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Explanatory Memorandum

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Article I

1. Introduction

This bill amends the Betting and Gaming Act (Betting and Gaming Act), the Betting and Gaming Tax Act (KSB) and some other acts concerning the regulation of remote games of chance. This is in implementation of the coalition agreement of the Rutte-Asscher government, which includes the modernisation of the games of chance policy and the strict regulation of online games of chance.¹ After the establishment of the Games of Chance Authority², this bill is the second phase in the modernisation process of the games of chance policy, which aims to prevent gambling addiction, protect the consumer and discourage illegality and crime.

Remote games of chance are games of chance in which the player takes part with electronic means of communication and without physical contact with (the personnel of the) the organiser of the games of chance or a third party which provides a room and resources for the participation in the games of chance. Because of the lack of direct contact between the player and the games of chance provider, these games involve different and bigger risks of fraud and gambling addiction than the traditional physical (“land based”) games of chance. Hundreds of thousands of Dutch people have however been participating online in such games of chance for years, without the objectives of the Dutch games of chance policy being guaranteed.

The closed system of the Betting and Gaming Act does not allow remote games of chance yet. With this bill, the government intends to lead the existing and future need for games of chance via internet and other future electronic means of communication to a responsible, reliable and checkable offer, leading the player to a regulated offer with guarantees against gambling addiction and crime with a suitable and attractive offer.

Proper and strict regulation of remote games of chance involves among other things that additional measures are set to prevent gambling addiction, including a central register for the exclusion of games of chance³, as well as additional supervision and enforcement powers for the Games of Chance Authority and amendment of the games of chance legislation.

2. Current situation and the need for regulation of remote games of chance

The rise of internet

The technological developments since the nineties have led to the Netherlands being part of a global communication society in which consumers have the possibility to buy a large number of products and services via internet. Internet use in the Netherlands is virtually comprehensive. 96% of all 12 to 75 year old people used an internet connection in 2012. Well over 60% of them are also on mobile internet and the growth of mobile internet is expected to continue.

Also the offer of remote games of chance has grown strongly. After the rise of online poker, online casinos and online sports betting followed. Technological developments enable

1 Building bridges. Coalition agreement VVD-PvdA. 29 October 2012.

2 Parliamentary Papers II 2012/13, 33 410, nr. 15, p. 26

3 Parliamentary Papers II 2010/11, 32 264, nr. 15; Parliamentary Papers II 2011/12, 32 264, nr. 25, p. 7.

additional new types of games of chance. The communication speed of internet for instance enables betting also during a sports match, even though the match takes place at the other end of the world: the so called *live betting*.

Because of the borderless nature of internet, many Dutch players have come in touch with remote games of chance rapidly because of these developments. According to the investigation of the Research and Documentation Centre (WODC) "Gokken in kaart" (Gambling mapped out)⁴, about 257,500 consumers took part in games of chance via internet in 2011. These were only 130,500 in 2005. Other investigations give even higher estimates of the number of participants. A Regioplan investigation estimates the number of Dutch participants of games of chance via internet at 565,000.⁵

The estimates of the size of the online market in the Netherlands vary between 140 million euros⁶ to 800 million euros⁷. This turnover is expressed in gross gaming revenue or the difference between the stake and the prize money paid. For comparison: The Holland Casino gross gaming revenue is about 500 million euros (2012) and the gaming machine sector in the Netherlands has a comparable size. Another comparison may be made to the Danish market, which has been legalised since 2012. Although Denmark has half the number of inhabitants, the remote games of chance market is about 250 million euros. The online market is expected to continue to grow. The European Commission's Green Book of March 2011 indicates that the online offer is the fastest growing segment of the games of chance market with a 2008 share (EU-27) of 7.5% of the annual revenues of the total games of chance market. This offer is expected to have doubled in size in 2013.⁸

The rise of regulation

The characteristic of these remote games of chance is that there is no physical contact between the provider and the player and that the remote game is offered via electronic means of communication. Because the player does not need to be physically present and many European governments did not license such games of chance, the providers established themselves in countries where favourable conditions were created for them, such as Antigua and Costa Rica. As the European clientele grew, the companies with their multi language customer services departments also established themselves in Europe, especially in Malta, the Channel Islands (Alderney, Jersey and Guernsey) and Gibraltar.

Many legal procedures followed over the past years, in which these companies claimed that the free movement of services in Europe involves that they are allowed to offer remote games of chance in all other European member states, based on a licence from another member state, such as for instance Malta. This is not the case as appears from the established case law of the EU Court of Justice.⁹ Many large providers of games of chance have adapted their strategy. They ask national governments to offer a licence for offering remote games of chance so that they can offer their services in a regulated environment. Many European

⁴ Intraval, Gokken in kaart. Second measuring nature and size games of chance in the Netherlands, 2011.

⁵ Nature and size of illegal games of chance in the Netherlands, 2009.

⁶ BCG, Online Market Games of Chance Investigation, 2011.

⁷ H2 Gambling Capital.

⁸ European Commission, Green Book: Online gambling on the internal market, COM(2011) 128, blz. 8.

⁹ Case C-42/07, Liga Portuguesa de Futebol Profissional, Jurispr. 2009, p. I-10447, 69.

countries, such as the United Kingdom, Italy, France, Germany, Spain, Denmark and Belgium, now have established such a regulation for offering remote games of chance.

Under the Betting and Gaming Act it is forbidden to offer games of chance unlicensed. The Betting and Gaming Act does not provide an explicit licence option for remote games of chance. An earlier bill to regulate games of chance via internet was submitted in 2005. As a test, it was suggested to license one provider, Holland Casino, to offer games of chance via internet. The bill was rejected by the Senate on 1 April 2008. The first reason was the fear of increased gambling addiction. A second reason was that offering games of chance via internet was not a government task and that also other parties besides Holland Casino should be able to join.

Regulation necessity

Because of the borderless nature of internet, the constant need of the Dutch consumer for remote games of chance, the fast technological developments and the wide offer directed to the Netherlands via hundreds of websites, sound enforcement of the ban on illegal offering is not possible without a responsible, reliable and checkable alternative. As the Betting and Gaming Act does not provide for the possibility to obtain a licence to offer remote games of chance, Dutch players depend on the way illegal providers curb the risks of games of chance themselves and they are not protected by government regulation and supervision.

It is clear from the 2011 investigation of gambling addiction "Gokken in kaart" that the number of problem players went down compared to 2005¹⁰ and that the group of risk players has increased (although not statistically significantly). It is in this group of risk players that the playing of games of chance via internet takes place more and more often instead of in the group of recreational players. To prevent such risk players from developing into problem players, a licensing system is required which protects against addiction risks. The lack of a licensing system also means that there are no guarantees for consumer protection and the fight of fraud and crime. Effective betting and gaming taxation for remote games of chance is also not possible now, because the Tax Administration is dependent on the individual player's preparedness to file taxes.

The above shows that the necessity to regulate remote games of chance is high. The situation in which remote games of chance are not regulated has to be replaced by a regulated system in which several online providers have to be able to enter the market, provided they meet strict licensing requirements which guarantee the objectives of the games of chance policy. By enabling licence holders to provide a suitable and attractive offer, a situation may be achieved in which the Dutch player has no need to play at illegal games of chance providers anymore. The remaining illegal providers can then be kept out from the Dutch market by the Games of Chance Authority as much as possible. This bill makes this possible.

3. Vision on remote games of chance

¹⁰ Amendment of the Betting and Gaming Act on temporary provisions regarding online games of chance (Parliamentary Papers 30362).

3.1. General policy vision on games of chance

By letter of 19 March 2011¹¹, the State Secretary of Security and Justice gave his vision on the Dutch games of chance policy. Consumers wishing to participate in games of chance have to be able to do this in a safe and responsible way. People have derived fun and excitement (or relaxation) from the knowledge that a small stake may lead to a large prize for ages. Games of chance are thus an important form of entertainment. Games of chance also involve risks that have to be contained. The policy objectives of the games of chance policy - prevention of gambling addiction, protection of the consumer and fighting illegality and crime - are the basis for it.

The government is of the opinion that a suitable and attractive offer of games of chance can be created by no longer focusing on all submarkets on a limited offer via monopolies, but by regulating the market by stricter rules and tight supervision on the offer. Where there is a demand for games of chance, a suitable offer must be regulated and not prohibited. Channelling the demand will lead the consumer to the responsible, reliable and checkable offer as much as possible.

This is based on the government's principle that offering games of chance is not a government task. The government is responsible for offering a regulative framework which takes the specific risks of games of chance into account, especially for groups such as young people who are extra vulnerable to these risks. This was started already in 2012 by including explicit criteria in the Betting and Gaming Act for the providers' advertising and canvassing policy. The government is also responsible for the supervision of the providers and for fighting unlicensed providers. The Games of Chance Authority was established for that purpose on 1 April 2012. Besides the government's responsibility, it may be expected from the player and the provider to take their responsibility (where possible) as well. They need to be aware that a game of chance is a product with special risks.

This vision concerns all submarkets of the games of chance. The government wants to modernise the entire games of chance policy. It does not want to make any rash steps, but chooses a phased approach. Based on interim evaluations, adjustments in the development can be made that way. A first step is the remote games of chance bill.

3.2 Preventing gambling addiction

Addiction risks

Dutch citizens who want to participate in games of chance have to be able to do that in a responsible and reliable way. Preventing gambling addiction is an essential part of this. Gambling addiction involves negative personal and social consequences. As a result of gambling addiction serious psychological, social, physical and financial problems may arise, such as aggression, relational problems and debts from which the person concerned cannot get

¹¹ Parliamentary Papers II 2010/11, 24 557, nr. 124.

out without help.¹² Many problem and risk players turn out to commit crime such as theft and fraud, and problem players usually do this because of their gambling addiction. These risks require an active prevention policy.

There are several factors that can increase the risk of gambling addiction. Personal specific characteristics and the personal situation first play a part to decide how susceptible a player is to gambling addiction. Also the game type and the game of chance environment may contribute to the risk of gambling addiction. For instance, the shorter the time between the game taking place and the possibility to place another bet, the larger the risk. This also applies to the short time between betting money and seeing the result.¹³

These last factors are present in remote games of chance. It mainly concerns game types with a fair to very high game pace. There is relatively little time between the stake being placed and the game result, which keeps the adrenaline high and the player tends to wage another bet. For these types of games the risk of gambling addiction is the highest. The threshold level to participate in the games of chance is low. For the players can for instance join in a game from their living room with a number of simple mouse clicks. The physical contact between the provider and the player is missing in this case. The specific characteristics of the offering of remote games of chance, as also acknowledged by the Court of Appeal in the Carmen Media Group case¹⁴, can involve serious risks to the protection of the consumer.

Addiction prevention framework

This bill therefore creates a framework to timely signal gambling addiction and to make specific steps to prevent addiction. Goal of the addiction prevention is

- to prevent vulnerable groups (such as youth) getting into trouble by participating in remote games of chance,
- to timely signal problems and
- moderation in gaming behaviour and if necessary referral to suitable care.

This is based on the notion of "playing responsibly" with government, players and licence holders each having their own responsibility.¹⁵

It is the task of the government to provide clear conditions and to supervise compliance with them. The player is responsible for his gaming behaviour. He should not play longer than is good for him and risk no more money than is responsible. The player therefore has to indicate his limits with playing limits. The licence holder has a far reaching responsibility to protect players against themselves (article 4a of the Betting and Gaming Act). This responsibility means that the licence holder takes the necessary measures to provide the player as much insight in his own gaming behaviour as possible and to inform him sufficiently on the (risks of the) games of chance. A licence holder also needs to take measures to help the player moderate his gaming behaviour, if necessary. This requires a specific target group

¹² WODC, Hooked on more than a game. An investigation into the nature and size of the games of chance issue in the Netherlands, 2005.

¹³ European Commission (2011). Green Book on online gambling on the internal market. European Committee (2011). Green Book on online gambling on the internal market.

¹⁴ European Court Case C-46/08, Carmen Media Group, Jurispr. 2009, not yet published, 103.

¹⁵ Parliamentary Papers II 2009/10/10, 24 557, nr. 130.

policy in which vulnerable groups such as youth under 18 cannot play and players displaying risk or problem behaviour cannot take part in remote games of chance or be protected against themselves.

The policy regarding addiction prevention distinguishes three groups of players:¹⁶ recreational players, risk players and problem players.¹⁷ The measures which have to be taken by the licence holders are increasingly more intense according to if a player's behaviour displays more risk indicators for gambling addiction (e.g. increasing playing frequency and exceeding limits set by him)

From a prevention point of view, besides the problem players, the group of risk players is an especially very relevant target group, because this group runs the risk of developing problematic gaming behaviour. At the same time however, this group is also interesting to licence holders to keep as active players, as especially these players play regularly. Active responsibility means that the provider especially observes the gaming behaviour of this group and intervenes if necessary by driving moderation of the gaming behaviour or temporary exclusion from the game.

Regulation of games of chance offers outstanding (observation) possibilities to early signal risk behaviour in gaming and to intervene in a suitable way if necessary. The gaming behaviour and the transactions of the player can be monitored continuously online for instance, as opposed to the physical world. The digital environment also offers the possibility to set and register personal limits to the gaming behaviour via a player profile and to effectively offer instruments like self-tests and reference to (anonymous) care.

Exclusion from participation in games of chance

For a further strengthening of the prevention policy, it is necessary for the player to always have the possibility to exclude himself temporarily from participation in the games of chance. This may cause him to temporarily take sufficient "distance from the game" and thus keep his actual gaming behaviour under control.

In current practice, certain land based licence holders have their own system for the exclusion of players. Holland Casino for instance displays its responsibility through the development of a procedure and registration system for exclusions. A number of gaming machines halls uses "exclusion lists". But players who have been excluded at one licence holder can simply participate in games of chance again at another licence holder in these situations. Only a registration system with a sound door policy can reduce the number of problem players therefore. Both the Netherlands Court of Audit¹⁸ and the Research and Documentation Centre¹⁹ recommended setting up a registration system for casino games and gaming machines, based on the experiences of Holland Casino and the characteristics of gambling addiction. Also the House of Representatives has requested this. In the motion by Kooiman and co²⁰ the government was requested - also considering the regulation of remote games of chance - to set

¹⁶ These three categories of participants in games of chance are based on the Southern Oaks Gambling Scale-score (SOGS), a score which indicates the degree of a potential gambling addiction based on 20 items.

¹⁷ Intraval, Gokken in kaart. Second measurement nature and size games of chance in the Netherlands, 2011

¹⁸ Netherlands Court of Audit. Holland Casino: compliance with government policy, 2011.

¹⁹ Intraval, Gokken in kaart. Second measurement nature and size games of chance in the Netherlands, 2011.

²⁰ Parliamentary Papers II 2010/11, 32 264, nr. 15.

up a central system to be controlled by the Games of Chance Authority in advance of that. The government is of the opinion that such a central register is a condition for the regulation of remote games of chance, considering the low threshold level and the special risks of remote games of chance. The government does not opt to centrally register the visiting frequency and visit restrictions of players, as a national game administration of all participants to games of chance is considered disproportional.²¹ Visit frequency and possible restrictions are registered per provider.

The bill therefore includes the set-up of a central register for exclusion from participation in games of chance, directed at participation in games of chance with a high game pace which are offered in gaming casinos, amusement arcades and remotely. The central register offers an effective possibility to protect risk and problem players against gambling addiction. Voluntary exclusion is obvious for risk players. Involuntary exclusion may be proceeded to for problem players as well. Exclusion offers an outstanding opportunity to organise care and the possibility/risk of exclusion gives the licence holder reason to speak with the player. The Games of Chance Authority will be the administrator of the central register. Paragraph 5 gives a further explanation of the functioning of the central register.

The government wishes to have reduced the number of risk players to the level of 2005 by 2017 (a reduction of 92,000 to about 44,000) and to keep the number of problem players at max. the level of 2011.²² To make sure that the licence holders and players fulfil their responsibilities sufficiently, the licence holders will get obligations they will have to meet at least. Active supervision on the compliance with these minimum obligations will point out the responsibilities to licence holders and prevention policy becoming a paper checklist is avoided.

In addition, the Games of Chance Authority will have a coordinating role regarding the prevention policy. The Games of Chance Authority has taken the initiative for structured consultations between games of chance providers (both land based and online), addiction care, Dutch Mental Health Care (GGZ) and the Ministries of Security and Justice and of Health, Welfare and Sport. These consultations focus on the development of joint ambitions to prevent gambling addiction as much as possible and to develop a strategy per subsector.²³ The Games of Chance Authority will also control the central register and temporarily excludes problem players from participation in games of chance with a high game pace if necessary.

3.3 Consumer protection

A second objective of the Dutch games of chance policy is to guarantee a high extent of consumer protection. Games of chance are often intransparent products which are characterised by information asymmetry. The consumer in games of chance, the player, has to be able to rely on it that the game is played fairly and is reliable and that his player's profit is actually paid out. Consumer rights have been harmonised quite speedily under Community law. But games of chance are excluded from the scope of these directives because of the special nature of games of chance and the authority of member states to establish their own

²¹ Parliamentary Papers II 2011/12, 32 264, nr. 25.

²² Parliamentary Papers II 2011/12, 24 557, nr. 131.

²³ Parliamentary Papers II 2010/11, 24 557, nr. 127.

policy regarding games of chance. Regarding games of chance, it is important that the member states have to be able to take (stricter) measures to protect the player in games of chance.

A number of basic principles apply to achieve a high level of consumer protection for remote games of chance. Players have to be able to make a deliberate choice if they want to participate in remote games of chance and with which provider they want to play. The licence holder must make sufficient information available about for instance the nature of the games of chance offered by him, the costs of participation and where the consumer can turn to for queries and complaints. This information has to be up to date and be provided to the player clearly and understandably.

Participation in games of chance by minors and other vulnerable persons must be avoided. This goes especially for remote games of chance, because the threshold for minors to use the internet for instance is very low. Research shows that in Europe 75% of the six to seventeen year olds make use of internet.²⁴ That is why preventive protection measures are taken to prevent these persons from having access to remote games of chance. Based on this bill, strict requirements apply to prevent participation of minors.

The players' balances on the player's gaming account at the provider have to be sufficiently protected. The consumer has to be able to rely on it that his player's balance will be paid out at all times safely and quickly and will not be used by the licence holder for other purposes.

Consumer data have to be protected carefully. With remote games of chance, a lot of data regarding for instance the identity of the player and his gaming behaviour are registered online. This has to be done carefully and improper use of these data has to be prevented.

Consumers also have to be protected against fraudulent services. The games of chance offered have to go fairly and be reliable. The random number generation for instance has to meet certain technical standards. Transparency is of essential importance in that respect.²⁵

It finally has to be avoided that advertising activities encourage the participation in games of chance or instigate to excessive participation. For channelling purposes, licence holders have to be offered sufficient room to point out the responsible, reliable and checkable offer and its advantages to the consumer. These advertising activities are not supposed to encourage the participation in games of chance however, or in particular, instigate to excessive participation. Licence holders are therefore only allowed to advertise for games of chance sensibly. Under article 4a of the Betting and Gaming Act, further rules will therefore be established for canvassing and advertising for remote games of chance. This concerns bonuses especially.

3.4 Fighting fraud and crime

It is an acknowledged fact that games of chance via internet involve other and more serious risks of fraud than the games of chance offered on the traditional markets because of the lack

²⁴ European Strategy for a better internet for children (COM(2012) 196 final).

²⁵ European Commission (2011). Green Book on online gambling on the internal market, p. 20.

of physical contact between the player and the games of chance provider. Examples of fraudulent activities are not receiving players' profits, influencing the chance determination by manipulation of the software, match fixing or unfair game play by the players themselves, for instance at the poker table. The government attaches great importance to the prevention of fraud and crime at remote games of chance as much as possible.

Players becoming the victim of fraud and crime is something which has to be prevented. There can also be a disadvantage to fraud and crime for the provider, if criminals have the possibility of money laundering via remote games of chance.

Licence holders have to meet strict requirements to prevent fraud and other crime. They have to establish the player's identity for instance and verify that identity, register all financial transactions and exclude players when there is a suspicion of fraud or other games of chance related forms of crime. In addition, licence holders have to comply with the Anti-Money Laundering and Anti-Terrorist Financing Act (Anti-Money Laundering and Anti-Terrorist Financing Act). With the regulation of games of chance, the scope of the Anti-Money Laundering and Anti-Terrorist Financing Act is extended to remote games of chance.

3.5 Suitable and attractive offer

Traditionally, three policy objectives - prevention of gambling addiction, consumer protection, and the fighting of fraud and crime - were aimed at by limiting the offer as much as possible. These policy objectives still come first. Their realisation is however no longer aimed at by limiting the offer as much as possible but by establishing strict rules and conditions to the permitted offer and by effective supervision of the compliance with that. This applies especially to the market for remote games of chance. Contrary to the land based offer, the market for remote games of chance is cross border by definition and enforcement is therefore complex.

The aim of the regulation of remote games of chance is to lead the consumer to the responsible, reliable and checkable offer as much as possible. The legal games of chance offer has to be so attractive that players feel no need to use the sites of illegal providers.

This bill aims to have the highest possible degree of channelling. The lower limit of the degree of channelling is set at 75%, which means that the aim is that at least 75% of the total gross gaming revenue generated by Dutch players is realised by providers with a licence under the Betting and Gaming Act.

To realise a suitable and attractive offer, it is firstly important that the number of licences is not limited beforehand. A parallel may be drawn with the gaming machine sector, which was regulated in 1986 from an illegal situation. The basic principles were:²⁶

- that the public's obvious need for machine games is taken into account;
- that on the one hand machine gaming may not lead to such losses, that weaker groups are put at a disadvantage, whereas a reasonable exploitation of gaming machines has to be possible on the other hand in order to prevent a flight to illegality, and
- that there is a reasonable degree of certainty that the regulation is complied with and that its enforcement does not give rise to any special investigation and prosecution problems.

²⁶ Revision of the Betting and Gaming Act (gaming machines), Parliamentary Papers 16 481.

Within these basic principles, it was decided at the time to not limit the number of licences to be granted for gaming machines.

A high degree of channelling for remote games of chance cannot be achieved in the opinion of the government with granting an exclusive right to a single licence holder or with a number of licence holders that was limited beforehand in the opinion of the government.

Considering the substantial demand for remote games of chance, many providers are active in this market. To achieve a high degree of channelling, it is important therefore not to limit the number of licence holders beforehand. A pre-limited number of licence holders reduces the competition between the providers. Although this may seem attractive at first from the point of view of gambling addiction prevention, it will lead to higher costs for the consumer in the form of a lower payment ratio. Additionally, the stimulus for providers to innovate is missing in such a system. From this follows the risk that Dutch players will turn to more attractive illegal sites offered. A limited number of licence holders will also raise questions about the criteria for setting the number. For it cannot be determined exactly beforehand in a dynamic market how many licence holders are required for a suitable and attractive offer.

A certain competition between licence holders within the limits set by the Dutch games of chance legislation is required for a suitable and attractive offer of remote games of chance. Consumers can then benefit from an optimal offer, because games of chance providers will jump on the latest need and wishes of the player. There will be certain requirements for the canvassing and advertising expressions. Moderate canvassing and advertising is possible to discourage the player from excessive participation in unregulated and unsafe games of chance being offered.

The number of licences granted is expected to be low in practice however, also considering the experiences in Denmark, because of the high requirements to the licence holder, his company and the exploitation of the games of chance.

A second precondition for a high degree of channelling is that the costs a licence holder has to make for a responsible, reliable and checkable offer remain realistic. High costs for the licence holder are a disadvantage for his competition position as compared to providers offering games of chance on the Dutch market unlicensed. This is at the expense of the intended channelling. Research²⁷ showed that there is a direct connection between those costs a licence holder has to make and the degree of channelling. The regulation in other European countries (such as France, Spain and Germany) proves that providers decide not to apply for a licence for business economic reasons, if the costs for it cannot reasonably be earned back. The player is thus tempted to play with illegal providers, who can offer higher pay out percentages because of lower expenses. For internet pre-eminently offers the opportunity to compare product characteristics such as pay out percentages between providers. Paragraph 7 further deals with the specific costs for a licence holder.

A third precondition for the attractiveness of the legal offer is the variation in the types of games being offered. Where the Games of Chance Commission still suggested via internet in 2010 to initially only regulate the poker game,²⁸ the dynamics in the current games of chance market show that poker has become less popular meanwhile and that sports matches are very popular at the moment. An investigation by Regioplan Policy Research of the nature and

²⁷ BCG, Investigation Online Market Games of Chance, 2011.

²⁸ Annex to Parliamentary Papers II 2009/10, 24 557, nr. 123.

extent of illegal games of chance²⁹ moreover shows that although the number of participants in illegal games of chance via internet largely consists of poker players, there is also a substantial offer of (other) casino games, sports betting and bingo.³⁰ It is therefore proposed to not only regulate poker, but also other types of games. In view of any future developments in the games of chance offer and the changes in consumer needs, the act will not include a limitation with regard to the types of games, but this will be specified in subordinate legislation. The proposed system thus offers the possibility to anticipate players' latest gaming needs quickly and adequately, so that they do not have to resort to the illegal offer. Innovation in the sector will also benefit from this.

3.6 The connection with the existing system of licences

The regulation of remote games of chance cannot be seen separately from the existing licence system and the current licence holders, as Dutch games of chance legislation in its entirety will change by the regulation of remote games of chance.

Because of the borderless nature of internet, there has in fact been a Dutch market for remote games of chance for years. This market is expected to see a growth in the coming years of about 12% per year.³¹ An investigation by public and private consultants APE of 2011 shows that substitution between offline and online offer cannot be proved, but is a possible effect. APE also specifies that there are differences in demographic characteristics between online and offline players. A survey by marketing information specialist TNS NIPO from 2012 on the expected future participation in games of chance predicts an increase in the number of players for all submarkets. The survey shows that there is more growth comparatively in the demand of online games with the group of respondents who were informed on the intended regulation of remote games of chance via the survey. The survey foresees a substitution risk at the State Lottery because of it. Because the substitution risk cannot fully be excluded, it is important that this bill also offers the current licence holders the opportunity to obtain a licence for organising remote games of chance in order to develop an online product offer to complement their offline games offer. In the light of this intended modernisation, the government participations Holland Casino and State Lottery are given the opportunity to apply for a remote games of chance licence, provided it does not lead to unfair competition.

The current Dutch licence holders kept aloof from offering remote games of chance over the past years, whereas the current (foreign) illegal providers have acquired market share in the meantime. The current licence holders emphasize that the starting positions for the transition to a licenced market differ so much, that they are at a great and unequal distance. They therefore plead in a sector proposal³² for a transition or *prelaunch* phase in which they can already offer remote games of chance prior to the opening of the market. They also plead accompanying measures to strengthen the existing product offer. In a strict interpretation of the current Betting and Gaming Act, the government only sees limited opportunity for an accompanying policy.

²⁹ Parliamentary Papers II 2009/10, 24 557, nr. 103.

³⁰ 66% of the respondents playing via internet indicates to play poker and 60% indicates to play other games of chances via internet (respondents take place in different types of games).

³¹ BCG, Investigation Online Market Games of Chance, 2011.

³² Source: <http://www.goededoelenplatform.nl/web/file?uuid=448d4bc7-0eb9-4bfb-9002-7aac36ff14a6&owner=2f6b8e00-cf1d-41c0-8913-9d6a43f82d37>

A possibility is the redefinition of the current prioritisation criteria,³³ which the Games of Chance Authority uses to tackle the current illegal offer, such as additional criteria for online marketing and agreements with tolerated parties to simplify tax collection from players under the current legislation. These measures may be combined with fighting illegal providers who do not keep to the prioritisation criteria according to the line started by the Games of Chance Authority.

The government recognises the importance of the contributions to sports and charity. This bill enables obligatory contribution to sports and charity by ministerial decree by way of a minimum contribution percentage. Although obligatory contribution to sports and charity can be considered a suitable measure, it could also have the undesirable side effect that - via posting as a sports and charity organisation - a sharper competition with the current licence holders will start to take place, which could cause the total contribution to become rather higher than lower. In view of this and taking the desired channelling into account, obligatory contribution will not be required at the opening of the market. Critical evaluation of the market development, the development of contributions to charity and sports and of potential substitution of the lottery offer by online games of chance may lead to yet having a minimal obligatory charity contribution for remote games of chance providers. This provision creates an "emergency valve" to mitigate undesirable developments regarding charities and sports contributions.

This bill is the first step in the modernisation of the games of chance policy, as has also been indicated in the introduction of this explanatory memorandum. In addition, the government intends to privatise Holland Casino and to regulate the casino market differently. The government also intends to end the monopoly on the sports bets and to grant lottery licences in a transparent way at a *licence fee*. In preparation of transparent licensing, an amendment of the Betting and Gaming Act is proposed in this bill, creating a legal base for the use of games of chance licences.

4. Measures based on the remote games of chance bill

The specific measures to give substance to the policy vision of the last paragraph are specified in this paragraph. How and which licences will be granted is specified first. The licence conditions are specified from paragraph 4.3.

4.1 Scope remote games of chance

Remote games of chance definition

Remote games of chance in the sense of the proposed title Vb of the Betting and Gaming Act are games of chance which are organised remotely with electronic means of communication and in which the player participates without physical contact with the provider or third parties who make room and resources available for the participation in those games of chance. This distinguishes these games from the land based games of chance from the other titles of the Betting and Gaming Act. For providers have to know ahead of time which licence has to be

³³ No .nl domain, no advertising in media, no website in Dutch.

applied for for the games of chance offered by them, which conditions have to be met and which tax rate applies. For different licences have different conditions.

Considering the future developments, the electronic means of communication that may be used for organising remote games of chance are not defined. That means that all games of chance offered via existing or future means of telecommunication, including internet, television or smartphone, come under the notion of remote games of chance. The use of those different means of telecommunication is allowed in principle, provided the conditions for offering remote games of chance are fulfilled.

Game types

It is also important to take into account future developments in the demand of the players for certain game types those players want to participate in. That is why the game types which may be offered remotely are not restricted in the act, but rules will be made on this by order in council. Considering the existing offer and the offer to be channelled, the following game types are considered:

- *Poker* in different kinds such as seven card stud, texas hold'em, pai gow, double down stud, fast action hold'em, let it ride, caribbean stud, pot limit, omaha and three card poker;
- *Casino games* which may currently be offered in land based gaming casinos, such as French and American roulette, Blackjack, Baccarat, Punto banco and Keno;
- *Gaming machines games* such as fruit games, which are currently offered in amusement arcades;
- Sports bets (*fixed odds*), with one on one bets between the individual player and the organiser. The licence holder himself establishes the quoted price (*odds*) of sports results against which players can place their bets. The quoted price determines what people get paid if a bet is made and they win. The quoted price is established before the match begins. This type of betting is very popular on internet and therefore has to be regulated. Other member states also allow fixed odds bets;
- Sports bets (*exchange betting or pari mutual betting*), with one on one bets between two individual players. The provider of exchange betting establishes the quoted price, but brings supply and demand together, like on eBay or a stock market. The licence holder claims a commission from each bet successfully closed between players. A licence holder's revenues do therefore not depend on the result. Also other member states allow *exchange betting*;
- Sports bets (*live betting*), with betting on events during the game. Live bets are becoming more and more popular on internet and are characterised by a more addictive (*short-odd*) nature than other bets, which makes regulation necessary. Also other member states allow live betting.

Only bets on sports matches are allowed as the demand for other types of betting (such as predicting who will win the next presidential elections in the United States) is restricted. *Spread betting* is not allowed. This type of bets involves risks of large losses for the players and the game looks more like a financial product with characteristics that are also present in the options market. This game of chance is of such nature that the player cannot be protected properly from the risks involved.

Sports bets are a substantial part of the demand in remote games of chance to be channelled. It concerns games with a high game pace which could be addictive. The current licence holders for organising the totaliser and sports totaliser under title III and IV of the Betting and Gaming Act can currently make limited use of internet - under the conditions of the licence. This will no longer be permitted under the new licensing after the current licences have expired. If the current holders of a licence under title III and IV of the Betting and Gaming Act want to start offering remote games of chance, they have to apply for a licence under the new title IVb.

As far as known, there is no substantial demand for online varieties of the traditional lotteries in need of channelling. The online offer of lottery products is therefore not regulated under the remote games of chance bill. Lotteries also mostly come under the games of chance with a relatively low game speed, as opposed to remote games of chance with mostly a high game speed. This does not alter the fact however, that the current possibilities for lotteries to sell lottery tickets via internet will continue to exist.

Under the licence for organising remote games of chance, all remote games of chance to be specified further in the subordinate legislation may be offered, provided they meet the conditions. It is also possible of course to offer only a part of those games of chance. The licence holder does not have to meet the conditions stipulated for the other games of chance in that case. If the licence holder wants to offer other permitted remote games of chance later, he can ask the Games of Chance Authority to change his licence accordingly.

Volume of players in terms of liquidity

In comparison to the illegal offer, the volume of players also determines the attractiveness of the game in the case of some types of games, such as poker and exchange betting and thus also the channelling of the demand for a responsible, reliable and checkable offer. That is why players registered with a Dutch licence holder can also play those types of games against players from other countries where this licence holder offers those games of chance under a licence. This creates the (international) volume of players which is required for the channelling. The operational management of course has to meet the necessary requirements to fight fraud, money laundering and other forms of crime. There will be certain requirements for the identity of the foreign player, the verification of that identity and the registration of the financial transactions. Also other countries with a relative small volume of domestic players, such as Denmark or Belgium, allow for such liquidity.

4.2 Granting licences

A licence from the Games of Chance Authority under the new title Vb is required for being allowed to offer remote games of chance in the Dutch market. Every company which meets the conditions for granting the licence can qualify for such a licence. These conditions and the way in which the licences are granted are included in general binding regulations in the act, the order in council and the ministerial regulation and are thus known to companies in other member states possibly interested in a licence in advance. The execution policy to be drawn up by the Games of Chance Authority will also be made known in advance. In addition, the Games of Chance Authority will clearly communicate these conditions to providers. This complies with the principle of transparency which means that the licensing procedure has to be organised in such a way that a company in a different member state has the actual

possibility to show its interest.³⁴ A company has to be given the opportunity to have access to all relevant information on the extension of the licence before the licence can actually be granted. The conditions providers have to meet if they wish to have a licence have to be sufficiently clear and known in advance.

The single fact that a games of chance provider has a licence for organising remote games of chance granted by a different EU or EEA member state, is no reason however to grant a licence for organising remote games of chance on the Dutch market. As harmonisation of the games of chance policy at a European level is lacking, a foreign licence does not offer any guarantee for warranting the Dutch games of chance policy.

Validity

The validity of a licence will in principle be five years. This is equal to the validity of licences in other European countries and enables the licence holder to earn back his investments, considering the conditions games of chance providers need to meet. The licence may be changed, revoked and suspended.

The licence cannot be transferred by the licence holder to another (legal) person. Other than by transfer, the licence can pass on to a third party with permission of the Games of Chance Authority – especially in case of a merger or division of the licence holder. In order to get that permission, the new legal person has to meet the conditions for the licence to be granted in any case.

When the licence is granted, the testing of the gaming system may be completed within six months to a year. Considering the necessity to offer a regulated system at short notice, this helps to have suitable providers being able to start on the Dutch market straight after the licence has been granted and not only after a time consuming test has been completed. For this purpose, the provider has to prove that he organises remote games of chance in a member state legally, is under supervision there and that his gaming system tested positively shortly before the application of the licence by a testing institution recognised by that member state. The development of similar criteria enabling completion of part of the inspections of the gaming system after the licence has been granted is also considered for the Dutch existing licence holders who do not offer remote games of chance in other member states.

4.3 Measures to prevent gambling addiction

The basic principle of the addiction prevention policy for games of chance is that the player gets sufficient information and resources to make him aware of the risks of gambling addiction, to give him insight in his gaming behaviour and to move or force him to moderate his gaming behaviour, if necessary.

Informing the player

The licence holder has to take the necessary measures to prevent and limit gambling addiction as much as possible (article 4a Betting and Gaming Act) A first requirement is that he facilitates players in responsible participation in remote games of chance. The basic principle is that the player is sufficiently informed about the risks of participation in remote games of chance and about the way he can play responsibly.

³⁴ Case C-231/03, Coname, Jur. 2005 p. I-07287.

The licence holder therefore has to provide the player with certain general and more individual information. This information has to be clear and properly accessible at all times for the (potential) player. The player has to have access to the information from any type of user interface (for internet this means for instance from every page of the website). This does not mean that all information has to be on every website in full. A link giving the player access to the obligatory information is already sufficient. The information that has to be provided in any case, will be further specified in the subordinate legislation, but contains at least information on:

- the risks of all games of chance and the way in which those risks can be avoided, such as play tips for responsible participation in remote games of chance;
- a self-test on possible addiction problems;
- the available help, with links to websites of Dutch institutions for addiction care in any case;
- the possibilities to change the limits of the desired gaming behaviour;
- the possibilities of temporary self-exclusion from participation in games of chance organised by the licence holder and the possibilities of temporary self-exclusion from participation in all games of chance offered in amusement arcades, gaming casinos and online;
- the duration of the participation in games of chance and the balance of the player account. This is a “clock” which has to be visible for the player at all times and on which the player has to be able to see how long he has been playing already and what the balance of his player account is.

Player profile with gaming behaviour limits

The licence holder is not allowed to offer remote games of chance to a player who has not filled out his player profile and has indicated the limits he wants to put to his gaming behaviour in advance. These limits are stored in the personal player profile of that player. The parameters of those limits will be further specified in cooperation with institutions for addiction care in the subordinate legislation. These will in any case comprise the frequency and the duration of the participation in remote games of chance, the maximum deposits on the player account and the maximum balance on that player account.

Generic limits applying for every player, regardless of his personal background, have not yet been considered. It is important that before he is going to participate in remote games of chance, the player first thinks himself about the limits he wants to put in for himself. The profile filled out by the player and the registration by the licence holder of data regarding his gaming behaviour enable the licence holder to call the player to account on his gaming behaviour. For reasons of prevention, it is more effective to point out to the player that he is exceeding the limits he put in for himself and to point out the risks of gambling addiction where necessary, than to confront him with exceeded generic norms which do not take his personal backgrounds into account. The licence holder has to help the player fill out the player profile. This could be in the form of an explanation about a responsible playing duration and visiting frequency or a self-test leading to individual advice on the limits of the profile.

The player can adjust his player profile later. Subordinate legislation will provide that a lowering of the limits will be implemented immediately and that a certain time has to be taken into account when the limits are raised in order to give the player some time to reflect.

Observation of the gaming behaviour

The licence holder has to register and analyse data regarding the player's gaming behaviour. Certain patterns in the gaming behaviour may not only point to money laundering activities, play manipulations or other forms of games of chance related crime, but also have to lead to early recognition of risky or possibly problematic behaviour. Intervention is required in that case to fight gambling addiction. Indications include long consecutive periods of participation in the remote games of chance, frequent adjustments or exceeding of the limits the player put in his player profile and persistent rude behaviour to other players or customer service staff. Also external signs by third parties – family members of the player for instance – are indicators which have to be involved in the registration and analysis.

Intervention in the gaming behaviour

The licence holder who detects risky gaming behaviour with a player, for instance as a result of his exceeding one or more limits in his player profile, points that out to that player and asks him if he wants to continue playing. If it is about exceeding a money limit of the player profile, he has to exclude that player temporarily (cooling down period). The licence holder also has to inform such a player in a personal meeting about his gaming behaviour, the development of that behaviour and the risks of games of chance addiction. The licence holder has to point out to the player the available assistance by institutions for addiction care and the possibilities to moderate his gaming behaviour, for instance by adjusting the player profile, taking a short “time out” or temporary exclusion of participation in all risky games of chance. These measures aim to prevent as much as possible that recreational players develop into risk or problem players and to encourage that gaming behaviour stays recreational.

The licence holder, who detects risky or problematic behaviour, has to protect the player concerned against himself. He has to convince that player of voluntary exclusion of participation in the games of chance organised by him, or of voluntary national exclusion by registration in the central register. The most far-reaching type of intervention is involuntary national exclusion in the central register.

Lead to care and treatment

Every player indicating that he needs assistance in responsible participation in games of chance has to be pointed to available possibilities for treatment at care providing institutions, such as for instance the usual addiction treatment at mental health care institutions (GGZ) or self-help groups. Especially when risk or problem players are concerned, an active attitude (player guidance) of licence holders is required. Online assistance is also possible. Participation in this type of assistance is also possible anonymously. This enhances the effectiveness of the assistance, as many players are embarrassed to look for help for problematic gaming behaviour via the usual care institutions.³⁵

Tax for the purpose of research into gambling addiction and offering help

Anonymous help is an effective form of assistance. There is no structural financial coverage for this at the moment, however.³⁶ Because of the regulation of the remote games of chance

³⁵ Parliamentary Papers II 2011/12, 24 557, nr. 131.

³⁶ Anonymous online help cannot be combined with the identification required to enable funding under the Awbz (General Special Medical Expenses Act).

market with a strong emphasis on preventive measures – the licence holder has to point out addiction risks to the player and lead him to the available care if necessary – there may be a larger demand for (anonymous) help. To be able to come to adequate prevention, there is a need for development, testing and improvement of risk analysis instruments, preventive measures and (online) treatment methods regarding remote games of chance.

An extension of the purpose of the existing betting and gaming tax is proposed, because of which the licence holders of organising remote games of chance contribute to the costs of the (anonymous) treatment of gambling addiction and of the research of gambling addiction. This is to interpret the “addiction fund” that was requested in the Van Gent and co.³⁷ motion. The tax amount is set each year by the Minister of Security and Justice after consultation with the Minister of Health, Welfare and Sport.

4.4 Measures to protect the consumer

Paragraph 3 explains the vision regarding consumer protection. It is realised because its consumers are enabled to play at reliable and transparently operating providers.

Information obligations towards the consumer

Licence holders have to make sufficient information available on their website to be able to have players make a deliberate choice between the different licence holders. These information obligations and the way in which these need to be designed will be specified in subordinate legislation. These could be information obligations on the identity of the licence holder (trade name and establishment address), the way of price setting, the payment of taxes, the way of payment by the player, the way of pay out by the licence holder, the consequences of playing at a certain games of chance provider and where the player can go with queries and complaints. This information has to be clear and easily accessible for the player at all times.

In shaping this information obligation, the latest consumer rights directive will be adhered to,³⁸ which includes information obligations regarding remote sales. Because of the specific nature of games of chance and the authority of member states to decide their own policy on that, games of chance are excluded from the scope of this directive. For member states also have to be able to take other and stricter measures to protect the consumer in gambling activities (consideration 31 of the Directive). This does not alter the fact that national legislation is connected as much as possible and that, considering the interests to be protected for games of chance, stricter and more specific obligations specifically directed at games of chance are set if necessary.

Using the .nl extension

Licence holders have to offer their Dutch market directed offer via a website with a so called *.nl extension*. This is an indication for players that it concerns a site that is supervised by the Games of Chance Authority. Only the access goes via.nl. So this extension does not prevent Dutch players from playing certain games of chance such as poker in the worldwide

³⁷ Parliamentary Papers II 2010/11, 32 264, nr. 12.

³⁸ Directive 2011/83/EU, OJ EU L 304 of 22 November 2011.

community. The use of the national extension is also required in other member states (e.g. Belgium and Italy).

Prevention participation by minors

Licence holders cannot register someone as a player and then have him participate in remote games of chance before it has been ascertained that that person is 18 years or older. The licence holder further has to state explicitly that participation in remote games of chance is not permitted for minors. It has to be prevented that minors can present themselves as people of age. That is why there are requirements for identification and verification of the player. These will be further specified in subordinate legislation. This could be the presenting a copy of an ID and a verification payment via a means of payment made out in the name of the person. Paragraph 4.5 further discusses the identification and verification of the player.

Protection players' balances

The licence holder has the balances of the player at his disposal. It has to be guaranteed that the player can dispose of his money at all times and it has to be prevented that the licence holder uses that money for other purposes, for instance to cover the operational costs or for speculation.

The licence holder therefore has to offer suitable guarantees for those players' balances. He thus has to separate the balances on the players' accounts from his own property. Considering the international nature of the remote games of chance to be regulated and the existing options for it in the various jurisdictions, it is up to the provider himself to decide in which way he does this. He can for instance open a third parties account in the Netherlands and a trust fund may be erected in the United Kingdom. Licence holders can determine the way in which the players' balances are protected themselves, provided the way chosen by them is effective. They are also not obliged to manage the players' balances in the Netherlands. This would create tension with Community law. This ties in with the legislation of other countries such as Denmark and Italy.

Fair play

An important aspect of consumer protection in games of chance is the fairness of the remote game of chance offered by the licence holder. It is subject to requirements in subordinate legislation in the scope of responsible, reliable and checkable operational management. A distinction may be made for instance according to the way in which the remote games of chance are offered. Random numbering can thus take place via an electronic random numbering generator by a croupier (in *live dealing*) or by the result of an event in a sports match.

Advertising and canvassing

Licence holders have to design their advertising and canvassing in a responsible way. Article 4a of the Betting and Gaming Act and the Decree on games of chance canvassing, advertising and gambling addiction which is based on that entails that licence holders have to protect vulnerable groups and have to counteract misleading advertising. The international advertising and canvassing practice for remote games of chance has some additional specific characteristics which require further regulation.

Providing bonuses is an important form of marketing of remote games of chance. Bonuses are indispensable for an attractive legal offer of remote games of chance. They are used by

(almost) all providers and are an important instrument in the competition between licence holders and illegal providers to lead players to the licenced and therefore responsible, reliable and checkable offer. But bonuses cannot be tuned to the player's individual gaming behaviour. This prevents players being personally tempted to continue playing at vulnerable moments, for instance right after the loss of money. Bonuses will not be tax deductible for the provider and therefore do not count in the total gross gaming revenue on which tax is levied. This prevents the creation of a stimulus for licence holders to provide unlimited bonuses.

The international market for remote games of chance also has affiliate marketing". This is a form of internet marketing in which advertisers reward their partners (affiliates) for the generated sales or potential customers they provide. There is in itself no objection against this form of internet marketing, provided the objectives of the Dutch games of chance policy are guaranteed. The licence holder remains responsible and can thus be called to account for the canvassing and advertising activities of affiliates that refer to services of the licence holder.

Guarantees regarding personal data

Consumer protection also requires protection of personal data. Various (personal) data are processed when organising remote games of chance. Because it has to be prevented that improper use can be made of these data, there are requirements for the data processing by the licence holder, such as the use of consumer data and the time limits for the storage of personal data. Players have to be able to trust their personal data are handled carefully and in agreement with the principles of the Data Protection Act.

4.5 Measures to prevent fraud and crime

Fraud and other crime have to be prevented as much as possible in remote games of chance. The licence holder has to know who the player is. All transactions also need to be traceable to the person concerned. The licence holder further has to have proper means of recognising fraud and crime.

Identification and verification of the player and temporary player account

A licence holder can only register a person as a player after his identity has been established. Payments to players from the temporary player account, which will not be discussed here, cannot take place before also their identity has been established. The way in which identification and verification have to take place are further specified in the subordinate legislation.

There are different methods to establish and verify the identity of the player. Only having the player fill out his data is not sufficient to guarantee the objectives of the games of chance policy. If the data are not verified, for instance by retrieving documents, minors could register under a false age, players registered in the central register could participate in remote games of chance under a false name and personal details and money laundering, fraud and other crime will be easier. Sound identification and verification are therefore required from licence holders.

Subordinate legislation further specifies that the player has to present documents proving his identity, such as a copy or a scan of his ID. As this is also not entirely sound - a player could forge a copy for instance - the player also has to pay an amount into his player account with a means of payment in his name. The use of a credit card is allowed for this, provided it is

made out in the name of the player and can be traced back to the bank account number provided by him. In this way, the licence holder connects to the earlier identification and verification of the player by the payment institution involved. For when opening a bank account, the payment institution already requires the necessary information to establish the identity of the accountholder and to verify his identity.

This multi-stage way of verification is required, as the Netherlands does not have a central identification system, like for instance the Danish NEMID, on the basis of which the identity can be verified. Licence holders can also not use the citizen service number for their internal operations, as this is only allowed in the communication between government authorities and the citizen.³⁹

After registration, the player gets a unique player account which is linked to one bank account number indicated by the player when registering and on which the verification of his identity is carried out. Money in the player account can only come from this bank account or from a credit card or electronic wallet (*e-wallet*) linked to that bank account. Any prizes are only paid to that bank account. The identification-verification chain is lengthened in the use of the *e-wallets*, because also the e-wallet companies rely on the identity check of the linked bank account or credit card. This is in agreement with the requirements of the Anti-Money Laundering and Anti-Terrorist Financing Act. This lengthening of the chain can be allowed, provided the name-number check can take place – the use of anonymous credit cards and anonymous *wallets* is not allowed for that reason – and the credit card company or e-wallet provider has a bank licence in the EU.

There may be a time lapse between the identification and the verification of the identity. As is shown from the experiences with remote games of chance in France, it is however important for the degree of channelling that players can play immediately with free playing credit (bonus) provided by the licence holder. This prevents them from playing at illegal providers. That is why the possibility is provided to play with a temporary player account. Pending the verification of their identity by the licence holder, players can already participate in the games of chance offered for a limited period of time. They cannot get money paid into their account however, until their identity has been verified in the above described way. This ties in with the regulation of remote games of chance in for instance Denmark.

The subordinate legislation also has rules regarding the suspension and termination of the player's registration. The licence holder having reason to suspect a player of fraud, therefore for instance has to exclude this player (temporarily) from participation in the games of chance organised by him.

Transactions

The transfer of money between the player accounts of the individual players is not allowed. The licence holder has to take suitable measures to prevent this. The transfer of money between the different player accounts is a possibility to launder money and is therefore not in keeping with the policy objective of preventing fraud and other crime.

³⁹ The BSN may be used for communication with government services. The BSN is therefore used for the registration of players in the central register to guarantee the quality of the data.

The licence holder has to register all relevant transactions with the players clearly under the proposed article 34i. In this way, the transactions can be checked when there is a suspicion of fraud or money laundering. The licence holder has to make a copy of all transactions in his reference data bank available to the Games of Chance Authority and to the other relevant supervisory bodies (under the Anti-Money Laundering and Anti-Terrorist Financing Act, the 1977 Sanction Act and the KSB Act). To prevent manipulation with these copies, these have to be placed in the reference databank almost real time, within a few minutes. Which data have to be stored in the reference data bank, is specified in the subordinate legislation. These will in any case be data referring to the identification and verification of the player the transactions on the player account, the player profiles and the changes in those.

Means to recognise fraud and crime

The licence holder has to have the proper resources to recognise fraud and crime. This is specified in the subordinate legislation. An investigation into the nature and size of match fixing was ordered by the Minister of Health, Welfare and Sport and the Minister of Security and Justice and is carried out during the consultations for this bill. Whether specific further measures against match fixing have to be taken will be considered after the completion of this investigation.

4.6 Measures to ensure suitability and reliability

Only suitable providers who are able to offer suitable and attractive games of chance in a responsible, reliable and checkable way qualify for a licence. The licence holder thus has to be (financially) stable and reliable. The licence holder has to be able to meet his obligations to players and the government and be appropriately qualified.

Suitable providers

The continuation of the organisation of the provider has to be reasonably guaranteed. A licence holder therefore cannot be in receivership or be bankrupt. His equity capital or one or more assets forming a substantial part of that may not have been seized. Imminent bankruptcy, receivership or such a type of seizure may also be reason to doubt the suitability of the licence holder concerned. The requirements for continuity are further specified in the subordinate legislation.

The licence holder has to be a capital company besides, for instance a public limited company (plc), a limited liability company (Ltd) or a European partnership. The continuity of a licence holder is guaranteed to a sufficient degree with this requirement and is not made dependent on one or more individuals. In addition, this requirement offers more transparency in the organisation of the licence holder, as rules regarding capital companies are harmonised under European law. This harmonisation entails that capital companies have to meet certain requirements, especially in terms of accounting (published annual accounts) and audits.⁴⁰

The licence holder has to set up his operational management in such a way that a responsible, reliable and checkable organisation of remote games of chance is guaranteed. The outsourcing of work may not stand in its way. It is common usage in the international practice of remote

⁴⁰ Case C-64/08, Engelmann, 9 September 2010.

games of chance that certain parts of the operational management, such as the development of the gaming software, the players' administration and the transaction administration, is sourced out to third parties. Outsourcing in itself is not objectionable, provided it is clear that the licence holder remains responsible for the compliance with the requirements under the licence, also if the work is actually carried out by third parties. The licence holder can be held to account on his obligations by the player and the Games of Chance Authority at all times. Also in the case of canvassing and advertising activities it has to be clear to the player who they are from.

Rules for the outsourcing of tasks to third parties are established in subordinate legislation.

Reliable and expert providers

The reliability of the provider and of those who (also) determine his policy has to be beyond doubt. The way in which this reliability is established and the facts and circumstances involved are further specified in the subordinate legislation. Relevant antecedents will be formulated according to the model of the Act on Financial Supervision (Wft). The provider wanting to qualify for a licence, has to prove that his reliability is beyond doubt, among other things through a certificate of good conduct or if it concerns a foreign provider a similar document from which it is clear that he has no relevant antecedents. The Games of Chance Authority can also use the instruments of the Public Administration Act (BIBOB). Its effectiveness depends of course on the extent to which data are provided by the other country or countries. The burden of proof regarding the reliability is for the provider concerned.

The provider additionally also has to prove that he is professional. The policy of the provider has to be determined by people who are professionals in their work. The customer service staff for instance will have to have the necessary knowledge in terms of recognising risky and problematic gaming behaviour.

4.7 Measures for supervision

The previous paragraphs outlined the licence requirements for the licence holder in order to be allowed to offer remote games of chance. These are requirements which apply to obtaining the licence and requirements which apply during the exploitation of the licence. A number of these requirements see to the enforcement supervision by the Games of Chance Authority and other supervisory bodies involved in remote games of chance.

The licence holder has to have its statutory seat in the EU or EEA (European Economic Area) or in a designated third country, where supervision of that licence holder is sufficiently guaranteed. The statutory seat therefore does not need to be on Dutch territory. This would be in conflict with European law, as it would impede providers established in other member states to conduct their services in the Netherlands. The requirement of a statutory seat in the EU or EEA entails that not only providers with a statutory seat in the Netherlands can qualify for a licence.

The explanation on the measure for prevention of fraud and other crime already addressed the licence holder's obligation to keep accounts of data which are important for the supervision of the compliance with the Betting and Gaming Act, the Anti-Money Laundering and Anti-Terrorist Financing Act, the 1977 Sanction Act and the KSB Act and to store a copy of it in a reference data bank. The licence holder has to place this reference data bank in the Netherlands, so that access to this information by the Games of Chance Authority and other

supervisory bodies (such as the Tax Administration) is guaranteed at all times and the Games of Chance Authority can secure this information via seizure if necessary (article 34i). This requirement can be made, as opposed to the requirement of a primary seat in the Netherlands, because it is only about the obligation of keeping accounts and making the relevant data available to the supervisory bodies concerned. It moreover entails few costs for the licence holder and promotes supervision by the supervisory bodies concerned.

Besides the reference data bank, the licence holder uses electronic means (hardware and software) for the organisation of remote games of chance. Inspection of those electronic means is essential for the supervision on the compliance of the games of chance legislation, for instance for the fair proceeding of the games of chance offered. There are the necessary requirements to the electronic means.

These electronic means are usually located outside the Netherlands and with that outside Dutch jurisdiction. The Netherlands therefore cannot exercise physical supervision authority without agreements having been made with the foreign authorities concerned. An absolute obligation to locate these electronic means in the Netherlands would entail such high costs that the intended channelling intended by the regulation of remote games of chance would be at risk. The basic requirement therefore is that these means have to be located in the Netherlands, but this may be deviated from if cooperation agreements have been made between the Dutch Games of Chance Authority and the games of chance supervisory bodies concerned in the country where these means are located. The basis for this cooperation is laid down in article 34m.

The Games of Chance Authority has to have access to both those electronic means and the reference data bank. Article 31l is the basis to establish requirements to the electronic inspection from the Netherlands in subordinate legislation. Remote electronic access is necessary in order to check if the data included in the reference data bank are correct. With the combination of access to the reference data bank in the Netherlands and electronic access to the systems abroad, the possibility of adequate supervision on the compliance with the Betting and Gaming Act, the Anti-Money Laundering and Anti-Terrorist Financing Act, the 1977 Sanction Act and the KSB Act is reasonably guaranteed without the expensive obligations for the licence holders. This turns out to work well according to experiences from other countries, such as Denmark and Italy.

The licence holder has to provide the games of Chance Authority with the information required to conduct supervision periodically. The licence holder also has to provide data to the Games of Chance Authority on an incidental basis. He has to inform the Games of Chance Authority for instance on serious incidents which could be damaging to his integrity, continuity or exercising if his task. Finally also relevant references in the information provided with the application for the licence have to be reported to the Games of Chance Authority immediately. This will be further specified in subordinate legislation.

The gaming system of the licence holder has to be subjected to an inspection for the application of the licence, for later changes and by instruction for that purpose from the Games of Chance Authority. The licence holder has to submit the relevant inspection reports to the Games of Chance Authority. Based on this and on the other available data, the Games of Chance Authority decides if the compliance is sufficient.

In addition, the licence holder has to appoint one or more professional officers, who are responsible in his organisation for the execution and for the internal supervision of the compliance with the games of chance legislation. These officers also mainly maintain the contacts with the Games of Chance Authority and have to be available for the Games of Chance Authority.

Based on the proposed article 35d, financial security may be demanded by the licence holder. The purpose of this is to guarantee that fines and penalties imposed by the Games of Chance Authority are also paid if the licence holder refuses to pay. This also applies for the games of chance tax, as the games of chance tax is important for the proper functioning of the Games of Chance Authority. The maximum amount of the guarantee will be further specified in subordinate legislation. An amount is considered which is related to the gross gaming revenue, but not higher than € 780,000

5. Central register of exclusions to fight games of chance addiction

As explained in paragraphs 3.2 and 4.3, the temporary exclusion from participation in games of chance is an effective instrument of prevention to bring about a change in the gaming behaviour. Players displaying characteristics of risky gaming behaviour keep sufficient “distance” to the game by temporary exclusion of participation, thus influencing their gaming behaviour and it staying under control. Temporary exclusion also creates room for some addiction treatment. Experience in the care and treatment of addictions teaches that a temporary exclusion has to have a duration of at least six months in order to bring about an actual change, prevent fast rebound and have time for treatment.⁴¹ To have a national registration of temporary exclusion of participation, a central games of chance exclusion register has been proposed. This registers players who, voluntarily and in some cases involuntarily, cannot take part in certain games of chance for at least six months.

Scope of the central register

The scope of the central register is determined by how addiction sensitive the games of chance are. Games of chance with a high gaming pace turn out to be more addiction sensitive than games of chance with a low gaming pace. The “Gokken in kaart” report calls games of chance played in amusement arcades, in gaming casinos and remotely as the most addiction sensitive games of chance. An access and identity check is possible here. Checking with the central register is therefore required for all licence holders offering games of chance in amusement arcades, in gaming casinos and remotely. The player, who is registered in the central register, is excluded from participation in the games of chance organised by these licence holders. It will be considered in the evaluation of the bill whether extension of the scope of this register is required subject to the development of the gaming pace and the addiction risk of other games of chance.

The working of the central register

Persons are registered in the central register who have been temporarily excluded from participation in the games of chance mentioned. Licence holders can not admit these persons to games of chance organised by them. At the first registration of a player, and then each time a player logs in to start playing, the holder of a licence to organise remote games of chance has to check with the register. With this check, he ascertains that the person in question is not

⁴¹ Parliamentary Papers II 2010/11, 32 264, nr. 15.

listed in the register. Also the visitor of the land based casino or amusement arcade cannot be offered access to those physical spaces, before it has been established that he is not listed in the central register.

The basic principle of the listing in the register is the voluntary exclusion of the player of his own accord. A player can decide that he does not want to participate in the games of chance mentioned for six months, for instance because of the information on his gaming behaviour and the risks of games of chance provided to him by a licence holder. With that decision, the player indicates to be in need of help to limit his gaming behaviour. The licence holder supports him in that by pointing him to the possibilities and the way in which a listing in the central register takes place. In some cases, a problematic player will not want to exclude himself voluntarily from participation in spite of intervention by the licence holder concerned. The licence holder has to inform the Games of Chance Authority for possible involuntary registration in the central register, if he reasonably suspects that the player can cause harm to himself or others with his gaming behaviour. This may be necessary in situations in which the player for instance gambles away family money and his gaming behaviour has negative consequences for his work situation or family situation.

The Games of Chance Authority may decide on the basis of the data provided by the licence holder that the player concerned is yet registered in the central register. The Games of Chance Authority has to carefully judge the nature and the effects of the gaming behaviour in such a case. Object and appeal are open against the decision of the Games of Chance Authority to exclude a player involuntarily.

Signs of (burgeoning) problem behaviour may also reach the third parties via the Games of Chance Authority, for instance the player's spouse. A third party procedure has been put up for this purpose, in which a third party concerned can request a player's involuntary exclusion. The Games of Chance Authority will then start an investigation on the basis of that request.

Preconditions for an effective and efficient central register

Preconditions for an effective and efficient system are the feasibility for the licence holders and the enforceability for the supervisory body. The central register is effective when the application, registration and compliance of exclusions are conducted correctly by the parties involved. The player has to provide the licence holder with the right identity data, which are verified by the licence holder. It has to be prevented that the identity of a player not listed in the register is exchanged for that of a player who is listed. The BSN (Citizen Service Number) as person specific number enables a quick unique identification and verification of an individual and is used in checking with the central register by providers. This makes the use and the checking efficient and reliable. The licence holder also provides a timely and correct selection of players qualifying for (voluntary) exclusion. The licence holder is offered risk indicators for this purpose. They will be specified in the subordinate legislation. Examples are an increasing gaming frequency and exceeding the limits set by the player. These risk indicators have been derived from different types of research⁴² and the experiences in the care and treatment of addictions.

⁴² WODC, Hooked on more than a game. An investigation into the nature and size of the games of chance issue in the Netherlands, 2005; Intraval, Gokken in kaart. Second measurement nature and size games of chance in the

The central register is run by the Games of Chance Authority. The Games of Chance Authority supervises the correct execution by licence holders of their obligations to register and analyse gaming behaviour and to intervene in the gaming behaviour of the individual player if necessary. The Games of Chance Authority is also responsible for the involuntary registration of players in the register and the thorough investigation required for that.

Only the data which are required to guarantee that the right persons are excluded from participation in games of chance are registered in the central register. Those data are anonymised as soon as the exclusion period has finished. The data can then no longer be traced back to a person. The privacy of the person registered is then maximally guaranteed in this way. The anonymised data are made available after permission of the supervisory body for the investigation into the prevalence of gambling addiction.

6. Supervision and Enforcement

General

Supervision and enforcement in the market for remote games of chance requires a different approach than supervision and enforcement in the land based market. As opposed to land based, the market for remote games of chance is cross border by definition and supervision and enforcement are therefore complex. This complexity requires a combination of instruments which take this into account. The goal is to lead the consumer to the responsible, reliable and checkable offer as much as possible on the one hand and to make it as difficult as possible to the illegal providers on the other hand. The player has to be made aware of the presence of the attractive legal offer, with protection through a regulated offer and the objectives of the games of chance policy, such as the prevention of gambling addiction, being guaranteed. It is extremely important therefore that licence holders are checked and that enforcement against illegal providers takes place.

The basic principle is administrative enforcement. Criminal enforcement is the ultimate remedy. In general, criminal enforcement will only be preferred in cases of (serious) multiple or repeated offences, if there is a connection to (other) criminal activities or if there is a need for the application of criminal means of coercion, as well as the imposition of specific criminal sanctions.⁴³ Concerning administrative supervision and enforcement, the Games of Chance Authority cooperates with the supervisory bodies of the games of chance of the countries concerned and the (other) supervisory bodies for the Anti-Money Laundering and Anti-Terrorist Financing Act and the KSB Act.

Supervision on licence holders

Paragraph 4.7 explains which licence requirements the licence holder has to meet to enable the Games of Chance Authority to supervise effectively. In addition to these requirements, the Games of Chance Authority is competent under articles 5:16 and 5:17 of the Administrative Law Act (Awb) to demand information and examination of business data and documents. The Games of Chance Authority can collect information itself through select and random checks. For this purpose, the licence holder offers the Games of Chance Authority access to the parts

Netherlands, 2011; Ministry of Security and justice. Impact analysis central register exclusion from games of chance, 2012.

⁴³ Parliamentary Papers I 2011/12, 32 264, C, p. 8.

of the operational management and the gaming system that are relevant for supervision in order to be able to execute the necessary inspections. If data from reporting obligations, inspection reports or for instance information from third parties give reason, the Games of Chance Authority will proceed to further investigate and place a licence holder under sharper supervision. In that way, the Games of Chance Authority can decide that the accredited inspection institution appointed by the licence holder conducts inspections, at the expense of the licence holder, to check if the requirements are being complied with correctly at that moment within a period of time to be determined by the Games of Chance Authority. Licence holders are stimulated by the transparent way of working from the Games of Chance Authority to correct possible (unintended) illegalities themselves without intervention of the Games of Chance Authority. Awareness and clarity of legislation and rules with the target group are very important in this respect. The Games of Chance Authority encourages the licence holders to take their own responsibility.

Enforcement: making it as difficult as possible for the illegal providers.

Experiences in other countries and earlier experiences in the Netherlands with fighting illegal games of chance show that a high degree of channelling entirely relies on a successful implementation of enforcement. The achievable degree of channelling is the result of two effects: the degree in which the regulated system is suitable and attractive to players and providers and the degree in which operating (or continuing to operate) outside the regulated system is unattractive and risky to players and providers. With the games of chance tax rate proposed in this bill, an expected channelling of 75% is achieved. This means that some 25% of the total turnover of Dutch players will continue to be generated at providers outside the regulated system, in spite of the enforcement measures of the Games of Chance Authority. Besides creating a suitable and attractive legal offer, things have to be made as difficult as possible for the illegal providers. As the current enforcement instruments of the Games of Chance Authority are not entirely sufficient to fight the illegal offer of remote games of chance, some additional enforcement instruments are included in the bill. It is to be expected that the providers abroad will ignore the administrative sanctions. Tackling illegal providers abroad required a different approach.

Firstly, it is important that the supervisory body can detect the identity of the illegal provider. The possibility for the supervisory body to participate in the game anonymously is included in this bill. The supervisory body can detect the identity of the illegal provider in this way by following the flows of money.

The bill further authorises the supervisory body to give parties promoting remote games of chance, such as internet advertisers and financial and IT providers, a binding instruction to stop that service. For IT service providers this is a type of Notice and Take Down Order. Financial service providers are asked to block the payments between the player and the illegal provider. The explanation to the amendment of article 1 of the Betting and Gaming Act further discusses the service provision by financial institutions and IT service providers which is essential to illegal remote games of chance, which comes under “promoting” those games of chance. This offers a basis for the supervisory body to further extend the cooperation with these parties. The Games of Chance Authority will communicate with the service providers which illegal providers are concerned via a blacklisting.

Additional administrative enforcement instruments

Additional administrative enforcement instruments have also been included in this bill to give

the Games of Chance Authority more strike power. These instruments do not only apply to enforcement of remote games of chance, but also to enforcement of land based games of chance. The supervisory body is thus authorised to seal the places and objects of business, to prevent the provider from destroying or moving pieces (of evidence). It is further proposed to authorise it to enter and search homes against the will of the inhabitant. The supervisory body will further be authorised to definitively seize goods, such as online gambling columns. These authorisations may be exercised by force of the police if necessary.

International cooperation

The current providers of remote games of chance are often established abroad and also often operate from abroad. Also when Dutch providers enter the market for remote games of chance, the international character of this market will continue to exist. It is expected that the licence holders will mostly use gaming systems which are not located in the Netherlands. This has consequences for the supervision and compliance of the Dutch games of chance legislation and its enforcement, as the jurisdiction of the Dutch supervisory body is limited to Dutch territory. International cooperation is a prerequisite therefore. Article 34m of the bill is the basis for international administrative cooperation between the Dutch supervisory body and foreign supervisory bodies.

International cooperation also has the focus of attention EU wide. The first steps have been made to shape the international cooperation between the different national supervisory bodies of games of chance. The European Committee announced an action plan on 11 January 2012⁴⁴ aiming to have a better cooperation and a more effective protection of consumers and citizens among other things. The European Committee further announced some actions on 23 October 2012⁴⁵. Firstly, the administrative cooperation between the supervisory bodies of games of chance in the member states will be promoted. Secondly, it will be investigated which possibilities the IMI Regulation⁴⁶ offers for the cooperation and exchange of data between the member states. Thirdly, the exchange of information and best practices in terms of enforcement are promoted. Fourthly, the benefits and possible restrictions of reactive enforcement measures, such as blocking payments and EU blocking of access to the websites will be explored. The European Committee will further provide clarity on the reporting and action procedures for non-allowed content hosted in the EU by online intermediaries and a dialogue on supervision will be entered third countries.

Supervisory bodies of games of chance in various member states (Denmark, France, the United Kingdom, Italy and Spain) have developed bilateral administrative collaborations via Memoranda of Understanding (MOUs) on the basis of mutuality. The Netherlands are part of both the EU developments as the MOUs with other countries. Based on the MOUs, the supervisory body can exercise Dutch authority (under the Awb and Betting and Gaming Act) for the other supervisory body, to the extent that it is mutual. It occurs also for instance that a provider operating illegally in the Netherlands and who is established abroad does have a licence in his own country. It can be agreed with the supervisory body of that country that this

⁴⁴ Notification from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 11 January 2012, COM(2011) 942 final.

⁴⁵ Notification from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 23 October 2012, COM(2012) 596 final.

⁴⁶ (EC) Regulation nr. 2006/2004 on cooperation between the national bodies Responsible for enforcement of the legislation regarding consumer protection.

provider cannot direct his offer to the Netherlands. The sanction for this provider may then be that he will lose his licence in his own country.

7. Financial aspects of the bill

7.1 General

A precondition for a high degree of channelling is that the costs a licence holder has to make for a responsible, reliable and checkable offer of remote games of chance have to remain realistic. High costs for a licence holder are a disadvantage to his competitive position compared to providers offering games of chance on the Dutch market without a licence. This will be a negative effect on the intended channelling. Research⁴⁷ has shown that there is direct connection between those costs a licence holder has to make and the degree of channelling. It turns out from the regulation in other European countries (such as France, Spain and Germany) that providers decide not to apply for a licence for business economic reasons, when the costs cannot reasonably be earned back.

Besides the amount owed based on cost price for the licence application procedure, a licence holder's costs consist of the investments which have to be made to meet the Dutch licence requirements, the betting and gaming levy for the financing of the Games of Chance Authority, the betting and gaming tax, the contribution to the addiction fund, the contribution to sports and charity and the contribution to be paid to the Ministry of Security and Justice for the exploitation of the games of chance licence.

This paragraph explains the regulation of the betting and gaming tax first. Then other costs are discussed.

7.2 Betting and Gaming Tax

General

The regulation of games of chance as under this bill also influences the levy of betting and gaming tax. The Betting and Gaming Tax Act is adapted at some points therefore. A distinction is made for instance in the levy of betting and gaming tax for legal and illegal remote games of chance, especially regarding the rate and the tax base. There will be a lower rate for legal games of chance than for other games of chance. To finance a lower rate, the exemption for prize based gaming and betting tax is lowered.

Besides those amendments related to the regulation of remote games of chance, it is proposed to change the levy for land based poker tournaments from a levy on the prize for the player to a levy on the gross gaming revenue for the provider. This adaptation intends to achieve that the legal offer of these games can be continued in the Netherlands. It is also made clear that poker is marked as a game of chance for the betting and gaming tax. In exceptional cases it is not clear who is the taxpayer in the case of gaming machines. The tax duty will therefore be connected from now on to the person under whose exploitation licence these gaming machines are exploited. It is also arranged that the participants in casino games, gaming machines games and poker tournaments in a different EU member state or in another state which is party to the EEA are not taxed more heavily than players of those games in the

⁴⁷ BCG, Investigation Online Market Games of Chance, 2011 .

Netherlands. The way in which the economic value is established for prizes in kind will further be similar to the system used in income tax for pay in kind. The valuation is simpler and clearer that way. Finally, certain superfluous administrative obligations will be abandoned. The articles part of this memorandum is referred to for a further explanation of the measures described in this paragraph.

Betting and Gaming Tax for legal remote games of chance

As part of the regulation of remote games of chance, also foreign providers of remote games of chance can qualify for a licence. The offers a possibility to levy the betting and gaming tax from the legal foreign providers of remote games of chance instead of from those entitled to the prizes. The proposed set-up of this betting and gaming tax levy is similar to the way of levying which currently applies for domestic games of chance played via internet, for land based casino games and for gaming machines games, i.e. levy for the provider on the gross gaming revenue (stake minus prizes as well as the compensation for allowing the opportunity to participate in games of chance). The same tax base applies for the betting and gaming levy.

By taking the gross gaming revenue as the tax base, a relatively high betting and gaming tax is levied for games of chance with a high margin for the provider and relatively little betting and gaming tax for games of chance with a small margin for the provider. Taxation on the gross gaming revenue also meets the request to that end of a number of providers of remote games of chance with a large market share. The gross gaming revenue is also the tax base which is used most in the EU member states which have regulated remote games of chance.

When choosing the gross gaming revenue as the tax base, the government also considered the commitments to the House of Representatives⁴⁸ to consider xxx in the event of a possible system change of betting and gaming tax levied on the stake and with that letting go of the windfall principle. Further adjustments of the tax base (for land based games of chance) would however lead to drastic system adaptations with large consequences for the operational management in the sector. Such fundamental adaptations reach too far to realise them in the available time of the current bill. The main objective of the current bill is to regulate remote games of chance and to also amend the KSB Act accordingly.

To further strengthen the position of legal providers of remote games of chance and to promote the channelling, it is proposed to put the rate of the betting and gaming tax on legal remote games of chance at 20%. Providers could be inclined to continue to offer their services illegally in the event of a high rate. An illegal offer is more difficult to fight for remote games of chance than for land based games of chance.

Also at the request of the Ministry of Finance and on the basis of an analysis of the Dutch market and of experiences from other EU member states where remote games of chance have already been regulated, H2 Gambling Capital estimated the channelling in the years between 2015 to 2018 at different betting and gaming tax rates.⁴⁹ This estimation has been included in the table below.

⁴⁸ Proceedings II 2006/07, nr. 83, p. 4549 and 4550.

⁴⁹ In making this estimation, H2 Gambling Capital assumed that regulation of remote games of chance starts on 1 January 2015 and that no additional levy on remote games of chance is realised besides the games of chance levy and the games of chance tax.

Rate betting and gaming tax	Channelling 2015	Channelling 2016	Channelling 2017	Channelling 2018
10%	93.6%	95.0%	95.5%	96.0%
15%	84.9%	85.8%	86.5%	87.0%
20%	76.0%	76.1%	76.4%	76.9%
29%	65.0%	63.8%	63.2%	63.3%

An H2 Gambling Capital investigation of the betting and gaming tax in eight EU member states with regulated remote games of chance shows that all these member states apply a different betting and gaming tax rate and mostly also a different tax base for remote games of chance than that for land based games of chance.

The government considers the 20% betting and gaming tax of the gross gaming revenue suitable for legal remote games of chance. This rate leads to a reasonable betting and gaming tax revenue, whereas also a channelling is achieved to essentially realise the government's objectives for remote games of chance.

The monthly profit of players of illegal games of chance is taxed at 29%. The reason for the tax being levied from the players is that is virtually impossible to levy tax on the usually foreign providers of illegal games of chance. There is no reason to use a lower rate than the regular rate of 29% for these illegal games of chance. An additional benefit of levying betting and gaming tax from the player is that the player is stimulated extra to choose for a legal instead of for an illegal remote games of chance. The monthly profit of the players is not taxed in legal games of chance and taxed in illegal games of chance.

Lower exemption betting and gaming tax

The 20% rate for legal games of chance leads to the revenue of legalising the remote games of chance included in the coalition agreement not being made. The shortage in budgetary revenue of € 8 million per year therefore has to be covered. A budgetary coverage of € 3 million per year is also required for the measure to not tax participants in casino games, gaming machines games and poker tournaments in other EEA states heavier than players of the same games in the Netherlands.

The government looked for coverage within the betting and gaming tax and chose to limit the exemption of betting and gaming tax for prizes up to € 454 to an exemption for prizes up to € 250. The budgetary revenue of this measure is € 11 million per year. The measure has consequences for the prizes from lotteries, bets, competitions, promotional games of chance and bingo. The betting and gaming tax for these prizes is to be paid by the player winning the prize, unless the provider pays the tax. The additional betting and gaming tax precipitates on players participating in other lotteries than the State Lottery for € 5 million. These players generate a turnover of over € 1 billion per year. The extra tax pressure versus the stake is therefore limited. The other € 6 million precipitates on the State Lottery and the (participants in) other games of chance. Only 5% of all prizes up to € 454 are affected by this amendment.

7.3 Other costs for licence holders

The basic principle for determining the level of the financial obligations is, as has been mentioned, that the costs cannot be thus high that it is not profitable for a provider to apply for a licence (cost-benefit ratio) Illegal offer has to be minimised as much as possible. The total costs therefore are important for the degree of channelling.

Strict regulation in the interest of the Dutch games of chance policy means that the games of chance providers have to incur expenses to meet the requirements. These costs are kept at a reasonable level in this bill in the interest of channelling and the specification of it in subordinate legislation is kept at a reasonable level by tying it in where possible to existing international standards and the international practice of remote games of chance.

The provider wanting to qualify for a licence has to pay for the application procedure. The bandwidth for this is estimated at 45,000 to 50,000 euros.

The betting and gaming levy (article 33e) is necessary for the financing of the legal tasks of the Games of Chance Authority, such as the supervision on the compliance and the enforcement of the games of chance legislation, the management of the central games of chance exclusions register, promotion of the prevention and limiting of gambling addiction and giving advice and information. These costs are strictly necessary in the interest of the realisation of the objectives of the games of chance policy. These costs are estimated at about 1.5% of the gross gaming revenue.

The licence holder also has to pay a contribution to the Ministry of Security and Justice for the exploitation of the games of chance licence. This does not concern a strictly necessary debit item for the benefit of the games of chance policy, but it is an additional financial advantage. The amount of these contributions is further specified in the subordinate legislation, on the basic principle that it is considered in the light of the other costs and cannot be at the expense of the intended 75% channelling.

A separate addiction fund⁵⁰ is further set up to fight gambling addiction in remote games of chance. This fund will be used to finance (anonymous) treatment of addicts (e.g. online) and to do research into the prevention and treatment of games of chance addiction. The exact scope and size of the fund and the related contribution percentage will be further specified. It is also pointed out in this respect that the licence holder has to incur expenses for games of chance prevention. He has to take the necessary measures to prevent and limit gambling addiction as much as possible (article 4a), such as registering and analysing the data relating to gaming behaviour and if necessary to further investigate and intervene in the gaming behaviour to prevent addiction (articles 30, 31l, 31n). The licence holder also has to invest in provisions for the identification of the player for the prevention of gambling addiction.

The bill provides for the possibility of making contributions for sports, culture, social welfare or public health and other charities obligatory in the form of a minimum contribution percentage.

8. Fundamental rights

⁵⁰ Motion Van Gent and co, Parliamentary Papers II 2010/11, 32 264, nr. 12.

Privacy

The personal and social consequences of gambling addiction require an active prevention policy, in which personal data are processed. That processing is governed by the Data Protection Act (Wbp). The registration and analysis of data on gaming behaviour by the owner of amusement arcades, gaming casinos and games of chance can lead to the processing of special personal data at a certain point in time, such as health data in the sense of article 16 of the Data Protection Act (Wbp). This is the case when the player is considered a potential gambling addict and is advised by the licence holder to exclude himself by registration in the central register (article 33h), or is brought to the attention of the Games of Chance Authority in the light of registration in that register.

Pursuant to article 16 of the Wbp, the processing of special personal data is not allowed. Pursuant to article 23, paragraph 1, opening line and under f, Wpb, this ban does not apply if such a processing is necessary in the light of an important general interest. The government is of the opinion that such an important interest applies in the case of regulation of remote games of chance. The objectives of the games of chance policy and especially the fight of gambling addiction justify the processing of gaming data for an early recognition of risky gaming behaviour and preventive action against gambling addiction. This bill provides in the legal basis also required in article 8, paragraph 2, ECHM for the processing of special personal data, where necessary for the fight of gambling addiction. Based on paragraph 5 of that article, the subordinate legislation contains further rules regarding the processing of personal data by the licence holder, the guarantees for their legal processing and suitable technical and organisational measures to secure against loss or illegal processing. Among other things, it will be determined that the licence holder does not provide such data to others than the Games of Chance Authority to the extent it needs these data for its tasks. Data can be made available in anonymised form for scientific research of gambling addiction. The evaluation (article VIII) will include the regulation and analysis of the player data and the protection of data.

Freedom of opinion

The binding instruction for a provider of a public electronic communication service to block internet communication that is used for the organisation of, participation in or advertising for illegal games of chance (article 34n) may lead to a restriction of the right to freedom of opinion guaranteed by article 10 ECHR, which includes the freedom to receive or provide information. The exercise of this right can be restricted under the second paragraph of article 10, if so provided by law and necessary in a democratic society (proportionally and alternatively) in the interest of among other things the prevention of disorders and criminal offences, the protection of the reputation or the rights of others, or to prevent the spreading of confidential notifications.

The proposed article 34n provides for the required legal base for the blocking of internet communication. It is further forbidden under article 1, paragraph 1b Betting and Gaming Act to promote participation in illegal games of chance or to provide resources for that for instance by providing internet services. The possibility to block such services in certain cases is necessary to realise the objectives of the games of chance policy – especially the protection of the rights and the health of the player and the prevention of crime and illegality. Gambling addiction often has large personal and social consequences for the player and his environment. This has already been discussed in earlier paragraphs. Offering games of chance

without a licence, so without the guarantees against gambling addiction and games of chance related types of crime such as unfair game play and other types of fraud, is not allowed (article 1, paragraph 1a, Betting and Gaming Act). As it concerns commercial expressions here, more weight can be put on those important general interests in advance in the opinion of the government, than on the interest of the illegal games of chance provider and the participant in those illegal games of chance in providing and receiving such data of a commercial nature (cf. ECHR 10 January 2013, appl. nr. 36769/08, *Ashby Donald et. al. versus France*). Moreover, the objectives of the Dutch games of chance policy have been recognised by the European Union Court of Justice as interests which may justify the limitation of the free movement of services. In the EU, the options for a European regulation for the blocking of games of chance websites are currently investigated. Such blockades to fight manipulation of sports matches and thus the results of sports bets are also considered in the scope of the European Council.

Home right

For the proposed regulation on entering and searching homes (articles 34e to 34h), the legal guarantees in the Constitution, the General Entry Act and article 8 of the European Convention for the Protection of Human Rights and the fundamental rights apply. Under article 12 of the Constitution, a house may only be entered against the will of the inhabitant in cases determined by or under the law and by those appointed for that purpose by or under the law, after prior identification and notification of the purpose of the entry, except for legal exceptions. The proposed regulation meets the above provision. Under article 8 of the ECHR, everyone is entitled to protection of his home, and the entry and searching of that home is only admissible, when legally provided for and required in a democratic society in the interest of national security, public safety or the economic welfare of the country, the prevention of disorders and criminal offences, the protection of health or good morale, or the protection of the rights and freedoms of others and is proportional considering that interest. In case of entry and searching homes in case of (serious) violation of the betting and gaming legislation, especially the prevention of disturbances and criminal offences, the protection of health or good morale and the protection of the rights and the freedoms of others are important. In certain cases also national security and public safety may be at stake especially concerning the financing of terrorism, money laundering and other types of crime. The application of the entry and search authorisation is ruled by the principles of proportionality and subsidiarity. That means for instance that it will in practice only be used in the case of a specific investigation.

9. EU legal framework

There is no sector specific legislation on games of chance at EU level. Member states can draw up their own policies and legislation in principle. This means that a games of chance licence granted by a different member state does not need to be recognised in the Netherlands. Certain aspects of modalities of games of chance offer are covered (indirectly) by one or more directives⁵¹, such as the e-commerce directive.⁵²

Offering and advertising games of chance has to be considered “service” in the sense of the TFEU. That means that the fundamental freedoms established in the TFEU such as the

⁵¹ Directives applying to remote games of chance: Directive 2000/31/EC; Directive 98/34/EC; Directive 97/7/EC; Directive 97/55/EC; Directive 2005/29/EC; Directive 95/46/EC; Directive 2005/60/EC.

⁵² Directive 2000/31/EC.

freedom of establishment (article 49) and the free movement of services (article 56) are at stake. Limitations of the freedom of establishment and the free exchange of services are not allowed under the TFEU, unless exceptions are laid down in the TFEU or follow from jurisprudence by the EU Court of Justice – hereafter: the Court.

Court jurisprudence

In a steady line of judgements, the Court has ruled since 1972 that member states are competent within certain limits to determine their own level of protection regarding games of chance. Member states may thus forbid the offer of games of chance entirely, but they may also regulate this activity via a one licence system, a limited number of licences or an open licence system. The requirement for the implementation of a certain system of licences is that the limitations under such a system are justifiable by compelling reasons of general interest, do not have a discriminating effect, are suitable for the realisation of the objectives pursued and are not disproportionate. The Court has formulated different compelling reasons of general interest which can justify national limitations regarding games of chance – in the form of a system of licences. It concerns matters such as consumer protection, fraud control, preventing citizens being stimulated to wasting money because of games of chance, and generally avoiding serious social problems.⁵³ The Court further specified that limitations following from a certain system of licences can only be considered suitable and proportionate, if they limit the offer of games of chance in a cohesive and systematic way. This means that the policy of a certain member state needs to be not only cohesive and consistent to the letter but also in practice. Since the judgement in the Gambelli case, this consistency requirement has been further specified in a number of consecutive judgements.

Violation procedure

A number of years ago, the Commission of the European Union (hereafter: the Commission) urged a number of member states to adapt (parts of) the national legislation regarding games of chance. It often concerned national regulations, which limit the (cross border) offer of sports competitions to one provider, whereas there was insufficient justification for such a far-reaching limitation according to the Commission. The Commission gave the Netherlands a "reasoned advice" on 28 February 2008. The advice is an official request to the Dutch government to adapt the legislation. The Dutch government replied to the advice extensively by letter of 25 September 2008. The essence of the reply is that the limitations of the free exchange of services regarding sports competitions following from the Betting and Gaming Act can be justified sufficiently by compelling reasons of general interest and are also suitable for realising the objectives set. The contested provisions under the Betting and Gaming Act do therefore not violate EU law according to the Dutch government. There was no reply from the Commission for a considerable period of time. The Commission requested additional information from the Dutch government by the end of 2012 however, with the information that it intends to take a final decision on the continuation of the violation procedure against the Netherlands in the course of 2013. The requested information was provided to the Commission in writing at the beginning of February 2013.

The Commission made a Green Book on online gambling on the internal market early 2012 (COM(2011) 128 final 24 March 2011). It was the aim of the Commission to collect facts and list points of view of all interested parties on the phenomenon of online gambling via the

⁵³ Judgement *Liga Portuguesa de Futebol Profissional and Bwin International*, 56.

Green Book. The Commission hoped to thus get a complete insight into the existing situation on online gambling in that way in order to then be able to decide whether the different national legislation models for gambling could continue to exist besides one another and whether specific action at EU level is required in this respect.

The State Secretary of Security and Justice informed the House of Representatives of the Cabinet's reply to the Green Book by letter of 8 June 2012 (Parliamentary Papers II 2010/11, 24 557 and 22 112, nr. 126). This letter stated among other things:

- That the government wants to hold on to the competence of member states to establish their own games of chance policy.
- That the government intends to implement a system of licences for games of chances via internet at short notice via an amendment of the Betting and Gaming Act.
- That the licences concerned will be granted via public and transparent procedures.
- That the sharing of information and the exchange of *best practices* on games of chance can be a valuable contribution to an effective national games of chance policy.

In reply to additional questions of the permanent commission for Security and Justice on the Cabinet's reply to the Green Book (Parliamentary Papers II 2010/11, 24557, nr. 129), the state secretary again confirmed on behalf of the government that member states have to be able to determine themselves if and how they want to regulate online games of chance – on a national level – and which level of protection they consider suitable for that. Although the government would like to get into contact with other members states on different aspects of the online games of chance offer, considering the cross border nature of online games of chance, the government does not consider it desirable to come to EU legislation regarding this matter.

In connection with the Green Book and the public consultation as part of the Green Book, the Commission sent a notification to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions which was specified as “A wide European framework for online gambling”.

The Commission establishes in this notification in the first place that on the basis of the collected information it is not expedient to propose sector specific EU legislation. The Commission confirms that the member states are free in principle to state policy objectives on games of chance and in determining the desired level of protection. The Commission emphasizes however, that the national legislation frameworks have to be in agreement with the EU law and finds that member states have to come to administrative cooperation and should exchange information on ‘best practices’, considering the cross border nature of this type of services. It establishes five areas of priority on which the online gambling issue needs to be tackled further, i.e.:

- f Compatibility of the national legislation frameworks with EU law;
- Strengthening of the administrative cooperation and efficient enforcement;
- Protection of consumers, citizens and minors and other vulnerable groups;
- Prevention of fraud and money laundering;
- Guaranty of integrity of sports and the prevention of match fixing.

The Minister of Foreign Affairs informed the House of Representatives in detail on the notification of the Commission by letter of 30 November 2012 (Parliamentary Papers II 2012/13, 22 112, nr. 1516), in the form of a so called “token”.

It may be concluded that it is still up to the individual member states for the time being to determine if they want to forbid or regulate online games of chance and, if the latter is the

case, determine the desired level of protection. Member states are bound to adhere to the requirements under EU law when setting up a system of licences however. It is the aim of the proposed regulation to lead the extensive demand for remote games of chance existing in the Netherlands to a legal and safe offer and at the same time bar illegal offer of similar games. For in that way, the policy objectives aimed at – fighting gambling addiction, consumer protection and fighting fraud and money laundering can be optimally achieved. Court jurisprudence shows that such policy objectives are considered compelling reasons of general interest. Also the further structure of the proposed system of licences shows that it amply meets the requirements under European law.

European legal aspects of a differentiated betting and gaming tax rate

The proposed lower betting and gaming tax for remote games of chance compared to the land based games of chance is government support to holders of a licence to organise remote games of chance. This government support requires approval by the European Commission. Denmark has received such approval. Commission approval is expected to be valid for max. ten years. A request for extension may be submitted at the end of this period. If the Commission withholds approval, the 29% rate will also apply to legal remote games of chance. As said, this will have large negative consequences for the desired degree of channelling. The budgetary coverage for the adaptations in betting and gaming tax only needs to be € 3 million per year instead of € 11 million per year. The amount of the exemption for prizes is then not limited to prizes of up to € 250 but to prizes of up to € 450. As the Dutch differentiated rate has been structured according to the Danish system and pursues similar objectives regarding the games of chance policy, a Commission approval also seems feasible for the Netherlands.

10. Feasibility, enforceability, administrative costs and costs of compliance

PM.

11. Financial consequences national government

The proposed adaptations of the betting and gaming tax are feasible and enforceable for the Tax Administration. The amendment of the act needs to be carried through in the levying system of the Tax Administration. It does not touch on the collecting process and collection systems. This can be fitted into the budget for adaptations of new legislation and regulations and does not lead to additional implementation costs. Because of the adaptations however, the group of taxpayers liable to pay betting and gaming tax will change, but not the size of it. The group size will largely remain the same. The implementation costs will therefore on balance remain the same.

PM.

12. Development bill

In the preparation of this bill, the experiences have been involved of other member states which have regulated remote games of chance. Advice was further obtained from e.g. Boston Consultancy Group, APE, TNS NIPO, Fox-IT, [...]

The bill was presented for consultation on [...] May 2013 to e.g. the Games of Chance Authority, Public Prosecution Service, Council for the Judiciary, Data Protection Authority, Dutch Mental Health Care, Tactus Addiction Care and Treatment, the VAN gaming machines sector organisation, the national games of chance licence holders, the Dutch Banking Association and the ISP Connect Association.

The bill was also posted on internet for consultation (www.internetconsultatie.nl).
The European Commission was notified of the bill on [...] in accordance with article 8 of Directive 98/34/EC.
The received replies have been discussed in the specific parts of this explanation.

II EXPLANATORY NOTES ON INDIVIDUAL ARTICLES

Article I

Part A (Article 1(1), (3) and (4))

First paragraph

The purpose of the supplement to the first paragraph, under (b), is to provide more clarity about the meaning of “promoting” illegal games of chance. In general language, this is understood to be developing activities that help, support or facilitate the organisation of illegal games of chance or help them proceed better, contributing to this or offering or providing facilities for this purpose. It is clear that this concept includes, in any case, canvassing and advertising services for the purpose of legal or illegal games of chance. Within the context of remote games of chance, an example of this could be affiliate programmes that are used to generate income by adding a link on a party's own website to a certain provider of remote games of chance (the consideration being that usually an amount is paid for players who register with this provider of games of chance through this link).

In practice, there is uncertainty about the question whether offering financial and telecommunications services, which, by definition, are essential in order to organise illegal remote games of chance, also means promoting such games of chance. In order to effectively counter the supply of illegal games of chance in the Netherlands, there should be no misunderstanding that these types of services also need to be forbidden under Article 1(1)(b). The supplement to subsection (b) provides for this. This makes it possible to take action against said service providers who provide the means without which illegal games of chance could not be organised. As financial and telecommunications service providers cannot be required to monitor all financial transactions and content themselves, the proposed Article 34n provides for a special regulation the purpose of which is for the games of chance authority, after having discovered that such service providers form an essential link in the supply of illegal games of chance, to give these service providers a binding instruction to terminate these services.

Third paragraph

The proposed third paragraph provides for the possibility to lay down further rules by ministerial regulation with regard to the definition of a game of chance. New games in which participants cannot generally exercise a decisive influence on the results thereof are under continuous development. In practice, the question arises from time to time whether a certain game represents an opportunity within the meaning of Article 1(1)(a) of the Betting and Gaming Act. This does not exclusively apply to new games of chance. For instance, it is often disputed at law whether a game such as poker is a game of chance, and whether or not it falls under the scope of the Betting and Gaming Act. Further rules may be laid down in the ministerial regulation with regard to the various games, preventing any lack of clarity as much

as possible. Of course, a condition is that these rules and any games to be designated as games of chance remain within the limits set by Article 1(1)(a) of the Betting and Gaming Act.

The first paragraph, under (a), of the Betting and Gaming Act does not require a further explanation to the question as to when the opportunity to participate in games of chance is provided in the Netherlands at a distance (“on-line”). The case law of the Supreme Court of the Netherlands (for example HR 13 June 2008, LJN BC8970) already shows that the opportunity to participate in remote games of chance within the meaning of Article 1, opening words and under (a), is provided when, through the Internet, by means of a website partly aimed at the Netherlands, access to games of chance is offered to potential participants in the Netherlands and they can use their computer (or appliances such as a laptop, tablet or smartphone) to participate in the game directly, i.e. without any actions being required other than those that can be performed on a computer. It is sufficient for the website on which the opportunity to participate is offered not to have been rendered impossible using software that enables the provider of remote games of chance to render it impossible to participate in these games of chance from certain countries (the so-called geolocation techniques) and for the layout to show that the website is partly aimed at potential participants in the Netherlands. The latter is already the case if, for example, the Netherlands is stated in a list of countries on this website from where it is possible to participate in the games of chance offered. It is not important from which country the games of chance are organised, where the gambling agreement is formed and which law is applicable to this agreement. For example, the opportunity within the meaning of Article 1, opening words and under (a) is provided if the Netherlands is stated in the list of countries on the relevant website, a Dutch resident can visit this website in order to participate in remote games of chance from his computer in the Netherlands and can therefore take part in the game in the Netherlands, whereby the participant receives the participation form on his own computer or computer screen, sends this form from his computer in the Netherlands to the provider (or its server), can use his Dutch credit card to pay in euros and, finally, can receive any prize money on his Dutch bank account ()

Fourth paragraph

Article 1(1)(c) of the Betting and Gaming Act contains a prohibition to participate in games of chance organised without a licence. The proposed fourth paragraph contains an exception to this insofar as it concerns participation in remote games of chance by the supervisors of the games of chance authority. Participation by these supervisors in illegal remote games of chance in accordance with the proposed Article 34c is necessary in order to retrieve the necessary data with respect to, among other things, the identity of those offering the relevant games of chance and the payment transactions between the players and these organisers. Such data are necessary for enforcing the prohibition of supplying illegal games of chance, for example by means of a binding instruction, an order subject to a penalty for non-compliance or an administrative penalty imposed on the provider, or other measures in order to terminate this illegal supply. A specific example of this is to block the essential payment transactions and internet traffic between the player and organiser, meaning that financial institutions form an essential link in the supply of illegal games of chance. For the sake of brevity, reference is made in this connection to the explanation of the proposed Article 34n.

Part B (Article 1a)

A substantial part of the yet illegal supply of remote games of chance is poker. Poker is a

game falling under the scope of the Betting and Gaming Act. It forms part of the so-called casino games which, so far, may only be offered in the Netherlands by Holland Casino. Both the Ministry of Security and Justice and the Tax and Customs Administration have always considered poker to be a game of chance. In other European countries, poker is also a game of chance. However, as found by the Commission on Games of Chance through the Internet (appendix to Parliamentary Papers II 2009/10, 24 557, no. 123), discussions are held from time to time and not only in the Netherlands about the question whether poker is a game of chance or a game of skill. In this connection, reference is made, among other things, to the judgment of the Supreme Court of the Netherlands of 3 March 1998 (LJN ZD0952). A more recent judgment of the District Court of The Hague of 2 July 2010 (LJN BN0013) considers poker to be a game of skill, while poker in the variation of Texas Hold'em is considered to be a game of chance by the District Court of Haarlem on 24 November 2011 (LJN BU6574) and the Leeuwarden Court of Appeal on 18 October 2012 (LJN BY1198). The government believes, partly in view of the risk of gambling addiction caused by the game of poker, that there may not be any doubt about the fact that poker falls under the scope of the Betting and Gaming Act. The supplement to Article 1a provides for this. Under the proposed third paragraph of Article 1, further rules with regard to the definition of a game of chance may also be laid down by ministerial regulation in the future.

Parts C, D and E (Articles 5, 6 and 6a)

The coalition agreement (Parliamentary Papers II 2012/13, 33 410, no. 15, p. 64) includes, among other things, that the licences for lotteries will, as from 2015, be awarded by means of a transparent procedure, the new licence holders paying a competitive licence fee with a total revenue of € 10 million. In this connection, lotteries specifically refer to the so-called charitable lotteries (Article 3 of the Betting and Gaming Act), the state lottery (Article 9 of the Betting and Gaming Act), the instant lottery (Article 14b of the Betting and Gaming Act) and the lotto (Article 27b of the Betting and Gaming Act). Here, the scope is not limited to the lotteries, but also includes those games of chance for which the number of licences is limited beforehand, so also for organising sports-related prize competitions (Article 16 of the Betting and Gaming Act), the totalisator (Article 24 of the Betting and Gaming Act) and casino games (Article 27h of the Betting and Gaming Act).

In this connection, the regulation of Article 6(2) of the Betting and Gaming Act needs to be amended. This paragraph contains a delegation clause under which rules may be laid down by order in council with regard to the amount owed for the processing of the licence application and an annual amount owed by the licence holder. It forms the basis for charging the administrative costs for assessing a licence application and certain costs for monitoring compliance with the regulations attached to the licence (Parliamentary Papers II 1993/94, 23 605, no. 3, pp. 4-6 and the explanatory notes to Article 3a of the Betting and Gaming Decree in the Bulletin of Acts and Decrees 1995, 523, pp. 5-6), but not for charging the licence fee - referred to in the coalition agreement - for the use of the licence. This is not connected with the costs incurred by the government. Moreover, the scope is now limited to licences under Articles 3 (charitable lotteries) and 4 (premium bond loans). However, the licence fee for the use of the lottery licence as referred to in the coalition agreement also pertains to the holders of a licence for organising the state lottery (Article 9 of the Betting and Gaming Act), the instant lottery (Article 14b of the Betting and Gaming Act) and the lotto (Article 27b of the Betting and Gaming Act). As said, the government deems it desirable that a fee is also paid for the use of a licence for organising sports-related prize competitions (Article 16 of the

Betting and Gaming Act), the totalisator (Article 24 of the Betting and Gaming Act) and casino games (Article 27h of the Betting and Gaming Act). That is why it is proposed to extend the scope and include a specific basis for the licence fee.

The current second paragraph of Article 6 is replaced by a basis for a regulation for reimbursement of the costs for processing applications for a lottery licence. The amount owed for the processing of an application for a licence as referred to in Articles 3 (charitable lotteries), 4 (premium bond loans), 9 (state lottery), 14b (instant lottery), 16 (sports-related prize competitions), 24 (totalisator), 27b (lotto) and 27h (casino games) is laid down by ministerial regulation. This amount is based on the cost price of the processing of such applications. As the costs of the games of chance authority monitoring compliance with the regulations on games of chance must be included in the rate of the levy on games of chance (Articles 33e and 33f in conjunction with Article 33b), this fee will not return in Articles 6 and 6a. However, this will result in a minor adjustment of the rate of the levy on games of chance for the relevant lotteries.

The new Article 6 does not provide for the possibility of collection by writ of execution; if the amount for the costs of processing the application has not been paid in time, the application will not be handled and no period will be granted in order to pay the amount later.

The delegation basis in the current first paragraph of Article 6 is included in Article 5. Here, in view of the upcoming reform of the system of lotteries, the opportunity was used to lay down rules by or pursuant to a General Administrative Order with regard to the granting and withdrawal of Article 3 lotteries.

The proposed Article 6a forms the basis for the licence fee for the use of the lottery licences. The relevant licence holders owe a periodical amount for the use of the licences. The basis and the rate are also laid down by ministerial regulation. Here, rules may also be laid down with regard to the periods in which the amount is owed. This amount may be collected by writ of execution.

The regulation in the proposed Articles 6 and 6a fits in with the regulation for the levy of an amount for the costs of processing the application and a licence fee for remote games of chance (Articles 31e and 31f).

Parts F, G, K and L (Articles 27j, 27ja, 30u and 30v)

The amendments to Articles 27j and 30u and the new Articles 27ja and 30v are related to the introduction of the central register for exclusion from participation in games of chance (Article 33h), which was discussed in more detail in the general part of these explanatory notes. These articles provide for an expansion of the persons who may be refused access to physical rooms where high-paced games of chance are organised (amusement arcades and gaming casinos) (Articles 27j and 30u) and for obligations of the relevant licence holders to register and analyse details of players, to further assess gaming behaviour in case of a reasonable suspicion of excessive participation in games of chance or gambling addiction and to intervene in this gaming behaviour in case of a reasonable suspicion that the player may cause damage to himself or to others due to excessive participation in games of chance or gambling addiction (Articles 27ja and 30v). This intervention may result in an entry ban - whether or not agreed - for the physical gaming casinos or amusement arcades of the licence holder, and to a temporary exclusion by the player himself or by the games of chance

authority from participation in games of chance in all amusement arcades and gaming casinos in the Netherlands and all remote games of chance offered in the Netherlands. Articles 27j, 27ja, 30u and 30v relate to the gaming casinos and amusement arcades in the Netherlands; for remote games of chance offered in the Netherlands, reference is made to Articles 31l and 31n.

Articles 27j and 30u

The proposal is to supplement the current prohibition to grant minors access to gaming casinos and amusement arcades and the games of chance organised there (Articles 27j(1) and 30u(1)). This supplement concerns persons who are registered in the central register for exclusion from participation in games of chance (Article 33h) and persons whom the licence holder should reasonably suspect to cause damage to themselves or others due to excessive participation in games of chance or gambling addiction. For every visit of a player to a gaming casino or amusement arcade, the licence holder must establish the identity of this visitor and consult the central register in order to determine whether this visitor is registered in this register. Subordinate legislation sets out in more detail how to establish the identity of visitors (Articles 27j(3) and 30u(3)). In physical gaming casinos and amusement arcades, this will be done on the basis of an identity document that is also used to verify the identity.

In any case, the persons whom the licence holder should reasonably suspect to cause damage to themselves or others due to excessive participation in games of chance or gambling addiction, concern those persons who are registered in the central register for exclusion from participation in games of chance (under (b)). In that case, the relevant licence holder will, when checking the identity and consulting the register based on a hit/no hit, receive a notification of a hit and he may not grant access to the person in question. In that case, the person in question may not be granted access to other (physical) gaming casinos and amusement arcades either, nor participate in regulated remote games of chance.

It may also concern persons who have not yet been registered in the central register, but whom the licence holder should reasonably suspect, based on the data known to him, to cause damage to themselves or others due to excessive participation in games of chance or gambling addiction (under (c)). Here, it concerns players who demonstrate high-risk gaming behaviour which has been assessed by the licence holder in more detail, and who do not want to be temporarily excluded from participation in games of chance after intervention by the licence holder either. As they have not yet been registered in the central register, they will only be refused further access to the gaming casinos and amusement arcades of the relevant licence holder.

This supplement to the current prohibition of allowing persons access to the games of chance organised under a licence forms an additional requirement that the licence holder has to meet in addition to, for example, the existing prohibition of granting access to minors. As indicated in the general part of these explanatory notes, this supplement is based on the model of entry bans developed by Holland Casino in the course of time in order to implement its statutory duties under Article 27i(1) and (2), under (d), of the Betting and Gaming Act, 3, 12 and 15 of the Casino Games Decree in order to prevent gambling addiction as much as possible. If the person in question disagrees to the entry ban, he may apply to the relevant licence holder and, if necessary, to the civil court (see, for example, Haarlem District Court 26 March 2012, LJN BW0008, Utrecht District Court 17 August 2011, LJN BR6197, Arnhem District Court 22 September 2009, LJN BK1258, Arnhem District Court 8 May 2009, LJN BI4323, 's-

Hertogenbosch Court of Appeal 13 February 2007, LJN AZ8339 and Haarlem District Court 31 May 2006, LJN AX8660).

Articles 27ja and 30v

The proposed Articles 27ja and 30v provide for obligations of the relevant licence holders to register and analyse details of players, to further assess gaming behaviour in case of a reasonable suspicion of excessive participation in games of chance or gambling addiction and to intervene in this gaming behaviour in case of a reasonable suspicion that the player may cause damage to himself or to others due to excessive participation in games of chance or gambling addiction.

First paragraph Under the first paragraph, the licence holder must register the data relevant to the detection of possible high-risk gaming behaviour and analyse these data based on risks of gambling addiction in order to identify high-risk or (emerging) problem behaviour at an early stage. Under the fifth paragraph, subordinate legislation sets out in more detail the data that should be registered and analysed in any case, and sets out in more detail the risk indicators to be used. Here, it concerns, among other things, factors such as the frequency of visits to amusement arcades and gaming casinos, undesirable behaviour of the player towards fellow players of the licence holder, and external signs from, for example, the player's family members. If the analysis shows that there could be risk or problem behaviour, the licence holder must intervene in the gaming behaviour of the relevant player.

The personal and social consequences of gambling addiction require an active prevention police, in which personal data are processed. This processing is governed by the Personal Data Protection Act. The registration and analysis of data with respect to gaming behaviour by the operator of amusement arcades, gaming casinos and remote games of chance may, at any time, also result in the processing of special personal data, namely health data within the meaning of Article 16 of the Personal Data Protection Act. This is the case if the player is regarded as a possible gambling addict and the licence holder recommends that he exclude himself by registering in the central register (Article 33h), or notifies the games of chance authority for the purpose of registration in this register. The processing of special personal data is forbidden under Article 16 of the Personal Data Protection Act. Under Article 23(1), opening words and under (f), of the Personal Data Protection Act, this prohibition does not apply if such processing is necessary with a view to a substantial general interest. Here, it concerns such a substantial interest.

The objectives of the policy on games of chance and especially the prevention of gambling addiction justify the processing of gaming data in order to identify high-risk gaming behaviour at an early state and to take preventive action against gambling addiction. This bill provides for the statutory basis - also required by Article 8(2) of the ECHR - for the processing of special personal data, insofar as this is necessary in order to prevent gambling addiction. Under the fifth paragraph, subordinate legislation sets out further rules with regard to, among other things, the processing of personal data by the licence holder, guarantees for the lawful processing thereof and suitable technical and organisational measures for protection against loss or unlawful processing. Here, it will be provided, among other things, that the licence holder does not issue such data to parties other than the games of chance authority insofar as the latter requires these data in order to perform its duties. Data can be provided in anonymous form for scientific research into gambling addiction. The evaluation

(Article VIII) will also include the registration and analysis of the data of players and the protection of personal data.

Second paragraph

If an analysis of the registered data results in a reasonable suspicion of excessive participation in games of chance or gambling addiction, the licence holder must further assess the player's behaviour. For a certain risk indicator may indicate (emerging) high-risk gaming behaviour, but could also have a different, more innocent explanation. In any case, this assessment consists of a personal interview with the player. In doing so, the licence holder will have to ensure the correctness of the gaming behaviour discovered by it and assess whether the player may cause damage to himself or others due to excessive participation in games of chance or gambling addiction. The assessment should focus on, among other things, the extent to which there is a dependence on games of chance, the influence of the participation in the games of chance on the player's behaviour and environment and whether the player can afford the discovered participation in the games of chance. This assessment must be conducted by staff members of the licence holder who are experts in addiction problems and can identify (emerging) problem behaviour. Under the proposed Article 31k, requirements are set on the expertise of the staff members.

The licence holder draws up a report of this meeting. This report is important, among other things, for the purpose of further monitoring the player and any temporary exclusion by the games of chance authority from further participation in games of chance (see Article 33da). The report is also important for the purpose of monitoring compliance with the obligation to intervene by the games of chance authority.

Third paragraph

If, based on the analysis of the gaming behaviour and the personal interview with the player, the licence holder should reasonably suspect this player to cause damage to himself or others due to excessive participation in games of chance or gambling addiction, the licence holder will inform the player of his gaming behaviour in relation to responsible gaming behaviour. In essence, the licence holder holds a mirror up to this player, causing him to become aware of his gaming behaviour and the consequences thereof.

The licence holder also informs the player of the possibilities of voluntary exclusion, and it recommends the player to be temporarily excluded from participating in games of chance organised in Dutch amusement arcades and gaming casinos and from participating in remote games of chance offered in the Netherlands. In this recommendation, the licence holder informs the player of the consequences of voluntary exclusion. Such self-exclusion means that the person in question is temporarily registered in the central register for exclusion from participation in games of chance (Article 33h), causing him to be refused access for six months to amusement arcades and gaming casinos in the Netherlands and to remote games of chance offered in the Netherlands. The person in question cannot reconsider this decision during this period of six months.

The licence holder must temporarily exclude the relevant player who does not decide to do so of his own accord from further participation in the games of chance organised by him.

A majority of the relevant players will be expected to follow the advice of self-exclusion. In that case and if requested, the licence holder must assist the player in this self-exclusion by performing the further acts necessary for this purpose on his behalf. Of course, the player may also perform these acts himself. The licence holder cannot force the person in question to do

so. However, the games of chance authority may register the relevant person who does not follow the licence holder's recommendation in the register (Article 33da).

Fourth paragraph

The fourth paragraph relates to the player who, in the expert opinion of the licence holder, may cause damage to himself or others due to excessive participation in games of chance or gambling addiction, but who does not voluntarily want to exclude himself for some time from participating in games of chance in gaming casinos and amusement arcades and remote games of chance. The licence holder must temporarily exclude the relevant player who does not decide to so do of his own accord, but, in the opinion of the licence holder, can no longer participate in games of chance in a responsible manner, from further participation in the games of chance organised by the licence holder. The licence holder also notifies the games of chance authority of the player's high-risk behaviour, and recommends that the player be temporarily excluded.

The games of chance authority may still temporarily exclude the relevant player from participating in these games of chance (Article 33da). When notifying the games of chance authority, the licence holder must provide the data required by the games of chance authority for the assessment whether the relevant player may indeed cause damage to himself or others due to excessive participation in games of chance or gambling addiction. These data also serve as a basis for any preparations of a decision to temporarily exclude the player. Under the fifth paragraph, these data are worked out in more detail in subordinate legislation. In any case, it concerns the data and analysis with respect to the gaming behaviour of the relevant player (first paragraph), the results of the assessment of the player's behaviour (second paragraph) and the player's response to the recommendation to exclude himself (third paragraph). The games of chance authority must be able to rely on the correctness and completeness of these data. However, if, in a particular case, the data provided by the licence holder are insufficient, the games of chance authority may request the licence holder to provide additional data. If necessary, it may also collect data itself.

Within the social interest of preventing gambling addiction, the licence holder may use the citizen service number of the relevant player. This use and the quality checks that can be used within the infrastructure of citizen service numbers promote the quality of the data in the register, thereby reducing the risk of mistaken identity and also reducing the administrative and implementation burden on the licence holder and the games of chance authority. The explanatory notes to Article 33h(5) will discuss this in more detail. The licence holder must comply with the privacy guarantees and warrant, among other things, that the citizen service number is not used for other purposes. Under the fifth paragraph, further rules are laid down with regard to this.

Fifth paragraph

Under the fifth paragraph, further rules may be laid down in subordinate legislation with regard to the registration and analysis of details of players and the consequences the licence holder must attach to this.

Parts H and I (Articles 30i and 30o)

The purpose of the proposed amendments to Articles 30i and 30o is that the costs owed by the licence holder can be collected by writ of execution. Moreover, the delegation clauses have

been amended such that they can be used by the Central Fine Collection Agency to support the games of chance authority in this (see Article 2 of the Decree Establishing the Central Fine Collection Agency).

Part M (Title Vb. Remote games of chance)

The new Title Vb includes the regulation on remote games of chance. This title provides for the licence for organising remote games of chance, setting conditions, within the interest of the objectives of the policy on games of chance, on the licence holder and its company, and on the actual organisation of the licensed remote games of chance. As already explained in the general part of these explanatory notes, further rules are laid down in subordinate legislation within the interest of a sound, reliable and verifiable organisation of remote games of chance.

Article 31 (general)

First paragraph

The first paragraph gives a definition of a remote game of chance. It concerns an opportunity to compete for prizes or premiums, the winners being designated through any determination of chance on which the participants generally cannot exercise a decisive influence (Article 1(a) of the Betting and Gaming Act) and which is provided at a distance using electronic means of communication. In line with legislation of various other member states and of the Green Paper of the European Commission, the definition of remote games of chance has been formulated in a technically flexible way. For technical developments in the area of telecommunications occur rapidly and it is necessary to respond to these developments in an adequate manner. So apart from the games of chance that are offered through the Internet on a computer, tablet or smartphone, for example, remote games of chance also include games of chance that are offered at a distance using other current or future electronic means of communication. Examples are games of chance organised through the television and games of chance in which players can participate by telephone.

The organisation of and participation in these games of chance happens from a distance, which means that a participant does not have any physical contact with the organiser of the games of chance (or its staff) or a third party providing space and resources for participating in the games of chance. Remote games of chance are distinguished from other games of chance due to the absence of any physical contact between the player and the party offering the game of chance.

In order to avoid any lack of clarity about the question whether games of chance offered in physical rooms can be regarded as remote games of chance, the absence of any physical contact between the player on the one hand and the organiser of these games of chance or the party providing space and resources for participation on the other has explicitly been included in the definition. The distinction between remote games of chance and other games of chance needs to be clear in view of the applicable rate of tax on games of chance, the scope of the supply of games that may be offered under the licence and the conditions the licence holder has to meet.

Games of chance which are organised at a distance using electronic means of communication, but which are offered to players in physical hotel/catering establishments, betting offices,

amusement arcades or gaming casinos, for example, are no remote games of chance within the meaning of Article 31. Games of chance which are played on machines in, for example, a building provided by the licence holder, e.g. in an amusement arcade or gaming casino, or on a boat, are, even if these machines are in fact terminals connected to the Internet or an intranet, not regarded as remote games of chance, as the player has physical contact with the relevant operator (or the staff of this operator). The same applies if the space is provided by a third party, for example a subsidiary of the licence holder. The purpose of this is to prevent an operator of an amusement arcade or gaming casino who is also a holder of a licence for organising remote games of chance or who has concluded an agreement with such licence holder, from offering games of chance in this physical gaming area which are organised at a distance using electronic means of communication in order to be eligible for the low tax rate.

A licence for organising remote games of chance is subject to other conditions than a licence for operating or having gaming machines present, partly in view of the absence of any physical contact during the game.

So-called internet pillars, which, pursuant to established case law of the Supreme Court of the Netherlands (HR 29 March 2011, LJN BP396, for example), must be regarded as gaming machines within the meaning of Article 30 of the Betting and Gaming Act, will therefore also be regarded as such after the regulation of remote games of chance and will continue to fall under the gaming machines regulation.

Second paragraph In line with the system of the current Betting and Gaming Act, the second paragraph provides that remote games of chance may only be organised under a licence granted with due observance of the newly proposed Title Vb. An exception to this is necessary. The definition of remote games of chance entails that the sale of betting slips of physical games of chance, for example, also falls under the definition of remote games of chance. In this connection, an example is the sale of lottery tickets of a charitable lottery or the state lottery through the Internet. Over the past few years, permission has already been granted for the use of the Internet as a sales channel for several physical games of chance, under certain conditions.

In accordance with the recommendation of the Commission on Games of Chance through the Internet (appendix to Parliamentary Papers II 2009/10, 24 557, no. 123), the use of electronic means for existing (physical) games of chance are, from now on, provided for by generally binding regulation under the third paragraph. The proposed exception applies to the use of the Internet for the sale of betting slips of lotteries that are organised with a licence under a title other than the new Title Vb. These games of chance may already be organised in the physical world under a licence, using telecommunication as a sales channel for the betting slips. Subordinate legislation will provide that proof of participation in certain lotteries that are organised under a licence pursuant to the law may continue to be sold at a distance as before using electronic means. It especially concerns charitable lotteries (Article 3 of the act), the state lottery (Article 8 of the act), the lotto (Article 27a of the act) and the so-called numbers games which the holder of a licence for organising sports-related prize competitions is allowed to organise (Article 15(4) of the act). These are games of chance all falling under “lotteries”. It concerns relatively low-paced games of chance. The reform of the lotteries system is set at a later point in time and does not form part of this bill. This will make the existing practice - in which players can buy a ticket through the Internet in front of their computer at home or through the terminal in a tobacco shop or kiosk - permanent.

However, this does not apply to holders of a licence for organising a totalisator or bets on sporting competitions, who, pursuant to the conditions attached to these licences, are also allowed to use the Internet as a sales channel to a limited extent. Remote and high-paced bets on sporting competitions form a substantial part of the existing supply of remote games of chance that needs to be channelled. These do form part of this bill and will fall under the scope of the new Title Vb. For current licence holders, a transitional provision will be made which means that the current licence conditions are observed until the moment when the licence expires.

Third paragraph

Under the third paragraph, rules are laid down in subordinate legislation with regard to the offering - at a distance using electronic means - of betting slips of such lotteries for which a licence has already been granted under a title other than this title. If necessary, further rules may be laid down here as well with regard to the concept of remote games of chance.

Article 31a

First paragraph

The proposed Article 31 contains provisions on a licence for organising remote games of chance. Under this article, the board of the games of chance authority may, in principle, grant an unlimited number of licences for organising remote games of chance. Any provider complying with the conditions set by or pursuant to this title qualifies for a licence. In practice, however, the number of licences granted is expected, partly in view of the experiences in Denmark, to be limited due to the high requirements set on the licence holder, its company and the exploitation of the games of chance.

Second paragraph

The licence for organising remote games of chance is granted for a definite period of time. Under the fourth paragraph, the validity is provided for in subordinate legislation. The point of departure will be a period of validity of five years. This is in line with the period of validity of licences in other European countries and allows the licence holder to recoup its investments, partly in view of the conditions to be met by providers of games of chance.

Third paragraph

The licence for organising remote games of chance may be granted under a restriction connected with the nature of the games of chance to be organised. Conditions may be attached to the licence. These restrictions and conditions may be changed by the games of chance authority.

Restrictions

The purpose of the regulation of remote games of chance is to offer a suitable and attractive supply of remote games of chance which can be used to guide the existing demand for these games of chance towards a safe and regulated supply (channelling approach). The demand for remote games of chance to be channelled is the demand for casino games (including poker, bingo and fruit games) and bets on sporting competitions. Channelling towards a safe supply of remote games of chance does not mean that each variant of these games will be permitted. In further detailing the games that may be offered at a distance and the minimum

requirements these games have to meet, the degree to which these games involve a risk of addiction or a risk of unfair play will be included.

For instance, certain types of bets on sporting competitions will not be allowed, as they involve too great a risk for players or too great a risk of unfair play due to influencing and match-fixing. Under the fourth paragraph, subordinate legislation provides for the types of remote games of chance that may be offered and the variants that are allowed. Depending on the type of game, general rules may be laid down, as is currently the case with games of chance offered on gaming machines. Several variants of these games are allowed as long as they comply with these general rules. This will especially be the case with the games of chance in which the player plays against the licence holder. In other cases, however, especially in which players play against each other, rules of play will have to be laid down.

The licence may be granted for all games of chance which may be offered like this at a distance. No other games of chance such as lotteries may be offered under the licence, as these are no casino games or bets on sporting competitions. A different licence is required in order to organise such games of chance. The fact that, under the licence, only casino games and bets on sporting competitions may be organised at a distance follows from the generally binding regulations and therefore does not have to be stated explicitly when granting the licence. Of course, the games of chance authority may refer to the generally applicable rules when granting the licence.

The fact that the licence may be granted under a restriction connected with the nature of the games of chance to be organised is related to the following. In the current international supply of remote games of chance to be channelled, not every provider of games of chance offers both (all) casino games and (all) bets on sporting competitions at a distance. Some have specialised in poker games, others in bets on sporting competitions and again others in certain bets on sporting competitions, such as horse races, and only offer these games. They have tailored their business operations and expertise to this. A licence holder who only wants to offer part of the remote games of chance allowed in the Netherlands - only poker or only (certain) bets on sporting competitions, for example - is not expected to adjust his business operations such that they also meet, for example, the technical and operational requirements for the organisation of games of chance he will not be offering to Dutch consumers. This would lead to unnecessary costs being incurred by him, which could induce him to expand the supply in order to recoup these investments. This could then affect the intended channelling of the existing demand for a safe and regulated supply.

In the application for the granting of a licence for organising remote games of chance, the applicant must state which remote games of chance he wants to start organising in the Netherlands. The assessment of the application will be tailored to this. The applicant who wants to start organising all remote games of chance allowed in the Netherlands must demonstrate that he and his organisation meet all requirements set on this in order to start organising these games of chance in a sound, reliable and verifiable manner. Accordingly, an applicant who only wants to start organising part of these remote games of chance (e.g. only remote poker or only remote bets on sporting competitions) needs to demonstrate less and incur fewer costs. In that case, the licence is granted under the restriction that the licence holder may offer in the Netherlands remote poker only or remote bets on sporting competitions only, for example. If other games of chance are offered either on-line or off-line,

the licence may be withdrawn (Article 31d), as the restriction under which the licence was granted has been violated in that case. If a licence holder wants to start offering other allowed forms of remote games of chance afterwards, he may ask the games of chance authority to change the restriction under which the licence was granted. In doing so, he will have to demonstrate that he and his organisation also comply with the conditions for organising these other remote games of chance.

Conditions

The licence for organising remote games of chance may be granted if the conditions set for this purpose have been met, creating a sound, reliable and verifiable organisation of these games of chance. The explanatory notes to Article 31i will discuss this in more detail. This requires, among other things, an assessment of a body of specific facts and circumstances by the games of chance authority prior to the granting of the licence. In doing so, the games of chance authority will also have to assess, for example, whether it is sufficiently guaranteed that, after the licence has been granted, the games of chance will actually be organised in accordance with the Betting and Gaming Act, the Anti-Money Laundering and Anti-Terrorist Financing Act and the Sanctions Act 1977, and whether compliance with these acts is sufficiently guaranteed. For this purpose, the games of chance authority will draw up an implementation policy pursuant to Article 4:81 of the General Administrative Law Act. In its decision whether or not to grant a licence, the games of chance authority must, of course, be able to provide tailor-made services. This is possible by attaching specific licensing conditions to the licence. In this connection, examples are conditions with which the games of chance authority guarantees that the licensed games of chance will actually be organised in accordance with the statutory conditions.

A change to the restriction under which the licence is granted or to the conditions attached to the licence means a change to the licence. This change may be made on request – for which an amount will be charged (Article 31e) – or ex officio. An ex officio change will only be made in the interest of a sound, reliable and verifiable organisation of these games of chance in the Netherlands.

Fourth paragraph

Under the fourth paragraph, further rules may be laid down with regard to the licence for organising remote games of chance. The demarcation of the types of games of chance and their variants which may be offered in the Netherlands under the licence, the period of validity of the licence and the conditions that may be attached to this have already been discussed in more detail. Furthermore, rules are set on the transfer of the licence. The basic principle here is that the licence cannot be transferred by the licence holder. The licence is person-related and the applicant and his company play a crucial role in the granting thereof. The licence holder is therefore not at liberty to transfer this licence to a third party. Under certain circumstances, however, a transfer of the licence other than a transfer by the licence holder, for example in case of a merger or division should be possible with the consent of the games of chance authority.

Article 31b (procedural provisions)

The procedure for granting, changing, suspending and withdrawing licences for organising remote games of chance is governed by general administrative law. The General Administrative Law Act provides, among other things, for the requirements an application

must meet and the documents and data to be provided (Article 4:2 of the General Administrative Law Act). Furthermore, the regulations for incomplete (Article 4:5 of the General Administrative Law Act) and repeat applications (Article 4:6 of the General Administrative Law Act), and the guarantees for a careful preparation of the decisions (Part 4.1.2) apply. As the games of chance authority is authorised to grant, suspend and withdraw licences, it may, for example, draw up forms for submitting applications and providing data (Article 4:4 of the General Administrative Law Act). Within the framework of generally binding regulations, it may also determine an implementation policy (Article 4:81 of the General Administrative Law Act).

By or pursuant to a General Administrative Order, rules are laid down with regard to the period within which a decision must be made on the application. In view of the complexity of the games of chance market as it has developed from an international perspective and the requirements which a provider of games of chance must meet in order to qualify for a licence, an example in this connection is a period of six months with a possibility of extension if advice or further investigation by third parties – e.g. a foreign games of chance supervisor or the Public Administration Probity Screening Agency - is required.

Article 31c (refusal)

The proposed Article 31c contains generally formulated grounds on which a licence for organising remote games of chance is refused by the games of chance authority in any case. The words “in any case” are used to express that these grounds may be supplemented if this proves to be necessary for a sound, reliable and verifiable organisation of the remote games of chance.

The application must include the data and documents necessary in order to assess this application. These data and documents and other information the games of chance authority may possess must sufficiently guarantee that the applicant and his company will comply with the provisions laid down by or pursuant to the Betting and Gaming Act, and that, after the licence has been granted, the remote games of chance can and will be organised in accordance with Dutch regulations on games of chance and anti-money laundering and the Sanctions Act 1977. Prior to the granting of the licence, it must also be sufficiently guaranteed that compliance with the Dutch regulations on games of chance and anti-money laundering and the Sanctions Act 1977 can be monitored efficiently and effectively.

For instance, the documents submitted must show, for example, that the applicant and his company meet the requirements set on the registered office, legal form, transparency, continuity, reliability and expertise. If, for example, the reliability of the applicant or his policymakers is not beyond any doubt, it will be clear beforehand that the application must be rejected. It must also be established that the business operations, including the gaming system and the pertaining hardware and software, are set up such as to allow for a sound, reliable and verifiable organisation of remote games of chance, but for example also that the obligations to provide information to the games of chance authority will be complied with. Furthermore, the available data and documents must provide sufficient insight into the manner in which the games of chance will be organised after the licence has been granted, how the process of registration and login of players has been set up, how payments are made between players and the provider, how the details of players and transactions will be registered and protected against unlawful processing and how anti-money laundering legislation is complied with, for

example. Moreover, it must already be established before the granting of the licence that the possibilities of adequately monitoring compliance with legislation on games of chance, the Anti-Money Laundering and Anti-Terrorist Financing Act, the Sanctions Act 1977 and the enforcement thereof are sufficiently guaranteed. As and when necessary, the relevant provider of games of chance may take further measures in order to improve these possibilities and supplement the application.

At the time when the games of chance authority assesses whether a licence can be granted, not all conditions will actually have been met yet. Certain requirements - such as the requirement for the licence holder in the Netherlands to keep a control database in the Netherlands - may require additional investments, which will not be made before there is any certainty about the granting of the licence. In such cases, the data and documents submitted must sufficiently show that the relevant condition will be met after the licence will have been granted. This is possible, for example, on the basis of detailed intentions or draft agreements. If, in the board's opinion, this sufficiently guarantees that the requirements of the regulations on games of chance will be met, the licence may be granted. In that case, the licence may be granted, for example with effect from the later date on which the relevant condition will actually have been met. The games of chance authority may also attach conditions to the licence.

Under the second paragraph, the grounds for refusal are set out in more detail. For example, rules may be laid down with regard to the cases in which it is not guaranteed sufficiently that a certain condition, such as the requirement that the provider's reliability should be beyond any doubt, is complied with.

Article 31d (withdrawal and suspension)

1. The proposed Article 31d contains general grounds on which a licence for organising remote games of chance may, in any case, be withdrawn and a delegation basis in order to detail and expand these grounds in subordinate legislation, if necessary. Of course, a licence is withdrawn with due observance of the standards of due care under general administrative law. Rules have been laid down in the General Administrative Law Act with regard to, among other things, carefully collecting data and balancing interests which must be observed by the games of chance authority in preparing its decision.

In any case, a licence may be withdrawn if the decision to grant this licence is based on incorrect or incomplete data. Not all incorrect or incomplete data justify the withdrawal of a licence. The data must be incorrect or incomplete to such an extent that the licence would not have been granted to the relevant licence holder if the games of chance authority would have had the complete and correct data available when granting the licence. Data may be incorrect or incomplete, for example if the licence holder has withheld information that was necessary in order to assess the application.

The licence may also be withdrawn if the conditions applicable to the granting of this licence are no longer met. This ground is important in cases in which the licensing conditions were met at the time when the licence was granted, but in which afterwards the situation has changed such that the conditions are no longer met. Examples are cases in which the licence holder changes its legal form or transfers its registered office after the licence has been granted, resulting in the licence holder no longer being a capital company with its registered office in an EU/EEA Member State or an approved third country, or has established such an

obscure control structure that efficient and effective supervision is no longer possible (Article 31h), and cases in which the reliability of the licence holder or its policymakers is no longer beyond any doubt (Article 31j).

Furthermore, the licence may be withdrawn if the licence holder has violated the statutory provisions under the Betting and Gaming Act, the Betting and Gaming Tax Act, the Anti-Money Laundering and Anti-Terrorist Financing Act, the Sanctions Act 1977, the restriction under which the licence was granted, or the conditions attached to the licence. Examples are cases in which the licence holder offers other on-line or off-line games of chance in the Netherlands apart from or instead of the licensed and safeguarded games of chance. Under the first paragraph, under (b), the licence may also be withdrawn, for example if the payable tax on games of chance has not been paid. In such case, it could be that the reliability of the licence holder is no longer beyond any doubt (Article 31j). A tax debt may also indicate problems with the continuity of the licence holder (Article 31h) which prevent a sound and reliable organisation of remote games of chance.

The licence may also be withdrawn if the licence holder has rendered insufficient cooperation in monitoring compliance with and enforcement of the provisions laid down by or pursuant to these acts.

It follows from the applicable provisions of the General Administrative Law Act that the licence holder must be heard by the games of chance authority before the licence may be withdrawn. This gives the licence holder the opportunity to conform to the set rules, to pay the tax debt or to put forward special circumstances that must be included in the assessment whether to withdraw the licence. An example is a payment arrangement made with the Tax and Customs Administration.

Second paragraph

The possibility to suspend a licence pending the investigation into the desirability to withdraw this licence is proposed. The careful preparation of a decision on the withdrawal of a licence may take some time, especially if an investigation is required by the public prosecution service, the Public Administration Probity Screening Agency or a foreign games of chance supervisor. If the data that were the reason for this investigation are such that it is not wise to allow the licence holder to organise games of chance in the Netherlands any longer, it should be possible to suspend the licence pending the preparation of the decision to withdraw the licence. Of course, the suspension period may not be very long. On the other hand, this period must allow for a sound investigation. A possibility is a period of six months with the possibility of an extension.

Article 31e (processing charges)

Under the proposed Article 31e, the amount charged for processing the application for the granting or change of a licence for organising remote games of chance has been set by ministerial regulation. This amount is based on the cost price of the processing of such applications. This article does not provide for the possibility of collection by writ of execution; if the amount has not been paid in time, the application will not be handled and no period will be granted in order to pay this amount.

Article 31f (licence fee)

Under the proposed Article 31f, the licence holder owes a periodical amount for the use of a licence for organising remote games of chance. The extent to which remote games of chance can be channelled in the Netherlands depends on the total costs to be incurred by the licence holder in order to be allowed to organise remote games of chance in accordance with Dutch regulations. The user fee is one of the factors that will determine the overall burden of taxes and charges. The basis and the rate of the fee are laid down by ministerial regulation. Here, rules may also be laid down with regard to the periods in which the amount is owed. The amount may be collected by writ of execution.

Article 31g (contribution to charities)

Under the proposed Article 31g, the licence holder is obliged to pay a periodical amount to one or more public benefit organisations active in the area of sports, culture, social welfare or public health. The periodical amount to be paid will also have to be proportionate to the desired channelling. The contribution to sports and charities is detailed by ministerial regulation, providing for, among other things, the ground for this contribution and the organisations to which the contribution may be paid.

Part 3. The licence holder

Article 31h (legal form, transparency, soundness)

First paragraph

Under European law, it is not possible for a licence holder to be required to have its registered office, management board or principal establishment in the Netherlands. Such a requirement would result in companies incorporated in other member states being fully excluded from offering remote games of chance in the Netherlands, if, for example, they would want to set up a fixed establishment in the Netherlands for this purpose (e.g. an agency, subsidiary or branch). A company incorporated in another EU or EEA member state would have to set up or acquire another company in the Netherlands and could not limit itself to the cross-border management of the remote games of chance offered in the Netherlands. This does not only constitute a restriction of freedom of establishment, but also direct discrimination of companies with a registered office in another member state.

Although it should be possible to effectively check the on-line activities of a provider of games of chance, this would not suffice in order to justify this restriction of the freedom of establishment and discrimination of foreign companies. Efficiently and effectively monitoring compliance with Dutch legislation on games of chance and the enforcement thereof can be achieved in a less radical manner. Specific possibilities are obligations to provide information and to cooperate, the obligation to appoint one or more officials charged with internally monitoring compliance with Dutch regulations on games of chance, direct access by the supervisors to the data in a control database relevant for monitoring compliance and provision of financial security.

The basic principle is therefore that the licence holder has its registered office in the Netherlands or another EU or EEA member state. This guarantees that the relevant European instruments in the area of, for example, consumer protection, the prevention of money laundering and terrorist financing, privacy protection and company law apply. As already indicated in the general part of these explanatory notes, there will also be cooperation in the supervision of games of chance in a European context.

As an important part of the current supply of games of chance in the Netherlands to be channelled is organised by providers established in one of the British Channel Islands, a licence may, if applicable, also be granted to an operator who is established in a third country. A precondition here is that the supervision of this operator offers sufficient guarantees for the objectives of the policy on games of chance as detailed in Dutch regulations on games of chance. Subordinate legislation sets out further conditions under which a provider may also be established in a third country.

Second paragraph

Under the first paragraph, the licence may only be granted to a legal entity having the legal form of a public limited company, a private limited liability company, the equivalent thereof under the law of another EU or EEA member state, or a European company. So the company need not be a public limited company or private limited liability company under Dutch law, but may also be a public limited company or private limited liability company under the law of another EU or EEA member state, for example a Belgian or French société anonyme or société privée à responsabilité limitée, a Danish aktieselskaber or anpartselskaber, a German Aktiengesellschaft or Gesellschaft mit beschränkter Haftung or British public companies limited by shares. For European companies, reference is made to Council Regulation (EC) no. 2157/2001 of 8 October 2001 on the Statute for a European company (SE). The requirement of a capital company under the law of one of the EU or EEA member states brings with it the obligations to which these types of companies are subject, especially regarding their internal organisation, accounting and the publication of their annual reports, and the inspections to which they may be subject. Although the application without any distinction according to nationality restricts the free movement of services, this is justified by the objective of the policy on games of chance in order to prevent fraud and money laundering, in view of the specific features of the gambling sector and the risks associated with games of chance. As a result of this requirement, a company in, for example, Antigua or America that wants to qualify for a Dutch licence will have to set up a company in an EU or EEA member state.

Third paragraph

In order to properly assess applications and adequately monitor compliance with legislation on games of chance by the licence holder, the third paragraph sets the requirement that the licence holder is not associated with natural persons or legal entities in a formal or actual control structure that is so obscure that it affects or could affect adequate supervision. Nor may the law of another state applicable to these natural persons or legal entities affect supervision. This article is derived from the comparable Article 4.13 of the Financial Supervision Act.

Fourth paragraph

As indicated in the general part of these explanatory notes, the Dutch market of remote games of chance is quite extensive, both in terms of gross winnings and in terms of numbers of players. Players must be able to rely on the Dutch licensing system. That is why the continuity of the organisation of the licence holder is important. A player who should be guided towards a legal, suitable and attractive supply must be able to rely on him being able to continue to play with this licence holder throughout the duration of the licence and the latter also being able to pay his credit balances, for example. He must also be able to rely on the licence holder not violating Dutch regulations on games of chance in order to save his company, for example

in order to prevent imminent insolvency. That is why the continuity of the licence holder must be reasonably guaranteed. This is certainly not the case if the licence holder goes bankrupt or into liquidation, if a moratorium has been granted, if an attachment is made on the capital of the licence holder or on one or more operating assets which form a considerable part of its capital or which it needs in order to organise the games of chance in accordance with Dutch regulations on games of chance. The requirements set on continuity are detailed in subordinate legislation. For the time being, guarantees in the form of capital requirements are not an option.

Under Article 34k, the licence holder will have to provide the games of chance authority with the necessary details on its financial position. Following this, the games of chance authority may use the set of instruments available to it in order to guarantee a sound, reliable and verifiable organisation of the licensed remote games of chance.

Article 31i (operational management)

The proposed Article 31i sets requirements on the operational management of the licence holder. The operational management must be suitable for compliance with legislation on games of chance, the Anti-Money Laundering and Anti-Terrorist Financing Act and the Sanctions Act 1977 in organising remote games of chance or to make them verifiable.

First paragraph

The first paragraph requires the licence holder to set up its operational management such as to guarantee a sound, reliable and verifiable organisation of remote games of chance, and to guarantee the monitoring of compliance with regulations on games of chance and with provisions laid down in the Anti-Money Laundering and Anti-Terrorist Financing Act and the enforcement thereof. This is detailed to an important degree in the second paragraph of Article 31i.

Operational management concerns the operating assets (including staff, IT system parts such as hardware, software and means of communication, and the environment in which parts of the operational management are present) and working methods (documented processes and procedures) used by the licence holder in organising remote games of chance. These operating assets and working methods determine the question whether the operational management of the licence holder is designed for the purpose of compliance with regulations on games of chance. For example, a licence holder is unable to comply with an obligation to provide information if relevant information is not collected by the system. An important part of the operational management concerns the gaming system. The gaming system is distinguished from the rest of the operational management because it is always related to the organisation of remote games of chance. The gaming system includes those parts used in determining the chance in the game of chance, generating, processing, storing and deleting details of players, the communication with players and the (financial) transactions with players. These - most relevant - parts of the operational management are detailed in subordinate legislation, setting requirements of an operational and technical nature.

A sound operational management concerns matters such as reliable management, honesty, integrity confidentiality and security. The licence holder is responsible for a managed supply of games of chance whereby players can rely on the honesty and integrity of the licence holder, of the game and of the other players, on their details being treated in confidence, on

the security of the environment to which they entrust their money and details, and on protection by the licence holder against crime related to games of chance.

Partly the same expectations, such as honesty, integrity, confidentiality and security, play a role in the reliability of the operational management. Reliability also concerns continuity, transparency and conformity with Dutch regulations on games of chance. One has to be able to rely on the stability of the company of the licence holder and the stability of the gaming system. It should be clear to consumers who the licence holder is and the licence holder must be accessible. The licence holder must comply with obligations to provide information, such as information about how the games of chance are organised and offered. Furthermore, the operational management of the licence holder must be set up in such a way as to rely on the licensing conditions - used to achieve the objectives of the games of chance policy - being complied with.

The above entails that the operational management must be verifiable. Without verifiability, it cannot be assessed whether the relevant parts of the operational management are indeed sound and reliable. The operational management must therefore be accessible, transparent and testable and must also be administered properly.

Second paragraph

The second paragraph details the first paragraph. Under the second paragraph, requirements are set on the means used for organising remote games of chance and how they are used. These are hereinafter referred to as the means, processes and procedures. The words “in any case” are used to express that this use is not exhaustive. Under subsection (a), requirements are set on the means, processes and procedures within the interest of a reliable, sound and verifiable operational management. Subsection (b) provides for additional requirements within the interest of verifiability.

Subsection (a) (technical and operational requirements)

In order to ensure a sound, reliable and verifiable operational management, technical and operational requirements are set on, among other things, the security of the information systems used and of the electronic payments. A feature of technical and operational requirements is that they are verifiable. Not all of these requirements are specifically tailored to organising remote games of chance. That is why the details in subordinate legislation will be in line with existing and customary international industrial standards as much as possible. Examples are the norms of the ISO 27001 standard of the International Standards Organisation (ISO) with regard to the data security which are used in other European countries and in a considerable part of the industrial sector. An example in the area of electronic payment is the Payment Card Industry Data Security Standard (PCI DSS).

Apart from these generic standards for a sound, reliable and verifiable operational management, technical and operational requirements more specifically tailored to the organisation of remote games of chance are set as well. The details hereof in subordinate legislation will also be in line as much as possible with existing international practice in the sector and with the regulations of other European countries. In this connection, rules are laid down with regard to, among other things, the manner in which the chance of the game is determined, requirements will be set on the detection of forms of abuse and crime related to games of chance, such as unfair play and money laundering and requirements will be set that allow for some licensing conditions to be tested. Testable requirements allow for the

verifiability of the licensing conditions. Within the interest of a sound and reliable supply of games of chance, rules are also laid down with regard to combining the supply of games of chance with other activities, in order to prevent, for example, the licence holder from having an interest in granting credit to players, and separating and securing details of players.

Subsection (b) (inspection)

The means, processes and procedures used by the licence holder in organising remote games of chance must meet the requirements of Dutch regulations on games of chance, both during the granting of the licence and afterwards and during the organisation of the licensed games of chance. For this purpose, a system of inspection by an accredited institution is proposed. Subsection (b) requires that the means, processes and procedures are inspected by an accredited institution.

The Dutch Accreditation Council may accredit organisations, at their request and according to standards customary for this purpose (such as ISO standards 17025 and 17020), as inspection bodies, test laboratories or both. These organisations (hereinafter referred to as "inspection bodies") are accredited for a certain scope, which is limited by the rules on the basis of which an inspection body will carry out the inspections. Within the framework of Dutch regulations on games of chance, these are the conditions (especially the technical and operational requirements) which a licence holder must meet. Based on the principle of mutual recognition, national accreditation bodies from the other EU and EEA member states are also authorised to accredit inspection bodies for the Dutch scope.

The gaming system must be subject to an inspection during the licence application, after the granting of the licence in case of any changes to the gaming system and on the instructions given for this purpose by the games of chance authority. In order to ensure this, a provider of games of chance will have to make continuous use of the services of one of the accredited inspection bodies. Under Article 34k, he must inform the games of chance authority of the inspection body he appoints for this purpose.

Under the proposed Article 34k, the licence holder must submit the relevant inspection reports to the games of chance authority. The games of chance authority uses these reports and the other data available in order to assess whether there is sufficient compliance. Apart from the previous assessment of the licence holder during the granting of the licence, a positive inspection report is an important indication that the licence holder will comply with the licensing conditions. The games of chance authority may also include other factors in its assessment of compliance, such as complaints and other external signs, and conduct a further investigation and further inspection following this.

Inspection upon the application for and granting of the licence

A licence may be granted if it is demonstrated that the gaming system complies with Dutch regulations on games of chance before it is put into use. This must be evident from an initial inspection report, the so-called initial inspection.

The games of chance authority may allow that this initial inspection is only carried out after some time, provided that it is sufficiently guaranteed in the meantime that the gaming system is sound, reliable and verifiable. It is estimated that the processing time of a licence application will be around six months. In order to allow for the licensed market to be opened quickly, it could be desirable to give providers the opportunity, for a period between six to

twelve months, to complete part of the time-intensive technical inspections. For this purpose, it must be demonstrated upon the application that the provider organises legal remote games of chance in another member state (or a state as referred to in Article 31h(1)(b)) and is supervised there, that the gaming system has been inspected by an inspection body recognised by this state shortly before the granting of the licence, that the technical and operational requirements set by this state can be compared, in the opinion of the relevant inspection body, with the Dutch requirements, and that this inspection has resulted in a positive inspection report. Under the fifth paragraph, these conditions are worked out in more detail in subordinate legislation. This is to prevent that the opening of the market for remote games of chance is not yet possible due to non-completed time-intensive inspections, as was the case in Denmark for example. As a result of this, the opening of the market in Denmark was considerably delayed.

Inspection after changes

The licence holder must have any intended changes to the gaming system subject to an inspection by an accredited inspection body in advance and inform the games of chance authority of this (under the proposed Article 34k). As in practice, changes are quite common - especially as far as electronic means are concerned - the fifth paragraph provides for a few exceptions to the requirement of a prior inspection. In these cases, an inspection may also be carried out shortly after the implementation of the change. An inspection afterwards is wise if the relevant change to the gaming system does not have any crucial effects on a sound, reliable and verifiable organisation of the remote games of chance, but are merely technical in nature. An inspection afterwards is also wise if the relevant change is necessary for the security of the system. It should be possible to make such changes immediately. In that case, however, the relevant changes to the gaming system must still be inspected within a few months. This will be detailed in subordinate legislation.

Third paragraph (inspection on the instructions of the games of chance authority)

The supervisor can use the initial inspection reports and the notifications of changes to assess whether the gaming system has been inspected.

It is customary in international practice for the entire gaming system to be inspected annually in addition to the initial inspection before it is put into use and in addition to the inspections of the changes. This involves additional costs to be incurred by the licence holder, which will not benefit the channelling.

That is why in the Dutch system, the additional inspections - apart from the initial inspection and the inspection of changes - are not carried out annually, but at times set by the games of chance authority. The games of chance authority sets these times on the basis of a risk analysis and on a random basis. This means that the inspection body appointed by the licence holder will carry out inspections at the expense of the licence holder at a time set by the supervisor. Under the third paragraph, the games of chance authority may determine that only one or more parts of the gaming system must be inspected.

In its risk analysis, the games of chance authority includes the information available to it, including complaints received from players, information from other supervisors and reports of inspections carried out for the purpose of a licence of the licence holder in another country. Additional random inspections will safeguard that licence holders with respect to whom there are no such indications can still expect an instruction to have an additional inspection carried

out at any time.

As these additional inspections are not carried out at regular intervals and are announced shortly beforehand, it is expected that this will result in better compliance by the licence holder with Dutch regulations on games of chance. Additional inspections based on random checks and a risk analysis by the games of chance authority are expected to result in a lower frequency of additional inspections for the average licence holder compared to regular (annual) inspections and thereby in a lower burden and more effective supervision.

Fourth paragraph

Within the interest of the internal operational management of the licence holder, it must appoint, under the fourth paragraph, an officer who is expert on the matter and who is responsible and available within his organisation for the implementation of and internal supervision of compliance with Dutch regulations on games of chance. In international practice, such internal officers are also referred to as compliance officers. Subordinate legislation may detail the further requirements with regard to knowledge and/or experience of this officer.

This officer must be available within the organisation of the licence holder and also for the games of chance authority. This way, he forms a link between the relevant staff members of the licence holder and the games of chance authority. This officer may, of course, only be responsible for implementation and compliance within the provider's organisation. The responsibility for implementation and compliance does not lie with this officer, but with the licence holder. The fourth paragraph does not preclude the licence holder, for example in view of the size of its organisation, from appointing several of these officers, each having their own duties and responsibilities, provided that this is reported to the games of chance authority.

Fifth paragraph

Under the fifth paragraph, further rules are laid down in subordinate legislation with regard to the parts of the operational management relevant to the organisation of remote games of chance. The technical and operational requirements are rather extensive and detailed. Practice in other countries shows that there may be a need to adjust these requirements frequently.

Subsection (c)

In the complex international practice of the supply of remote games of chance to be channelled, certain parts of the gaming system are often outsourced by providers to specialised third parties. Here, it concerns, among other things, the management and development of the gaming software, of the players' accounts, of the transaction accounts, of the advertising and canvassing activities, of the customer care, and of the internal detection of forms of abuse and crime related to games of chance.

In itself, outsourcing is not problematic, provided that compliance with regulations on games of chance and the monitoring thereof continue to be guaranteed. Thus outsourcing does not release the licence holder from its obligations. Even if certain parts of the operational management are actually taken care of by specialised third parties, the licence holder continues to be responsible for compliance with Dutch regulations on games of chance. That is why subordinate legislation will set further requirements on the outsourcing of part of the operational management. Outsourcing should not stand in the way of internal and external

supervision. Nor may outsourcing result in the circumvention of the requirements set out regarding the reliability and competence of the licence holder.

Finally, rules may also be laid down under the fifth paragraph to guarantee transparency and accessibility in case of outsourcing. Even if the licence holder outsources parts such as advertising and canvassing, the actual supply of games or client management to third parties, it should be clear to consumers who the licence holder is (requirement of transparency).

Article 31j (reliability)

First paragraph

Both consumers of remote games of chance and the government must be able to rely on the integrity of the licence holder and the persons involved by it in the organisation of remote games of chance. The reliability of the licence holder and those involved in the organisation of the remote games of chance should therefore reasonably be beyond any doubt. As in its assessment of reliability, the games of chance authority in certain cases partly depends on information coming from abroad, the burden of proof of reliability lies with the party who wants to qualify for a licence for games of chance. In this connection, there is a link with the reliability assessment under the Financial Supervision Act.

Second paragraph

As the licence holder is a legal entity itself, the reliability of the licence holder is partly determined by the reliability of the persons involved with the licence holder. Here, it especially concerns directors, managers and staff members whose role in the organisation may affect the reliability of the licence holder. For instance, the proper management of players' credit balances depends on the integrity of those conducting the financial management of the licence holder, and effective fraud prevention and fraud detection depend on the integrity of the staff members charged with this.

For these reasons, the second paragraph provides for an obligation for the licence holder to be engaged in guaranteeing internal reliability in a policy-related and adequate manner. Examples are organisational rules and procedures that continuously monitor the reliability of the staff and other persons involved in the organisation of remote games of chance within the organisation of the licence holder. Here, it concerns managers who can exercise influence on other relevant persons, persons in key positions who are in a functional position in which they can make a significant difference to the reliability of the licence holder, and persons who come into contact with players when organising remote games of chance, whose ethics may have a direct effect on consumer interests. Persons in key positions include those who perform important tasks in the area of financial control, of the management of the games, the transactions and the player file, of canvassing, of information systems and of security, or who manage this. This will be detailed in subordinate legislation.

Third and fourth paragraphs

The third paragraph further details the first paragraph. In any case, the reliability of the licence holder and of the persons wholly or partly determining its policy will not be beyond any doubt in the case and under the conditions referred to in Article 3 of the Public Administration (Probity Screening) Act. In its assessment of the reliability of the (potential)

licence holder, the games of chance authority will, in any case, be able to make use of the set of instruments of the Public Administration (Probity Screening) Act. The Act Evaluating and Expanding the Public Administration (Probity Screening) Act (Act of 28 March 2013, Bulletin of Acts and Decrees 125, Parliamentary Papers 32 676) already provides for this set of instruments to be used in the gaming machines sector. The remote games of chance sector is also sensitive to abuse for criminal purposes and money-laundering, although it can be checked better because of its electronic nature. Of course, a provider of games of chance in the gaming machines sector who is not granted a licence under the set of instruments of the Public Administration (Probity Screening) Act, may, for the same reasons, not be granted a licence for providing remote games of chance either. However, the effectiveness of the set of instruments of the Public Administration (Probity Screening) Act depends on the extent to which data must be obtained from abroad.

Fifth paragraph

Further rules are laid down in subordinate legislation with regard to the reliability of the licence holder and the persons involved in its organisation. Where possible, this will be in line with the requirements set pursuant to Chapter 2 of the Prudential Rules (Financial Supervision Act) Decree on internationally operating financial institutions.

As a result, the games of chance authority may follow the expertise and experiences of the supervisor under the Financial Supervision Act.

Apart from violations of Dutch or foreign regulations on games of chance, a broad range of criminal antecedents, supervisory antecedents, financial antecedents, tax-administrative antecedents and other antecedents is taken into account in the assessment of the reliability of the licence holder. The extent to which the licence holder has met its financial obligations under administrative sanctions, the levy on games of chance and the tax on games of chance is also taken into account.

Article 31k (expertise)

The sound, reliable and verifiable organisation of remote games of chance is determined to an important degree by the professional quality of the management of the licence holder and of the staff and third parties in key positions. For instance, a provider of games of chance with an incompetent management who fully or partly outsources the organisation of remote games of chance to third parties, will be unable to properly assess the expertise of these third parties, thereby compromising a sound, reliable and verifiable organisation of the organised games of chance. The licence holder may outsource certain activities to third parties, insofar as these third parties comply with the expertise requirement set in this matter. The members of the board of the licence holder must therefore have sufficient expertise in order to be able to rely on the policy of the licence holder remaining within the limits of a sound, reliable and verifiable organisation of the games of chance.

Managers, persons in key positions and persons who come into contact with players when organising remote games of chance, play an important part in the implementation of this policy. They, too, must have the expertise, including suitability and knowledge or experience, required in their area. For instance, it cannot be assumed beforehand that, for example, the regulations on the prevention of gambling addiction will adequately be observed, if the staff members of the customer service, those who analyse the details of players for addiction risks and those who confront players about any high-risk gaming behaviour, do not have the knowledge and/or experience necessary in this area. The licence holder must therefore ensure

that the managers, the persons in key positions and the persons who come into contact with players when organising remote games of chance, have suitable expertise.

In principle, expertise can be required and demonstrated in the form of both training and experience. A training course will be required in certain areas; for instance, board members, key personnel and personnel who come into contact with players will be required to have completed a short training course on addiction prevention. Especially with managers, however, more value will be attached to experience and expertise with regard to the specific nature and risks of the organisation of remote games of chance.

Part 4. Organising remote games of chance

Article 31l

Article 31l sets out a number of provisions with regard to the registration and login of players with the licence holder. The purpose of this is that the licence holder knows who participates or wants to participate in the games of chance organised by it. Each player who uses the provider's gaming environment must be recognised by the licence holder as a unique player. The effectiveness of measures in the area of, among other things, the prevention of gambling addiction and money-laundering depends on recognising players. The licence holder must know a player's identity in order to determine, for example, that this player is of age and is not registered in the central register for exclusion from participation in games of chance (Article 33h). This applies both before and during the game.

First paragraph

Under the first paragraph, the licence holder may only offer remote games of chance to persons who are registered by it as a player and who are logged into its gaming environment as a player.

In principle, the registration as a player is a one-time act, during which the identity of the person concerned is established and it is checked whether this person may participate in the remote games of chance. A person is registered by submitting a number of personal details, which, under the fourth paragraph, are laid down in more detail in subordinate legislation. These details include, in any case, the first name and surname of the person concerned, his place of birth, bank account number and e-mail address. When the bank account was opened, the identity of the person concerned was checked and verified by the bank on the basis of an identity document.

After the registration, the player will, for each visit, login to the gaming environment of the licence holder as a player. This login reasonably ensures that the person who wants to participate in the remote games of chance after the registration is actually the person who was registered as a player and whose identity has been established. This login at every visit also allows the licence holder to check whether the registered player is included in the central register for exclusion from participation in games of chance (Article 33h) after his registration.

The player can log in using a unique login name and password that were submitted by the player during his registration and were approved and established by the licence holder. This unique combination grants the player access to this player profile and account. If possible,

automatic login as a player, for example by having the web browser remember the login name and password, is prevented. The reason for this is that it should not be possible for persons other than the person registered as a player - his minor children for example - to participate in the games of chance.

Second paragraph

The second paragraph provides for a number of conditions for the registration as a player. The licence holder must establish the identity of the person who wants to register as a player, so that the licence holder will know the identity of the person concerned. The licence holder must be able to establish, among other things, that the person concerned is 18 years of age or older and has not been included in the central register for exclusion from participation in games of chance (Article 33h). For no remote games of chance may be offered to minors and to persons who are listed in this register. The manner in which the identity is established and verified is detailed in subordinate legislation. The identity may be verified, for example, by comparing the personal details and contact details of the person concerned with the bank details this person had to submit for the registration and the copy of the person's identity document.

During the registration as a player, the person concerned must set up a player profile in which he sets a number of limits to his gaming behaviour. Examples are a maximum loss within one week, a maximum balance in the player's account and a maximum number of visits per week or month. By completing the player profile, the person is forced to reflect on his gaming behaviour beforehand and he allows the licence holder to intervene when the limits set in the profile are exceeded. The profile may be changed, on the understanding that a lowering of the limits will have immediate effect, and an increase only after a few days. By or pursuant to a General Administrative Order, further rules are laid down with regard to the player profile in consultation with care organisations for addicts. The player must also agree to the general terms and conditions used by the licence holder before he can be registered.

Third paragraph

Under the second paragraph, persons included in the central register for exclusion from participation in games of chance (Article 33h) may not be registered with a licence holder as a player. If a player is included in the central register after the registration with a licence holder, the registration as a player must be terminated by the licence holder. Under the third paragraph, the licence holder may also not allow a person whom he should reasonably expect to cause damage to himself or to others due to excessive participation in games of chance or due to gambling addiction, to login as a player. It concerns persons who have not yet been listed in the register, but whom the licence holder should reasonably expect, based on an analysis of their gaming behaviour and a further investigation (Article 31n), to cause damage to themselves or others due to excessive participation in games of chance or gambling addiction. If these players do not want to be excluded temporarily from further participation in games of chance, the licence holder must inform the games of chance authority of this and prevent the persons concerned from being able to participate in the remote games of chance organised by it.

Fourth paragraph

Under the fourth paragraph, further rules are laid down by or pursuant to a General Administrative Order with regard to, among other things, the registration and login of players.

Here, rules are laid down with regard to the verification of the identity of players, for example by paying a small sum of money from the bank account stated. Other examples are provisions with respect to the careful handling by the registered player of the login details in order to prevent others from using them in order to participate in games of chance. Moreover, a person who wants to be registered as a player will have to state expressly that he is legally competent and only plays at his own risk and expense. Rules will also be laid down with regard to the cases in which the registration is suspended or terminated. Examples of a suspension of the registration are situations in which the licence holder conducts an investigation into a player's possible involvement in crimes related to games of chance.

Article 31m

The proposed Article 31m relates to payments between the licence holder and the registered player and the credit balances held with the licence holder.

First paragraph

Under the first paragraph, rules are laid down in subordinate legislation with regard to the payments between the licence holder and the players registered with it. These rules will relate to the player's account in particular. This is an internal account opened by the licence holder for an individual player registered by it after identification. This player may pay amounts into this account from his bank account in order to use these amounts to participate in games of chance and may also receive his winnings on this account. The payments between a player and licence holder will, in principle, only be made through the player's account of the registered player.

The player's account is linked to a bank account in the name of the player. The player can only pay money into the player's account from this bank account. Winnings in the player's account may only be credited to the bank account linked to it. Transfers between player's accounts are not allowed, as this may involve considerable risks in the area of fraud and money-laundering.

The balance in the player's account belongs to the player. However, the licence holder may not make any payments before it has verified the identity of the player. Subordinate legislation will detail the manner in which the identity can be verified. Examples are the transfer of an amount - of one euro cent for example - by the player from his bank account to the player's account, which will show that the player has indeed access to the bank account submitted by him during his registration, and the provision of a copy of his identity document. This will provide the licence holder with the details necessary in order to sufficiently verify the identity, insofar as these details correspond with each other. It cannot be ruled out that other verification methods will become available in time.

Second paragraph

Under the second paragraph, a licence holder must provide suitable guarantees for the secure processing of the payments between the licence holder and a player. Furthermore, the licence holder must take appropriate measures to ensure that credits can be paid out at all times. It should be prevented that the licence holder fails to pay out credits, whether or not in case of financial problems, insolvency or a moratorium. The balances in the player's accounts belong to the players. It is therefore not desirable for credits to form part of the capital of the licence holder, which would allow for speculation with these balances, for example. The balance of

the account into which the credits are paid should always be at least equal to the total of the players' credits.

The licence holder determines how to separate the balances in the player's accounts from the risk-bearing capital. The licence holder may opt for a Dutch foundation, for example according to the model in which Dutch lawyers protect their clients' funds, or a trust under Anglo-Saxon law. A clients' account as used by Dutch civil-law notaries and bailiffs is also a suitable instrument in order to separate the balances of the player's accounts from the risk-bearing capital (third paragraph).

Moreover, the licence holder must guarantee that the balance in the player's account can be paid to the person entitled to it at all times. This means that, apart from separating the balances in the player's accounts from risk-bearing capital, the licence holder must also provide for suitable measures and procedures that ensure that it will always be clear which player is entitled to which payment and that there will also be one or more persons who will actually be able to make the payment, even in case of insolvency. Examples of this are the management of the foundation or the trustee of the trust managing the balances, or an accountant who is entitled to pay the balances.

Third paragraph

The third paragraph provides for the possibility that, in separating the credits from the risk-bearing capital, the licence holder may opt for a clients' account also used by Dutch bailiffs. Under the third paragraph, Article 19, first paragraph, second and third sentence, second and third paragraph, fourth paragraph, second and third sentence, fifth, sixth and eighth paragraph, of the Bailiffs Act apply mutatis mutandis in that case.

Fourth paragraph

Under the fourth paragraph, further rules are laid down with regard to, among other things, opening, closing and suspending a player's account, paying money into this account and making payments from this account, and providing information to the player about his player's account.

For instance, it will be provided for that the licence holder may only open one player's account for a player, only accepts money from the player in this account coming from this player's bank account, immediately credits the money paid and won by the player into the player's account, does not allow any transfers between player's accounts of different players and does not provide any credit to the player in his player's account. Nor may the licence holder charge any costs for paying the balance of the player's account to the player.

The player's account will have to be closed by the licence holder if the registration as a player is terminated. The balance of the player's account will then immediately be transferred to the player's bank account. Safe for a few exceptions - connected, for example, with investigations into embezzlements such as money-laundering or unfair play - the player will be entitled to a payment of the balance in this player's account at all times.

The licence holder must provide the player with details with respect to, among other things, the balance in his player's account and the mutations.

Article 31n (prevention)

First paragraph (registration and analysis)

The licence holder will register the data relevant to the detection of possible high-risk gaming behaviour and will analyse them based on risks of gambling addiction in order to identify (emerging) problem behaviour at an early stage. Under the fifth paragraph, subordinate legislation will detail the data that should be registered and analysed in any case. The risk indicators to be used are also set out in more detail. In any case, it concerns the level of the limits set in the player's profile, any increase and exceeding thereof, developments in the frequency with which the player participates in remote games of chance, and developments in the amounts paid by him into the player's account. Such indicators may be generated using electronic means when organising remote games of chance. It also concerns undesired behaviour of a player towards fellow players or towards staff members of the licence holder, for example staff members of the customer service department, and external signs from the player's family members, for example. These indicators are also used in games of chance organised in amusement arcades and gaming casinos. If the analysis gives reason to do so, the licence holder must intervene in the gaming behaviour.

The registration and analysis of data with respect to gaming behaviour may, at any time, result in the processing of special personal data, namely health data within the meaning of Article 16 of the Personal Data Protection Act. This has already been discussed in more detail in the explanatory notes to Articles 27ja and 30v.

Second paragraph

If an analysis of the registered data results in a reasonable suspicion of excessive participation in games of chance or gambling addiction, the licence holder must further assess the player's behaviour. For a certain risk indicator may indicate (emerging) high-risk gaming behaviour, but could also have a different, more innocent explanation. This assessment will be conducted on the basis of a personal interview with the player. The organiser of remote games of chance may hold this meeting electronically (for example by e-mail, videophone or chat). In doing so, the licence holder will have to ensure the correctness of the gaming behaviour discovered by it and assess whether the player may cause damage to himself or others due to excessive participation in games of chance or gambling addiction. The assessment should focus on, among other things, whether the player can afford the discovered participation in the games of chance, the extent to which there is a dependence on games of chance, and the influence of the participation in the games of chance on the player's behaviour and environment.

This assessment must be conducted by staff members who are experts in addiction problems and can identify (emerging) problem behaviour.

The licence holder draws up a report of this meeting. This report is important, among other things, for the purpose of further monitoring the player and any temporary exclusion by the games of chance authority from further participation in games of chance (see Article 33da). The report is also important for the purpose of monitoring compliance with the obligation to intervene by the games of chance authority.

Third paragraph

If, based on the analysis of the gaming behaviour and the personal interview with the player, the licence holder should reasonably suspect this player to cause damage to himself or others due to excessive participation in games of chance or gambling addiction, the licence holder will inform the player of his gaming behaviour in relation to responsible gaming behaviour. In essence, the licence holder holds a mirror up to this player, causing him to become aware of

his gaming behaviour and the consequences thereof. In such case, the licence holder must prevent the player from being able to login in order to participate in the games of chance offered by it (Article 31l(3)).

Moreover, the licence holder is obliged to advise this player to be temporarily excluded from participation in remote games of chance and games of chance offered in amusement arcades or gaming casinos, and to inform him of the consequences thereof. Such self-exclusion means that the player is temporarily registered in the central register for exclusion from participation in games of chance (Article 33h), causing him to be refused access for six months - or longer, if he so desires - to amusement arcades and gaming casinos in the Netherlands and to remote games of chance offered in the Netherlands. The player cannot reconsider this decision for six months.

A large majority of the relevant players is expected to follow this advice. In that case and if so requested, the licence holder must assist the player in this self-exclusion by performing the further acts necessary for this purpose on his behalf. Of course, the player may also perform these acts himself. The licence holder may not force the player to undergo such exclusion. The games of chance authority may, however, exclude the player for a duration of six months (Article 33da).

Fourth paragraph

The fourth paragraph relates to the player who, in the expert opinion of the licence holder, may cause damage to himself or others due to excessive participation in games of chance or gambling addiction, but who does not want to temporarily exclude himself from participating in remote games of chance or games of chance in gaming casinos or amusement arcades. The licence holder must notify the games of chance authority of this. The games of chance authority may still temporarily exclude the relevant player from participating in these games of chance (Article 33da). When notifying the games of chance authority, the licence holder must provide the data required by the games of chance authority for the assessment whether the relevant player may indeed cause damage to himself or others due to excessive participation in games of chance or gambling addiction and for any preparations of a decision to temporarily exclude the player. Under the fifth paragraph, these data are worked out in more detail in subordinate legislation. In any case, it concerns the data and analysis with respect to the gaming behaviour of the relevant player (first paragraph), the results of the assessment of the player's behaviour (second paragraph) and the player's response to the recommendation to exclude himself (third paragraph). The games of chance authority must be able to rely on the correctness and completeness of these data. However, if, in a particular case, the data provided by the licence holder are insufficient, the games of chance authority may request the licence holder to provide additional data. It may also collect additional data itself.

Within the social interest of preventing gambling addiction, the licence holder may use the citizen service number of the relevant player. This use and the quality checks that can be used within the infrastructure of citizen service numbers promote the quality of the data in the register, thereby reducing the risk of mistaken identity and also reducing the administrative and implementation burden on the licence holder and the games of chance authority. The explanatory notes to Article 33h(5) will discuss this in more detail. The licence holder must comply with the privacy guarantees and guarantee, among other things, that the citizen service number is not used for other purposes. Under the fifth paragraph, further rules are laid down

with regard to this.

Fifth paragraph

Under the fifth paragraph, further rules may be laid down in subordinate legislation with regard to the registration and analysis of details of players and the consequences the licence holder must attach to this.

Article 31o (delegation)

The current system of the Betting and Gaming Act allows for conditions to be attached to licences for games of chance. There is no exhaustive list of topics to which these conditions may relate. The basic principle of this act is that subordinate legislation is included in a General Administrative Order or ministerial regulation as much as possible. The preceding articles contain the necessary delegation grounds for this. It is also possible to attach conditions to a licence for remote games of chance in order to provide customised services in individual cases. This does not change the fact that the government deems it desirable to include an additional delegation ground in order to steer the regulation of remote games of chance in the right direction. That is why the proposed Article 31o provides that further rules on this may be laid down by order in council.

Part O (Article 33da)

Persons who do not want to participate in remote games of chance, in games of chance offered in gaming casinos and in amusement arcades may, whether or not through the intermediary of the organiser of such games and whether or not with their help, temporarily exclude themselves from participating in such games of chance by registering in the central register for the exclusion from participation in games of chance (Article 33h). It may concern self-exclusion on the advice of a licence holder after an analysis of the gaming behaviour and a personal interview with the player in question. However, this is not necessary for temporary self-exclusion from participation in such games of chance; each Dutch national may register in the register voluntarily. A player may, however, also be registered in the register on a non-voluntary basis.

First paragraph

The proposed Article 33da(1) grants the board of the games of chance authority the power to exclude high-risk and problem players who did not opt for this themselves, from participating in remote games of chance, games of chance in gaming casinos and in amusement arcades for a period of six months. It especially concerns cases in which the organiser of such games of chance has, after a registration and analysis of the gaming behaviour, after an intervention and after a further investigation, advised the player to temporarily exclude himself based on its expertise, and in which the player did not follow this advice. In such cases, the licence holder must notify the games of chance authority of this, providing the necessary data that, in any case, relate to the gaming behaviour, the analysis thereof and the investigation conducted by the licence holder following this analysis (Articles 27ja, 30v and 31n).

However, it may also concern cases in which an interested third party, for example a family member of the player, directly asks the games of chance authority to temporarily exclude a player from participation. In that case, the games of chance authority will have fewer data available with respect to the exact (gaming) behaviour of the person concerned, but may have more data available on the personal and social consequences of this gaming behaviour.

In response to the notification by the licence holder or the request of an interested third party, the games of chance authority will investigate whether the player concerned is indeed a high-risk or problem player who may cause damage to himself or others due to his gaming behaviour and must temporarily be excluded from participating in remote games of chance or games of chance offered in gaming casinos or amusement arcades by including him in the central register. The procedural aspects of the decision to involuntarily include a person in the central register (and the preparations for this) are governed by the General Administrative Law Act. During the preparations for a decision to temporarily exclude a person, the games of chance authority must acquire necessary knowledge on the relevant facts and the interests to be balanced (Article 3:2 of the General Administrative Law Act). Relevant facts include the gaming behaviour of the player concerned and the (negative) influence of games of chance on the player's life. As already said, these facts will mostly come from the licence holder who made the notification and provided relevant details, or must provide further details following this notification. It follows from the principle of due care (Article 3:2 of the General Administrative Law Act) that the games of chance authority must ensure that the licence holder conducted the investigation with due care. The licence holder must have analysed the data on the gaming behaviour of the person concerned, must have developed a reasonable suspicion of high-risk gaming behaviour based on this analysis and must have discussed this during a personal meeting with the person concerned, the suspicion not having been removed. All this must have been recorded in writing.

The data may also come from the relevant person himself, who must be given the opportunity to express his view (Article 4:8 of the General Administrative Law Act), or from a third party, such as a family member or an external expert in the area of addiction care. Preparations for the decision will be quicker and better as and when the investigation conducted by the licence holder is more careful. That is why, under the proposed Articles 27ja(5), 30v(5) and 31n(5), requirements have been set on the data analysis and the subsequent investigation by the licence holder. Based on these data, the games of chance authority must, in principle, be able to balance the interests directly related to the decision (Article 3:4 of the General Administrative Law Act) and must properly substantiate the decision (Article 3:46 of the General Administrative Law Act).

Second paragraph

Together with its notification, the licence holder must provide the data required by the games of chance authority in order to make preparations for the decision to include a player in the central register. These data will not always be sufficient for a careful preparation for the decision. Examples are cases in which the licence holder states that the relevant player also participates in games of chance organised by other providers and cases in which, for example, a family member of the player requests that he be temporarily excluded. In such cases, the games of chance authority must be able to request the necessary data from the (other) licence holder. The second paragraph provides that, in that case, these data must be provided by the relevant licence holder.

Here, it initially does not concern supervision information (Article 34k), but information necessary for the preparations for any decision to include a person in the central register. However, this information could be important for monitoring compliance with the obligation to register, analyse and intervene (Articles 27ja, 30v and 31n) and may be provided by the

board to the supervisors of the games of chance authority under Article 33g(2).

Parts P and Q (Articles 33e and 33f)

Article 33e(1)

Partly due to the absence of any physical contact during the game between the player and the provider, participation in remote games of chance involves specific addiction risks compared to participation in physical games of chance. That is why the holder of a licence for organising remote games of chance is obliged, among other things, to register and analyse the gaming behaviour and to intervene where necessary (Article 31n). In case of any high-risk gaming behaviour, the licence holder must show the relevant player the possibilities of anonymous on-line assistance, among other things. Research has shown that anonymous on-line assistance is very effective because of the low threshold and anonymity, compared to treatments with physical contact between a player and practitioner. Access to anonymous on-line treatment is essential in order to reach problem players at an early stage. In addition to regular addiction treatment financed under the Exceptional Medical Expenses Act, healthcare insurers offered, as an experiment until 2011, approximately 500 on-line treatments in which people could participate completely anonymously (“Gokken in kaart”, 2011). In order for a treatment to be financed under the Exceptional Medical Expenses Act, people need to submit their personal details, which, after 2011, resulted in a decrease in the number of registrations with addiction care organisations. Only one in ten problem players are expected to actually undergo treatment if the player's personal details are required in order for costs to be reimbursed by healthcare insurers, and that the other nine will only look for help after serious problems have arisen. That is why experts have argued to maintain the possibilities of anonymous treatment through the Internet. This low-threshold form of treatment can easily be combined with remote games of chance, by having the on-line provision of information and preventive instruments such as electronic self-tests and feedback systems refer to on-line treatment.

It is proposed to set up the addiction fund such that, from now on, the holders of a licence for organising remote games of chance also contribute towards the costs of anonymous treatment of gambling addiction and of gambling addiction research. Anonymous treatment is currently already funded on a voluntary basis by a single on-line provider. The proposed set-up of the addiction fund means that it is broadened and made sustainable. The aim of the expansion of the existing purpose levy is to prevent an unnecessary additional administrative and implementation burden on licence holders and the government.

The gambling addiction research to be financed through the contribution will focus on the development, testing and improvement of risk analysis instruments, preventive measures and (on-line) treatment methods in relation to remote games of chance. Moreover, proper insight is required into the effect of regulating on-line games of chance on gambling addictions. Addiction research with respect to remote games of chance is still in its infancy, as is also substantiated in the green paper of the EC and the ALICE-RAP research programme financed by the EU (www.alicerap.eu).

The basis of the contribution towards the costs of anonymous treatment of and research into gambling addictions is the gross winnings of the licence holder. This is also the basis of the

levy to cover the costs of the games of chance authority (see the proposed second paragraph, under (c), of Article 33e). The decision imposing the levy on games of chance will, from now on, specify two amounts "above the line"; apart from the amount owed by the licence holder as a contribution towards the costs of the games of chance authority, the amount to cover the costs of gambling addiction are, from now on, specified separately. The latter amount is made available by the games of chance authority to the Ministry of Health, Welfare and Sport.

The maximum amount of the contribution to be made by the holders of a licence for organising remote games of chance jointly is set by the Minister of Security and Justice. Of course, this contribution does not exceed the actual costs incurred for anonymous treatment of and research into gambling addictions. These costs will be specified and recorded by the Ministry of Health, Welfare and Sport. In determining the amount of the contribution, the total cost pressure that partly determines the guiding of players towards a safe and regulated supply of games of chance will also be taken into account. For high costs stand in the way of a suitable and attractive legal supply that should prevent players from participating in illegal remote games of chance which do not offer the high level of protection - also against gambling addiction - of legal remote games of chance.

The total costs of anonymous treatment (including overheads) amount to around 650 euros. Around 500 of such treatments were given in 2011. Assuming a need for around 700 treatments per year, the costs of anonymous treatment of gambling addictions amount to around 500,000 euros per year. The annual costs of gambling addiction research are estimated at around 250,000 euros. With a market of 176 million euros in gross winnings, this means an additional levy of around 0.45% of gross winnings.

The proposed expansion of the purpose of the levy on games of chance also meets the Van Gent motion (Parliamentary Papers II 2010/11, 32 264, no. 12) in which the then government was asked to investigate the desirability and feasibility of a fund to be financed by providers of games of chance, from which fund the costs of treating gambling addicts can be financed.

Articles 33e(2) and 33f

The costs of the games of chance authority are covered by a purpose levy (the levy on games of chance), which is imposed on the holders of licences for organising games of chance. In short, the basis of the levy on games of chance is currently the nominal value of the betting slips sold for lotteries and the numbers of gaming tables, player's terminals linked to this and player's seats of gaming machines for gaming machines (amusement arcades) and gaming casinos.

These bases are based on physical reality and cannot be used for remote games of chance. For this reason, it is proposed to use the so-called gross winnings as a basis for remote games of chance. The first subsection of Article 33e(2) describes this as the difference between the stakes received and the prizes awarded. Here, the bets also include the credits which a licence holder provides to a player for free and which a player can use to play with (bonuses). These are not included in the prizes, as they cannot be converted into cash by a player. This is different with prizes in kind, as they are put at the disposal of a player, who can sell them, for example. The cost price for the licence holder of prizes in kind is included in the calculation of the gross winnings. For this purpose, the licence holder will have to submit evidence (an invoice, for example), showing the costs of purchasing these prizes. Prizes awarded by a

sponsor free of charge are not taken into account.

In certain games of chance in which players play against each other and not against the licence holder, the prizes are not awarded by the licence holder, but the licence holder only receives a fee for providing the opportunity to participate in these games of chance. In poker tournaments, for example, this is the tournament fee paid by players in addition to the buy-in fee. In case of a betting exchange, this concerns the commission for the provider. In such cases, the levy on games of chance is calculated on the basis of the fee the licence holder receives for providing the opportunity to participate in the games of chance. This basis is also used if the licence holder requests a fee from the player before allowing him to participate in the games of chance. This basis is included in the second subsection of Article 33e(2). Of course, a combination of both bases is not excluded.

The new third paragraph of Article 33f sets a separate percentage for each of these bases. This allows for a differentiation. In general, the difference between the stakes received and the prizes awarded exceeds the amount the licence holder receives for providing the opportunity to participate in the games of chance, while the costs of supervision and the other duties of the games of chance authority paid from the levy on games of chance do not differ. These percentages may be changed. Under the (renumbered) ninth paragraph of Article 33f, further rules may be laid down by or pursuant to a General Administrative Order with regard to the levy on games of chance.

Part R (Article 33g)

Opening words

Under Article 33g(1)(a), the board of the games of chance authority may process personal data, including criminal record, insofar as this processing is necessary for the implementation of the Betting and Gaming Act. The exercise of the power to temporarily exclude persons who are reasonably suspected of causing damage to themselves or others due to excessive participation in games of chance or due to gambling addiction (Article 33da) from participating in high-risk games of chance, may result in the processing of health data within the meaning of Article 16 of the Personal Data Protection Act. Under Article 23(1), opening words and under (e), of the Personal Data Protection Act, the prohibition to process such data does not apply if such processing is necessary with a view to a substantial general interest. Preventing gambling addiction is such substantial interest. The supplement to Article 33g(1) provides for a statutory basis for the processing of such special personal data.

Pursuant to the fourth and fifth paragraph of Article 33g, these data are not processed for a purpose other than for which they have been provided and are not processed if this disproportionately harms the personal privacy of the person concerned. Under the sixth paragraph, the games of chance authority takes, among other things, suitable security measures in its privacy regulations.

Subsection (d)

Within the context of administrative cooperation with the games of chance supervisors in other countries where the (applicant) licence holder with a licence provides games of chance or where parts of its gaming system have been placed, it should be possible to exchange data - and, in certain cases, also personal data with respect to providers of games of chance. The

proposed supplement to Article 33g(1) allows for this under the guarantees already provided for by this article. For instance, no data may be exchanged with other supervisors if this disproportionately harms the personal privacy of the person concerned and the technical and organisational measures for protection, purpose limitation and internal supervision apply. Of course, the data exchange must be in accordance with Dutch regulations. For instance, no data will be provided if the purpose for which the data will be used has been determined or guaranteed insufficiently, and that the data will not be used for a purpose other than for which these are provided.

The experiences of the Danish games of chance supervisor show that a mere notification of an illegal supply of games of chance in Denmark to the games of chance supervisor of the country where the provider has a licence for games of chance often results in a discontinuation of the illegal supply.

Under the seventh paragraph, the games of chance authority will lay down further rules in its privacy regulations with regard to the foreign supervisors with whom data can be exchanged, the manner in which data can be provided and the supply and destruction of data.

Part S (Article 33h)

The proposed Article 33h contains provisions with respect to the central register for exclusion from participation in games of chance (the register), which the general part of these explanatory notes has already discussed in more detail. This register includes data of persons who may not be granted access to remote games of chance or games of chance organised in amusement arcades or gaming casinos for a certain period of time, but at least six months. Anyone who so wishes may be included in this register.

This article must be seen in conjunction with the proposed Articles 27ja, 30v and 31n under which said organisers of remote games of chance and games of chance offered in amusement arcades and gaming casinos must analyse a player's gaming behaviour. If a licence holder has a reasonable suspicion that a player may cause damage to himself or others due to gambling addiction or excessive participation in games of chance, they holder must advise this player to register in this register voluntarily. These organisers may not force players to exclude themselves. This article must also be seen in conjunction with the proposed Article 33da, under which the board of the games of chance authority may exclude persons, temporarily and against their will, from participating in remote games of chance or games of chance organised in amusement arcades or gaming casinos for a period of six months.

First paragraph

The register is kept by the board of the games of chance authority. Its management duty must be separated from the board's other duties and powers, such as monitoring compliance with and enforcement of the regulations on games of chance and including persons in the register. As the party responsible for the management of the register and the provisions from the register, the board enforces, in implementation of Article 13 of the Personal Data Protection Act, appropriate technical and organisational measures, among other things, in order to protect personal data against loss or any form of unlawful processing. These measures must at least guarantee an appropriate level of protection. These are aimed, among other things, at preventing unnecessary collection and further processing of personal data, and a timely deletion of data if the exclusion is no longer in effect.

Second paragraph

The aim of the register is to prevent persons who do not want or are not allowed to participate in remote games of chance or games of chance offered in amusement arcades or gaming casinos, from participating in such games of chance. Here, it concerns persons who have voluntarily excluded themselves from participation in such games of chance for a period of six months or longer (subsection a), and persons who have been excluded from this against their will by the games of chance authority under the proposed Article 33da for the duration of six months.

Third paragraph

The register only contains data that are necessary in order to achieve the goal. It therefore contains those data necessary in order to identify those who are excluded from participating in remote games of chance or games of chance offered in gaming casinos and amusement arcades, and data necessary for a proper management of the register.

Subsection (a)

The register contains necessary personal data with regard to registered persons, as the relevant licence holders are not allowed to offer any games of chance to a person listed in the register (Articles 27j, 30u and 31l) and must therefore be able to recognise prospective players. Under the eighth paragraph, subordinate legislation details the personal data that are included in the register. In most cases, the citizen service number of the person concerned will suffice. In those cases in which no citizen service number is available, further identifying data such as surname, first names, date of birth and place of birth must be included in order to prevent mistaken identity. Reliable identification is also important for the right of inspection and correction of the registered person under Articles 35 and 36 of the Personal Data Protection Act. Under the seventh paragraph, these data are rendered anonymous after the end of the period of exclusion and are deleted from the part of the register that can be consulted. The part that can be consulted means the part of the register that can be consulted by licence holders by means of a hit/ no-hit system. Data are rendered anonymous and placed outside the register for research and policy purposes. These data may be used, for example, for addiction prevention analyses.

Subsection (b)

The register necessarily also contains the start and end dates of the exclusion. These data are important in order to answer the question whether a person may or may not be allowed to participate in remote games of chance or allowed access to physical gaming casinos and amusement arcades. These data are entered together with the board's decision to include a person in the register (Article 33da) or in case a person is included based on a voluntary exclusion. The period of exclusion is at least six months.

Subsection (c)

In order for the games of chance authority, as manager of the register, to realise the right of inspection and correction of the person included in the register under the Personal Data Protection Act, the reasons underlying the registration must also be included. A possibility here is the documentation of the document with which a player gives his permission to be excluded voluntarily. In case of involuntary exclusions (Article 33da), the board's decisions for this purpose must also be verifiable. After the registration, the manager must be able to demonstrate why a person has been included in the register voluntarily or involuntarily.

Subsection (d)

In connection with the registered person's right of inspection and correction (Articles 35 and 36 of the Personal Data Protection Act), the manager of the register must also know the origin of the data included in the register. These data may come from the player who voluntarily excluded himself whether or not through the intermediary of a licence holder, but also from, for example, the licence holder or a family member of the player. This will increase transparency for the relevant person about the manner in which the registration in the register came about. Moreover, registering the origin of data will allow the manager of the register to verify any data provided if there are any doubts about their correctness.

Fourth paragraph

The fifth paragraph provides for the provision of data from the register. This provision, too, is limited to what is necessary in order to achieve the objective of the register.

Subsection (a)

The holders of a licence for organising remote games of chance or games of chance offered in amusement arcades and gaming casinos must necessarily be able to consult data from the register, allowing them to refuse access to these games of chance and physical locations to a person included in the register. This consultation is limited to comparing the (prospective) player's data with the data in the register based on a hit/no-hit. This means that the licence holder is notified if the data entered by it when consulting the register correspond with the data included in the register. The licence holder does not require any more data than that in order to comply with its statutory obligation to refuse access to a registered person to remote games of chance or to physical amusement arcades and gaming casinos (Articles 27j, 30u and 31l). For this purpose, the licence holder does not need to know when the period of exclusion of the person concerned ends, what the reasons were for inclusion in the register and who provided these data. Moreover, the register may only be consulted on the basis of a hit/ no-hit by persons who have been expressly authorised for this purpose by the licence holder.

Subsection (b)

The officials and persons supervising compliance with the legislation on games of chance must also have access to the data included in the register in order to carry out this supervision.

Subsection (c)

Moreover, the board must be able to impose administrative sanctions on licence holders if they appear to have granted access to games of chance to a person included in the register. The register must be consulted for this.

Fifth paragraph

Within the social interest of the prevention of gambling addictions, the games of chance authority, in managing the register, and the licence holder, in registering and searching this register, use the citizen service number of the relevant player. This use and the quality checks that can be used within the infrastructure of citizen service numbers promote the quality of the data in the register, thereby reducing the administrative and implementation burden on the licence holder and the games of chance authority.

The use of the citizen service number in combination with the duty to provide proof of identity and verification of the validity of the proof of identity and the citizen service number within the infrastructure of citizen service numbers provides a high degree of certainty about the identity of the person included in the register. This certainty is of the essence in order to prevent mistaken identities. Although the use of the citizen service number involves certain privacy risks, this use has a positive effect on the quality of data and thereby the effectiveness of the register in preventing gambling addictions.

There are two important reasons to keep the quality of data as high as possible. In view of the objective of the register, it is necessary to be able to prevent registered players from participating in high-paced remote games of chance and games of chance offered in amusement arcades or gaming casinos. If a registered person who expressly stated that he does not want to participate in such games of chance or who may cause damage to himself or others due to excessive participation in games of chance or due to gambling addiction, is still admitted as a result of mistaken identity, this will have negative consequences for the effectiveness of the register and thereby for the prevention of addictions and the health of the relevant player.

Moreover, it should be prevented that the identity of a player who is not listed in the register is mistaken for that of another person who is registered. Such mistaken identity would result in the relevant player being refused access to an amusement arcade, a gaming casino or remote games of chance without a valid reason, thereby wrongly limiting his liberty to participate in games of chance.

In view of the large number of 8.8 million players, 112,000 of whom fall within the target group of the central register according to the aforementioned “Gokken in kaart” report, there is a real chance of mistaken identity if no unique identifying data are used. Citizen Service Numbers offer such unique data. Identifying persons on the basis of a combination of other data in the identity document continues to be necessary for the registration of persons who do not have a citizen service number. However, this only concerns a small part of the full population, so that the chance of mistaken identity is only small.

Processing of the citizen service number allows for a relative easy check by the licence holder, which may also take place automatically to a great extent. The unique identification of persons using data other than the citizen service number results in more elaborate actions to be taken by the licence holder and the games of chance authority, because a combination of data must be entered in that case. Moreover, the risk of errors strongly increases if data are entered manually.

The processing of citizen service numbers by licence holders is limited. The number is used to report persons to the games of chance authority with respect to whom they have a reasonable suspicion that they may cause damage to themselves or others due to excessive participation in games of chance or due to gambling addiction (Articles 27ja(4), 30v(4) and 31n(4)), and to search the register. Apart from the mere recording of the citizen service number, the number is not used by the licence holder otherwise. It may, for example, not be used as a way to organise the player's accounts or as a link to other data. The only information obtained by a licence holder by searching the register using the citizen service number is whether or not the player has been included in the register.

The register is managed by the games of chance authority. Within this context, the citizen service number is only used to facilitate the registration by the games of chance authority and the search by licence holders and, in doing so, to obtain as much as certainty as possible about the identity of the registered person concerned.

A Privacy Impact Analysis is conducted with respect to the design and set-up of the register, determining the influence of the data processing on the personal privacy of the person concerned. This is used to determine the weight of the guarantees which reduce this influence to an acceptable level. Under the eighth paragraph, further rules are laid down with regard to these guarantees.

Sixth paragraph

The exclusion from participation in remote games of chance or games of chance offered in amusement arcades and gaming casinos applies for at least six months. This period, agreed upon with addiction services, guarantees that the exclusion may be effective. That is why the entry in the register is not deleted before six months have passed since the registration.

Those who chose not to participate in such games of chance for a certain period cannot be registered for a period shorter than six months, but they can be registered for a longer period. Those who registered for a longer period may, after six months, ask the manager to delete this entry.

Persons with respect to whom the games of chance authority decided to temporarily exclude them from participation in remote games of chance or games of chance offered in gaming casinos and amusement arcades are registered in the register for a period of six months (Article 33da). After six months, this entry is deleted by the manager of the register.

Seventh paragraph

After the exclusion, the data included in the register will immediately be collected in anonymous form and placed outside the register for policy development and statistical purposes.

Eighth paragraph

Under the eighth paragraph and within the context of the first, second and third paragraphs, further rules are laid down by ministerial regulation with respect to guaranteeing personal privacy. The processing of special personal data is guaranteed by the substantial general interest of preventing gambling addictions. Article 23(1)(a) and (f) of the Personal Data Protection Act provides the basis for processing any special personal data. The personal data may only be processed for their intended purpose. It should be ensured that the data in the register are or cannot be used for other purposes. The manner in which the data are protected against loss or unlawful processing by means of appropriate technical and organisational measures must also be provided for. This concerns, in any case, IT security and physically closing storage rooms and zones. The further regulation will also have to provide for monitoring compliance with this regulation.

Part V (Articles 34c to 34j)

The basic principle of enforcement of regulations on games of chance is administrative

enforcement by the games of chance authority. Criminal enforcement may be used as the ultimate remedy in cases in which, for example, (serious) multiple or repeated offences have been committed, in case of interrelatedness with other criminal activities, or if there is a need for applying criminal-law coercive measures and powers or for specific criminal sanctions (cf. among other things Parliamentary Papers I 2011/12, 32 264, no. C, p. 8).

Under the current regulations, the games of chance authority has, , the set of supervisory and enforcement instruments available which is provided to the supervisor under Article 5 of the General Administrative Law Act for the purpose of the administrative enforcement of the regulations on games of chance.

The administrative enforcement of the regulations on remote games of chance requires an additional supervisory power. Moreover, it has become clear since the formation of the games of chance authority on 1 April 2012 that there is a need for a few additional powers in order to improve the regulations of games of chance, both on-line and off-line. Article 34c provides for an additional powers specifically aimed at remote games of chance. Where necessary, the powers of Articles 34d to 34j may be used for monitoring compliance by providers of games of chance operating both on-line and off-line in the Netherlands.

Article 34c (participation in remote games of chance)The proposed Article 34c grants the supervisors of the games of chance authority the power to participate, within the context of performing their supervisory duties, in remote games of chance offered to Dutch nationals, providing incomplete or incorrect data if necessary. This power may only be exercised by the supervisors insofar as this is reasonably necessary in order to perform their duties.

Participation by the supervisor in remote games of chance for which a licence has been granted may be offered for the purpose of monitoring compliance with the regulations laid down by or pursuant to the law. Examples are situations in which the games of chance authority received complaints about participation in these remote games of chance by minor players or players who excluded themselves from participation and were still allowed to play. Other examples are complaints with respect to the player's accounts and the payment of winnings. Such signs may result in further investigations by the supervisors which require participation in the relevant remote games of chance in order to assess whether the games of chance are indeed offered in accordance with Dutch regulations on games of chance.

Participation by the supervisor in remote games of chance which are organised without a licence and are therefore illegal may be necessary in order to retrieve the necessary data in order to terminate the illegal supply of games of chance. Examples are data with respect to the identity of those persons who offer these games of chance and to whom an order subject to a penalty or decision to impose a penalty must be addressed. It may also concern data with respect to the manner in which payments are made between these persons and the players, so that measures can be taken in order to terminate these payments (in this context, see also the proposed Article 34n). In certain cases, participation in remote games of chance by supervisors may result in data that are important in order to answer the question whether criminal enforcement instruments must be used instead of administrative instruments. Examples are data relating to fraud and money-laundering.

In order to prevent the organisers of remote games of chance from setting up their electronic processes such that the supervisors of the games of chance authority are recognised as such

and are then misled, it is necessary for these supervisors not to be recognised as such by the organisers. That is why the supervisors must be able to use data that cannot be traced back to the games of chance authority. Moreover, the supervisors must be able to log into the gaming site as if he were someone who may not be offered any games of chance, a minor for example. This requires that it should even be possible to provide incomplete or incorrect data during the supervision of compliance with the regulations on organising remote games of chance.

As it concerns participation in remote games of chance which are already offered through the electronic means necessary for this, it is inconceivable for the supervisor to induce the organiser of these games of chance to commit any violations of the regulations on games of chance other than those at which its intention was already aimed and for which purpose its electronic systems were already designed. For the sake of completeness, however, the first paragraph expressly states that this is not allowed.

Under the second paragraph, the relevant supervisor draws up a report on the use of his power to participate in remote games of chance in which he includes his name and his capacity, the reason for using this power, the provisions the compliance with which or enforcement of which was monitored, and the incorrect or incomplete data he provided during this participation. He also states the website and, if possible, the organiser(s) of the remote games of chance, the time and manner of participation and that which he performed during the supervisory investigation, that which became evident to him and other things that occurred during this investigation.

Insofar as the proposed power concerns participation in games of chance that are organised without a licence under the Betting and Gaming Act, the proposed third paragraph of Article 1 provides for an exception to the criminality of this participation by the relevant supervisor in the exercise of this power.

Article 34d (seal)

Article 5:28 of the General Administrative Law Act provides for the power of placing seals when taking administrative enforcement action. However, this power does not apply during the prior investigation that is aimed at determining whether or not a violation has been committed. The proposed Article 34d provides for the power of the supervisors of the games of chance authority to place seals on business premises and objects in the interest of this investigation. An investigation into a possible violation of the regulations on games of chance may be so extensive that this may not be completed within one day. Moreover, it could be that, during the investigation, a supervisor does not have direct access, at any time necessary for the investigation, to all business documents and records or all objects which could be important for this investigation. Examples are possible documentary evidence that is located in physical or electronic records. In such case, it should be possible to place seals on business premises with a view to continuing the investigation the next day. Objects such as machines and computers - for example so-called gambling pillars that are used to offer illegal remote games of chance in certain hotel/catering establishments - may also be sealed. In certain cases, placing seals on objects may be less burdensome for the person concerned than closing the entire room in which this machine or computer is located.

During the investigation, the supervisor does not always have insight into all documents or

objects which are relevant to the investigation and with respect to which it should be possible to demand inspection or surrender. The proposed power to place seals could prevent the supervisor from being confronted with a situation in which the party to whom the investigation relates is given the opportunity to destroy or relocate evidence, documents or other relevant objects that could be important to the investigation. This may also occur at night or in cases in which the relevant documents or objects are stored at a location where no supervisor of the games of chance authority is or could be present at that time. It may also be required to place seals if it is necessary to wait for an expert to be engaged in the interest of the investigation.

The proposed Article 34d provides for the power to place seals. Breaking the seal is punishable under Article 199 of the Dutch Penal Code. The maximum penalty is € 19,500 (fourth category). In order to prevent any calculated behaviour, it is therefore proposed in the second sentence of Article 35a(1) to impose an administrative penalty for breaking seals equal to the highest penalty under the Betting and Gaming Act (no more than € 780,000 or 10% of sales).

Articles 34e to 34h (entry and search)

The aim of the proposed Articles 34e to 34h is to grant the supervisors of the games of chance authority the power to enter and search houses against the will of residents, insofar as this is reasonably necessary in order to exercise the powers referred to in Article 5:17 of the General Administrative Law Act. The purpose of these powers is that the supervisor may demand inspection of business documents and records, make copies thereof, and, if no copies can be made on-site, take the documents and records with him for this purpose for a short period of time, on submission of written proof. These powers may not be exercised in houses.

The experiences of the games of chance authority show that, in practice, illegal (off-line) games of chance are frequently organised from houses that are often also rented for this purpose. The aim of the proposed regulation in Articles 34e to 34h is that the games of chance authority may exercise the administrative powers of Article 5:17 of the General Administrative Law Act in houses as well. The proposed regulation has been derived from the regulation contained in Articles 55-55c of the Competitive Trading Act (see, among other things, Parliamentary Papers II 2005/06, 30 071, no. 15 and Parliamentary Papers II 2006/07, 30 071, no. 37).

The legal safeguards for the application of this regulation are based on the Constitution, the General Act on Entry into Dwellings and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Under Article 12 of the Constitution, a dwelling may only be entered against a resident's will in certain cases laid down by or pursuant to the law and by those who are designated for this purpose by or pursuant to the law, after prior identification and notification of the purpose of the entry, subject to exceptions laid down by law. The proposed regulation complies with this. Under Article 8 of the ECHR, everyone has the right of protection of their home, and the entry and search of this home against a resident's will is only allowed if this is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others and is proportional in view of these interests. The prevention of disorder or crime, the protection of health or morals, and the protection of the rights and freedoms of others are of particular

importance for the entry and search of houses in case of a (serious) violation of the legislation on games of chance. In certain cases, national security and public safety may also be at stake if it concerns, for example, terrorist financing, money-laundering and other forms of crime. The use of the power to entry and search dwellings is governed by the principles of proportionality and subsidiarity. This means, among other things, that it will only be used in practice in case of a directed investigation.

The entry or search of dwellings requires prior authorisation of the examining judge. This authorisation must be reasoned, signed and state the details referred to in the act. The entry of the dwelling takes place under the supervision of the examining judge. The official who entered or searched a dwelling under the supervision of the examining judge will, under oath of office or solemn affirmation, draw up a written report on the entry or search. In line with the regulation on the entry of dwellings in competition legislation, the examining judge of the District Court of Rotterdam was chosen. The reasons for this are the low number of cases in which dwellings will be entered within the context of monitoring compliance with legislation on games of chance, and the specialist knowledge of regulations on games of chance required in order to assess an intended entry. The examining judge of the District Court of Rotterdam may therefore build up expertise and act as a designated contact for the supervisor. Moreover, as already said, the examining judge of the District Court of Rotterdam is also entitled to issue an authorisation for the entry of dwellings under competition legislation.

In exercising the power to search a dwelling against a resident's will, the guarantees of Article 6 ECHR must also be observed. It follows from this that no-one is obliged to cooperate in their own prosecution (ECHR 25 February 1993, Funke, NJ 1993/485). This *nemo tenetur* principle applies from the moment when the person concerned is informed of the intention to impose a penalty on him. In case of legislation on games of chance, this is the moment when the penalty report is issued. The proposed regulation assumes that the power to search dwellings is only exercised during the phase prior to the drawing up of this report.

Article 34i (seizure) During investigations into compliance with the Betting and Gaming Act, the supervisors of the games of chance authority may come across goods which are used to offer illegal games of chance or which are of service for this illegal supply of games of chance. It concerns, among other things, internet pillars on which illegal remote games of chance are offered in certain hotel/catering establishments, other illegal types of gaming machines, and roulette tables in illegally organised gaming casinos. The supervisors are authorised to investigate such goods and, insofar as necessary for the investigation, take these goods with them for a short period of time (Article 5:18 of the General Administrative Law Act). However, the goods will have to be returned after this investigation. Goods may also be taken temporarily within the context of administrative enforcement action (Article 5:29 of the General Administrative Law Act), after which they must be returned. The return of such goods is undesirable, as, after their return, they may be used again to commit new violations of legislation on games of chance.

According to a statement by Verispect, the supervisors of this organisation discover supplies of games of chance organised by means of illegal gaming machines around 100 times per year. This is reported to the local police, after which a further investigation is conducted in around 40 percent of cases.

The enforcement instruments of the General Administrative Law Act do not provide for the possibility to seize goods without returning them. This is only possible during a criminal investigation into compliance with the Betting and Gaming Act, the power to seize goods existing under Article 18 of the Economic Offences Act. As administrative instruments are the basis of supervision and enforcement of the Betting and Gaming Act and criminal instruments are only used as the ultimate remedy, it is proposed to grant the supervisors of the games of chance authority the power to seize goods without returning them also in case of administrative actions. For the procedural aspects, the proposed Article 34i is in line with the regulation in Article 1:37 of the General Customs Act.

Article 34j (strong arm of the law)

Under Article 5:15(2) of the General Administrative Law Act, the supervisors of the games of chance authority may use the strong arm of the law (the police) in order to gain access to all locations, with the exception of a dwelling against a resident's will. If necessary, the police may force open entrance doors for the supervisor. In principle, this allows the supervisors to gain access to all (business) spaces where, if relevant here, any documents or goods are located which could be important for the supervisory investigation. However, this power does not give the supervisors the possibility to further investigate the space entered, to inspect the documents there or to investigate the goods or means of transport stored there. These powers are provided for in Articles 5:17 to 5:19 of the General Administrative Law Act.

With a view to situations in which the supervisor has gained access to a (business) space whether or not with the help of the strong arm of the law, but is then refused cooperation in the exercise of the powers referred to in Articles 5:17 to 5:19 of the General Administrative Law Act, there is a need for expanding these powers. For if cooperation is refused, it is actually impossible for the supervisor to conduct his investigation. The evidence that is used to determine whether it concerns a violation will almost always be obtained after inspection of administrative documents or investigation into goods or in means of transport. That is why the supervisor will almost always use the power to enter a (business) space in order to exercise the other supervisory powers there.

The refusal to cooperate in a supervisor's demand is a finable offence (the proposed second sentence of Article 35a(1)) and also a criminal offence (Article 184 of the Dutch Penal Code). This means that the board of the games of chance authority may prepare and issue a fine order in case of a refusal to cooperate. Alternatively, a supervisor who, as a special investigating officer, has the power of investigation may, pursuant to Article 36b of the Betting and Gaming Act, proceed to criminal prosecution by drawing up an official report for violating Article 184 of the Dutch Penal Code and transfer this official report to the Public Prosecution Service. This does not change the fact that a person who refused to cooperate in the exercise of the supervisory powers may destroy or relocate any evidence during this procedure.

For this reason, it is proposed to allow for the powers referred to in Articles 5:17, 5:18 and 5:19 of the General Administrative Law Act to be exercised with the help of the strong arm of the law, if necessary. This allows for cabinets and drawers possibly containing documents the supervisors want to inspect to be forced open with the help of the police. This also allows for inspection of digitally stored information to be forced. The proposed Article 34j also allows for the deployment of the police during administrative actions to enforce the Betting and

Gaming Act in the exercise of the power to place seals (the proposed Article 34d), the power to enter and search dwellings against a resident's will (the proposed Article 34e), and the power of seizure (the proposed Article 34i).

The proposed regulation is in line with comparable regulations in, for example, Articles 55(2) of the Competitive Trading Act, 7.19(2) of the Media Act 2008, 15.2 of the Telecommunications Act and 97 of the Passenger Transport Act 2000.

Part W (Articles 34k and 34l)

Article 34k (supervision information)

Pursuant to Articles 5:16 and 5:17 of the General Administrative Law Act, the supervisor designated under Article 34 of the Betting and Gaming Act is authorised to demand information and inspection of business documents and records. Under the proposed Article 34k and in the interest of monitoring compliance with regulations on games of chance, rules are laid down in addition to this with regard to the recording of data and documents by the licence holder and the periodical or occasional provision thereof of its own accord, therefore other than on demand. These rules may differ for example per category of licence holder or licensed game of chance.

In any case, the holders of a licence for organising remote games of chance must record data with respect to the identity of a player, the verification of this identity, the registration as a player and the termination thereof, the logins as a player, the suspensions and terminations of the registration and/or login as a player, the opening, suspension and closure of player's accounts, the mutations in a player's account, the player's profiles and changes thereto and the course of each game. The licence holder must also register the changes to the gaming system and the games and record the pertaining inspection reports by one of the accredited inspection bodies. Data must also be registered with respect to monitoring the gaming behaviour, the interventions by the licence holder as a result of this, advertising and canvassing activities, complaints processing and certain incidents and changes. These and other obligations to keep records are further specified in subordinate legislation. The data to be recorded must also continue to be available for a certain period in order for these data to be requested within the interest of supervision. As regards the retention period of these data, a possibility is a period of five years, which is in line with tax and money-laundering legislation.

Moreover, holders of a licence for organising remote games of chance may be obliged to provide, on a periodical and occasional basis, certain data and documents that could be important for monitoring compliance. As neither the licence holders nor the games of chance authority benefit from a needless data flow and the costs related to this, the further elaboration hereof will, as much as possible, take into account the data which the games of chance authority can obtain electronically from the gaming system and the control database (Article 34l).

Under the second paragraph, the board may determine that certain data or documents that are important for monitoring compliance with legislation on games of chance must be provided or explained in more detail in person. This power may be used, for example, if there are any doubts about the correctness or completeness of the data provided which cannot be removed in another manner. A specific example is a further explanation by the officials who are experts on the matter and who have been designated within the organisation of the licence

holder under Article 31i as persons responsible for the implementation of Dutch regulations on games of chance and the internal supervision thereof. For example, the relevant manager within the organisation of the licence holder may also be asked to explain certain matters in more detail.

Under the third paragraph, rules may be laid down on the manner in which the data that could be important for the application of the regulations on games of chance must be recorded, managed and provided. These may relate to the requirements that the records must meet in order to grant the supervisors of the games of chance authority adequate access to these data and the manner in which and the period within which the required data must be provided at a request for this purpose. The elaboration hereof will, in view of the administrative burden on the licence holder and the games of chance authority, be in line as much as possible with already existing obligations in this area, especially under tax and anti-money laundering regulations and as regards remote games of chance, the data that are included in the control database.

Article 34l (access to electronic systems)

By definition, organising remote games of chance implies the use of electronic means (hardware and software). Article 31i sets requirements on this, among other things in the interest of fair play and consumer protection, the prevention of gambling addictions and the prevention of money-laundering, terrorist financing and other forms of crime related to games of chance. Inspection of these electronic means by the games of chance authority is essential for monitoring compliance with Dutch regulations on games of chance.

Part of the electronic means used to organise games is currently located outside the Netherlands in jurisdictions such as Malta, Gibraltar, Alderney and Isle of Man. As a rule, the games of chance authority cannot exercise any physical supervisory powers here without further agreements with the relevant foreign authorities. A transfer of these extensive systems to the Netherlands would be so expensive that the intended channelling by regulating remote games of chance could not be realised. That is why the proposed Article 34m provides for a basis for agreements between the games of chance authority and the relevant games of chance supervisors within the context of administrative cooperation in the area of monitoring compliance.

In addition, the licence holder will, under Article 31i, be obliged to keep a separate control database containing data that are important for monitoring compliance with the Betting and Gaming Act, the Anti-Money Laundering and Anti-Terrorist Financing Act, the Sanctions Act 1977 and the Betting and Gaming Tax Act. This control database is also part of the electronic means used in the organisation of games of chance, and will have to be placed in the Netherlands. The costs associated with this are relatively low and are expected not to put the intended channelling at risk.

The proposed Article 34l provides for a basis for laying down rules in subordinate legislation with regard to the electronic inspection from the Netherlands of the electronic means used in organising games of chance. This allows the supervisors of the games of chance authority to systematically - on a daily basis if desired - monitor compliance with Dutch regulations on games of chance. For this purpose, they will have remote access to both the electronic means actually used to organise the games and to the control database. Through the inspections by

the supervisors of the games of chance authority and through the inspection of the electronic means by the accredited inspection bodies, it can reasonably be guaranteed that the data included in the control database are the correct data. As a result, electronic access to the control database in the Netherlands only will be sufficient in order to monitor compliance with the Anti-Money Laundering and Anti-Terrorist Financing Act, the Sanctions Act 1977 and the Betting and Gaming Tax Act.

Part X (Article 34m) (international cooperation)

As explained in the general part of these explanatory notes, the market for remote games of chance to be regulated in the Netherlands is highly internationally oriented. Many operators are established in other member states and make use of services that are offered from other (member) states. The part of the operational management - and especially the electronic means - used to organise remote games of chance are currently mostly located in jurisdictions such as Malta, Gibraltar, Alderney and Isle of Man. Monitoring compliance with Dutch regulations on games of chance by the licence holders necessarily requires the possibility to inspect their gaming systems. As the games of chance authority may exercise its supervisory powers in the Netherlands only, the point of departure is that the electronic means used by the licence holders to organise remote games of chance must be placed in the Netherlands, unless it can be guaranteed that compliance can be monitored efficiently and effectively outside the Netherlands.

A European framework for administrative cooperation between the games of chance supervisors of the various member states does not yet exist. In its communication on "A comprehensive European framework for on-line gambling" of 23 October 2012 (COM(2012) 596 final), the European Commission stated, however, that it will take measures in order to promote the administrative cooperation between these supervisors, to stimulate the exchange of information and best practices in the area of enforcement, to explore the advantages and possible limitations of reactive measures and to enter into a dialogue with third countries on supervision of games of chance. Moreover, the Council of Europe is negotiating on international cooperation between the various sports organisations and games of chance supervisors in order to prevent manipulations of sports results and resulting unfair games of chance. However, these developments are expected to take some time.

In international practice, games of chance supervisors in the member states that have already regulated remote games of chance have concluded cooperation agreements for the purpose of supervision. These are drawn up in the form of a Memorandum of Understanding (MoU). These cooperation agreements include arrangements based on reciprocity with respect to the exchange of data between the relevant supervisors and the exercise of supervisory powers.

The proposed Article 34m is in line with this practice. It forms the basis for international administrative - therefore not criminal-law - cooperation between the games of chance authority in the Netherlands and the games of chance supervisors in other (member) states based on MoUs. Under the first paragraph, the board and the supervisors designated by it under Article 34 of the Betting and Gaming Act work together with the supervisors in other states. In itself, no supervisory powers of the games of chance authority can be derived from this general obligation to cooperate with other supervisors in the area of monitoring compliance with legislation on games of chance, because these powers are linked to monitoring compliance with Dutch statutory provisions. In the second paragraph, the powers

which the games of chance authority may exercise in the Netherlands within the context of monitoring compliance with Dutch legislation on games of chance are linked to the obligation of international administrative cooperation. Here, it concerns the standard supervisory powers of Part 5.2 of the General Administrative Law Act and the specific powers of Title VIa of the Betting and Gaming Act. In certain cases, the games of chance authority will, in order to collect data requested within the context of administrative cooperation, have to be able to exercise such powers.

The second paragraph sets the limits within which supervisory powers may be exercised within the context of administrative assistance. The third paragraph sets a more detailed framework for these powers by providing that these powers are, in principle, exercised only in accordance with an MoU between the games of chance authority and the relevant games of chance supervisor in the other state. Such MoUs are concluded based on reciprocity and contain arrangements with respect to the object and scope of the cooperation. These set out the extent to which the games of chance authority in the Netherlands will exercise supervisory powers for the foreign games of chance supervisor and the extent to which the foreign games of chance supervisor will, in turn, exercise its powers for the purpose of monitoring compliance with Dutch regulations on games of chance. This is only not the case if a convention binding on the Netherlands or European law dictates otherwise.

Pursuant to the proposed Article 34m and the MoU concluded by the games of chance authority under this, it is possible to carry out supervision on request. Here, the games of chance authority is requested by the games of chance supervisor of the other state to perform certain supervisory acts. It may concern a request from this other games of chance supervisor for certain information for which the games of chance authority has to perform certain supervisory acts, or a direct request from this other games of chance supervisor for specific inspections by the games of chance authority. This form of administrative cooperation already exists in financial supervision. The basic principle here is that the games of chance authority may choose which measures from its supervisory instruments are most suitable for meeting the request. Another possibility is dependent cross-border supervision based on an MoU, the games of chance supervisor of the other state being present on Dutch territory for supervision purposes and the games of chance authority being in charge. This follows from Article 5:15(3) of the General Administrative Law Act, under which the games of chance authority may be accompanied by a designated foreign supervisor when entering locations. This form of administrative cooperation is known from the Customs, Financial Supervision and Food Safety sectors.

It follows from the reciprocity of the MoUs to be concluded that the games of chance authority may ask the same from a foreign games of chance supervisor for the purpose of supervising providers of games of chance who are active on the Dutch market.

Part Z (Article 34n)

First paragraph

The proposed Article 34n adds binding instructions to the administrative instruments of the games of chance authority. It grants the board of the games of chance authority the power to give a binding instruction to those who – in short - organise games of chance with or without a licence or who promote or facilitate the participation in games of chance. By way of a

regulation attached to the licence, the power to give instructions has currently been included in some decisions in which a licence for organising, for example, lotteries and casino games is granted under the Betting and Gaming Act. The binding instruction can also be found in other regulations. For instance, the Netherlands Authority for the Financial Markets (AFM) already has the power to give instructions under the Financial Supervision Act for violations referred to in this Act, the board of the Consumer and Market Authority (formerly the Netherlands Competition Authority or NMa) may give binding instructions under the Electricity Act 1998, and the Telecommunications Act also provides for the power to give instructions by the Consumer and Market Authority (formerly the Independent Post and Telecommunications Authority or OPTA). A binding instruction under Article 34n of the Betting and Gaming Act will, of course, be used prudently and proportionally in case of serious risks in the area of policy on games of chance. Unbridled interference in the operational management of companies is not its purpose.

Wherever the statutory standards of the regulations on games of chance may leave room for interpretation, it will not always be immediately clear whether it concerns a violation and a binding instruction may serve to further specify the relevant standards. So the use of a binding instruction is not limited to cases in which it clearly concerns acts in violation with the regulations. A binding instruction may also be given in cases in which the board of the games of chance authority believes that it concerns insufficient compliance or desirability to comply in another manner. A binding instruction will then act as an intermediary link in advance of enforcement of the specified standard, compliance with which may then be enforced. This has important added value compared to an order subject to a penalty. If it clearly concerns a violation of a statutory provision, a binding instruction may - as an order subject to a penalty or an administrative penalty - be used as an enforcement instrument.

A binding instruction is primarily aimed at promoting compliance with statutory provisions on games of chance. It offers other possibilities than an order subject to a penalty or an administrative penalty. An order subject to a penalty is a remedial sanction. An administrative penalty is a punitive sanction. In both cases, a violation must already have been discovered. This is not necessary in order to give a binding instruction. By giving a binding instruction, the board may also indicate what needs to be done in a specific case in order to comply with the relevant provision. An order subject to a penalty leaves no room for further interpretation of the relevant statutory provision; the principle of legality opposes the threat of incremental penalty payments before the party concerned knows the exact purport of the statutory standard to which he had to conform. It is possible, however, to enforce compliance with this standard - specified through a binding instruction - afterwards by means of an order subject to a penalty. The board may also use its other instruments simultaneously with the instruction. It may start an investigation which may result in a penalty or an order subject to a penalty. In practice, a binding instruction will usually be preceded by an informal warning or notification, not being a decision within the meaning of the General Administrative Law Act..

As a binding instruction is a decision within the meaning of Article 1:3 of the General Administrative Law Act, the provisions of Chapters 3 and 4 of the General Administrative Law Act must be observed when preparing, issuing and announcing an instruction decision. In the instruction decision, the board will, for instance, have to properly substantiate the reason for giving the instruction. In the decision, the board must set a reasonable period within which the relevant standard of the regulations on games of chance must be met. In determining the

reasonable period, the games of chance authority will, in any case, include the technical possibilities for complying with the specified standard. As the instruction is a decision within the meaning of Article 1:3 of the General Administrative Law Act and may be changed, the board may extend this period, if necessary. In individual cases, the principle of proportionality may imply that giving a binding instruction is the most approved instrument, because other instruments such as an order subject to a penalty and an administrative penalty are too onerous.

With respect to a licence holder, the instrument of a binding instruction may be used, for example, in further specifying the provisions to avoid gambling addictions and excessive participation in games of chance (Article 4a of the Betting and Gaming Act and the Canvassing, Advertising and Addiction Prevention (Games of Chance) Decree), or a sound, reliable and verifiable organisation of remote games of chance (Article 31i and related subordinate legislation). With respect to the organisers of illegal remote games of chance, it may, in certain cases, follow from the principle of proportionality that a binding instruction will first be given with respect to the manner in which the supply of games of chance must be adjusted (for example by applying geolocation techniques which make it more difficult for Dutch nationals to participate). With respect to persons who do not organise games of chance themselves but facilitate them or provide means for this purpose, a binding instruction may be used to point out to IT service providers or financial institutions the fact that, through their services - contrary to Article 1(1)(b) of the Betting and Gaming Act -, they facilitate illegal remote games of chance and to order them to make every effort to terminate these services.

Second and third paragraphs

The second and third paragraphs contain specific provisions with respect to the duration of the reasonable period granted to the relevant company in order to comply with the binding instruction insofar as it concerns financial or telecommunications services used by others in organising or participating in illegal games of chance.

The services of internet services providers and internet host providers are essential for remote games of chance. Organising remote games of chance without a licence under the Betting and Gaming Act is not possible if the telecommunications service providers would not provide their services for this purpose. Of course, this initially applies to illegal games of chance, but also to the advertising and canvassing activities through the Internet which are essential for the providers of illegal remote games of chance.

The services of financial service providers are also essential for placing bets and paying out winnings and thereby for organising illegal remote games of chance. Promoting illegal games of chance and providing means to organise illegal games of chance - including providing such financial or telecommunications services - is forbidden (see Article 1(1)(b)).

However, internet providers cannot be expected to monitor, within the context of preventive supervision, all internet traffic of and between all their clients in order to identify electronic files and block the part that may relate to illegal games of chance. The case law of the Court of Justice of the European Union (including the judgments of 12 July 2011, C-324/09, L'Oreal, and 24 November 2011, C70/10, Scarlet Extended) shows that such filtering system with active observation of all electronic communication in the network must be regarded as unreasonable, disproportionate and excessively costly. A preventive filtering system results in a serious limitation of the freedom of the relevant internet providers to conduct a business, as

it forces them to introduce and pay for a permanent, expensive and complicated filtering system. This is unnecessarily complicated and costly and thereby imbalanced. Moreover, the effects thereof will not be limited to the relevant internet provider, as the filtering system may also be an infringement of the fundamental rights of its clients of protection of personal data and of their liberty to receive or provide information, as protected by Articles 8 and 11 of the Charter of Fundamental Rights of the European Union. Nor can financial service providers be required to use a generally preventive filtering system. Financial and telecommunications service providers may, however, be required, for example, to use general terms and conditions which provide that their services are not abused for the purpose of organising illegal remote games of chance.

In these cases, the aim of a binding instruction is not so much to specify the relevant prohibitory provision (Article 1(1)(b) of the Betting and Gaming Act), but rather to point out to the relevant service provider the fact that its services are used for illegal games of chance and the instruction to terminate those specific services. In essence, it concerns the statutory regulation on the Notice-and-Take-Down requests which may already be made to internet providers voluntarily in order to have illegal games of chance websites removed. From now on, this also includes the financial service providers involved in illegal games of chance.

In these cases, the reasonable period is at least six weeks. This is the period for lodging a notice of objection to the order and the application to the administrative court to grant injunctive relief. The injunctive relief to be granted by the court in preliminary relief proceedings may be for the purpose of extending the reasonable period set by the board. If an application for injunctive relief has been filed in time, the period will end six weeks after a decision has been made on this application.

If the relevant service provider has failed to follow the instruction after the end of this period, the relevant instruction - in this case the prohibitory provision of Article 1(1)(b) of the Betting and Gaming Act, which is a statutory provision as referred to in Article 7.4a of the Telecommunications Act - may be enforced.

The binding instruction may result in a limitation of the right to freedom of expression guaranteed by Article 10 ECHR, which also includes the freedom to receive or provide information. Under the second paragraph of Article 10, the exercise of this right may be limited if this has been prescribed by law and is necessary in a democratic society, among other things, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, or for preventing the disclosure of information received in confidence.

The proposed Article 34n provides for the required statutory basis for blocking internet traffic. Moreover, it is forbidden under Article 1(1)(b) of the Betting and Gaming Act to promote participation in illegal games of chance or to provide means for this purpose, for example by providing internet services. In certain cases, the possibility to limit such services is necessary in order to achieve the objectives of the policy on games of chance, especially the protection of the rights and health of players and the prevention of crime and illegality. Gambling addiction often has major personal and social consequences for a player and his environment. The general part of these explanatory notes has already discussed this in more detail. Offering games of chance without a licence, therefore without the safeguards against gambling addiction and forms of crime related to games of chance such as unfair play and other forms of fraud, is forbidden (Article 1(1)(a) of the Betting and Gaming Act). As it

concerns commercial communications here, the government believes that it is possible to attach more importance to these substantial general interests beforehand than to the interests of providers of illegal games of chance and participants in these illegal games of chance in providing and receiving such data of a commercial nature (cf. ECHR 10 January 2013, Appl. nr. 36769/08, *Ashby Donald et al. versus France*). Moreover, the objectives of the Dutch policy on games of chance have been recognised by the Court of Justice of the European Union as interests that may also justify a limitation of free movement of services. Europe is currently assessing the possibilities for a European regulation on blocking games of chance websites. The Council of Europe is also considering such blockades in order to prevent manipulations of sporting competitions and thereby the results of bets on sporting competitions.

Part AA (Article 35)

Under Article 5:20 of the General Administrative Law Act, everyone is obliged to give the supervisor designated by the board under Article 34, within the reasonable period set by him, every assistance which he can reasonably demand in the exercise of his powers under the General Administrative Law Act. It concerns, among other things, the power to demand inspection of business documents and records, make copies thereof, and, if no copies can be made on-site, take the documents and records with him for this purpose for a short period of time (Article 5:17 of the General Administrative Law Act). It also concerns the powers referred to in Articles 5:18 and 5:19 of the General Administrative Law Act.

For the purpose of monitoring compliance with legislation on games of chance and the enforcement thereof, being able to inspect business documents and records, among other things, is essential. It should not be the case that businesses may easily avoid a penalty for violating these prohibitions by not allowing inspection of documents, and record and accepting a penalty in doing so. The proposed second paragraph of Article 35 offers the possibility to impose an order subject to a penalty for non-compliance with allowing inspection. The order will have to state the relevant documents and records, i.e. the object of investigation. A more specific list will generally not be possible. Even if an order is given to allow inspection of certain data, this does not alter the fact that the refusal to do so was a violation. It therefore seems logical that it should be possible to impose a penalty and an order simultaneously.

Part BB (Article 35a)

Article 35a provides for an administrative penalty of no more than € 780,000 or 10% of the sales of the offender. In view of an efficient enforcement of legislation on games of chance, an administrative system of supervision and enforcement was opted for upon the formation of the games of chance authority, whereby criminal law can be used as the ultimate remedy as and where necessary. The proposed regulation of remote games of chance contains various provisions, a violation of which is subject to a penalty. It concerns, among other things, offering remote games of chance and games of chance in amusement arcades or gaming casinos to minors, to persons who have been included in the central register and to persons who may cause damage to themselves or other due to excessive participation in games of chance. It also concerns transfers of the registered office and changes to the legal form of licence holders which are contrary to the law, concluding intransparent control structures affecting supervision, the use of unapproved means in the organisation of remote games of chance, engaging in other paid activities, the deployment of incompetent staff, and offering

games of chance to certain persons. For example, not providing the required supervision information and not granting the supervisor access to certain electronic systems may also be subject to a penalty.

The proposed second sentence of Article 35a forms an expansion of the existing powers of the games of chance authority to take action against providers of games of chance who violate the law. Under Article 5:20(1) of the General Administrative Law Act, everyone is obliged to give a supervisor - in this case the person designated by the board of the games of chance authority under Article 34 - within the reasonable period set by him, every assistance which he can reasonably demand in the exercise of his powers. It is desirable to also grant the games of chance authority the power to enforce the obligation to render assistance under Article 5:20 of the General Administrative Law act, in line with the administrative system of supervision and enforcement. This is the purpose of the proposed supplement of a second sentence to the first paragraph of Article 35a. This sets an administrative penalty of no more than € 780,000 or 10% of the sales if Article 5:20 of the General Administrative Law Act is violated. This is considerably higher than the maximum penalty to be imposed in case of a violation of the obligation to render assistance under Article 184 of the Dutch Penal Code. The reason for this is the objective to prevent any calculated behaviour of the person who refuses to render assistance. Any (on-line or off-line operating) provider of games of chance could adopt a calculated attitude by preferring the criminal sanction for failure to render assistance (Article 184 of the Dutch Penal Code) of a maximum of € 3900 to rendering assistance. For the chance of this is lowered if the refusal to render assistance may result in a penalty under the Betting and Gaming Act which may amount to € 780,000 or, if this amount is higher, 10% of the sales. For this reason, the proposed amendment to Article 35a(1) sets the maximum penalty for refusal to render assistance at the maximum amount set in the Betting and Gaming Act.

Part CC (Article 35d) (financial security)

The basic principle of enforcement of regulations on games of chance is administrative enforcement by the games of chance authority. For this purpose, the board has the instruments of an order subject to a penalty, an order for administrative enforcement action and an administrative penalty at its disposal. Under Article 5:10(2) of the General Administrative Law Act, the board may collect the money debts arising from the imposition of such sanctions by writ of execution. Moreover, the costs incurred by the games of chance authority as supervisor and central authority in the area of games of chance for the purpose of exercising its duties, are borne by the licence holders through the levy on games of chance. This levy may also be collected by writ of execution (Article 33f(7) of the Betting and Gaming Act). A collection outside the Netherlands is problematic in cases in which a licence holder no longer pays such money debts of its own accord. Effective enforcement requires the licence holder who violates Dutch regulations on games of chance to actually suffer the financial consequences of this.

That is why the possibility of providing financial security is proposed. This is important because the proportionality of a withdrawal of the licence for games of chance as a response to a violation of Dutch regulations on games of chance or the failure to pay, for example, the levy on games of chance or penalties or the failure to do so in time is not given by definition. In order to increase the effectiveness of administrative sanctions towards licence holders who do not have sufficient capital in the Netherlands from which the money debts may be

recovered if necessary, rules are laid down under the proposed Article 35d in subordinate legislation with regard to the provision of financial security by the licence holder. The financial security must not only be provided for the administrative sanctions for violations of provisions laid down by or pursuant to the Betting and Gaming Act (administrative penalties, incremental penalty payments and the costs of taking administrative enforcement action), but also for the levy on games of chance (Article 33e). The cases in which financial security is required and the maximum amount of this security are detailed in subordinate legislation. Here, rules may also be laid down with regard to the various forms in which security may be provided, and the maintenance of the financial security.

Article II (Betting and Gaming Tax Act)

Part A (Article 1)

Article 1 of the Betting and Gaming Tax Act sets out the persons who have to pay tax on games of chance. The below table shows, in simplified form, the taxpayers for the various categories of games of chance before and after the proposed legislative amendments.

	Until 1 January 2015	As from 1 January 2015
Domestic land-based casino games	Provider	Provider
Domestic land-based poker tournaments	Player or provider	Provider
Legal domestic land-based games of chance played on gaming machines	Operator (legal owner)	Operator (licence holder)
Illegal domestic land-based games of chance played on gaming machines	Operator (legal owner)	The person enjoying the proceeds
Other domestic land-based games of chance	Player	Player
Foreign land-based casino games, games of chance played on gaming machines and poker tournaments	Dutch player, irrespective of where the provider of the game of chance is established	Dutch player, provided that the provider of the game of chance is established outside the EEA
Other foreign land-based games of chance	Dutch player	Dutch player
Legal remote games of chance	-	Provider
Domestic illegal games of chance through the Internet (until 2015) / at a distance (from 2015)	Provider	Player
Foreign illegal games of chance through the Internet (until 2015) / at a distance (from 2015)	Dutch player	Dutch player

For the purpose of tax liability for gaming machines, it is proposed to follow the party under whose operating licence these gaming machines are operated. Currently, taxpayers are still the persons having the legal ownership. In most cases, the actual tax liability does not change because the person having the legal ownership usually also has the operating licence. Over the past few years, situations have become known in which the criterion of 'legal ownership' has resulted in implementation problems experienced in the gaming machines sector and by

the Tax and Customs Administration. The problems can be traced back to the lack of clarity that could exist about the legal ownership of a gaming machine at any time. The legal ownership of this movable property may, at any time, be legally transferred by means of a private / oral agreement. Moreover, the owners of the gaming machines are not recorded when the operating licence is issued. For the above reasons, the Tax and Customs Administration does not always know who the taxpayer is. This may also cause confusion in the sector itself. This is an argument in favour of letting go the criterion of 'legal ownership' in order to determine the tax liability and to switch to a criterion that can be determined better. That is why it is proposed to have the tax liability depend on the granted operating licence (Article 30h(1) of the Betting and Gaming Act) from now on and no longer on the operation (Article 3h(2) of the Betting and Gaming Act). The licence with operation number, name and telephone number of the operator is expressed by means of a compulsory sticker to be placed on the gaming machine. This creates the presumption that the person whose sticker is placed on the gaming machine is also the taxpayer. This also communicates to third parties who are responsible for paying the tax on games of chance on the gross winnings of this gaming machine. As a result of this change, the tax on games of chance is, from now on, levied from the same person as the levy on games of chance, being the operating licence holder as referred to in Article 30h(1) of the Betting and Gaming Act. In connection with the above, the definition of 'operator' as currently set out in Article 1(2) of the Betting and Gaming Tax Act ceases to apply.

In case of domestic land-based poker tournaments, the provider becomes the taxpayer after this bill has entered into effect. During the practical implementation of the current Betting and Gaming Tax Act, the question arose whether a poker tournament is a casino game for the purpose of the Betting and Gaming Tax Act. Under the current legislation, if a poker tournament is a casino game, tax must be levied from the provider and the gross winnings or the tournament fee form the tax base. Under the current legislation, if a poker tournament is not a casino game, the player is the taxpayer and prizes exceeding € 454 form the tax base. The Betting and Gaming Tax Act defines a casino game as a quick series of successive games, bets being placed and winnings being paid between players and the bank and a more active role of the players in the game being expressed in the manner in which they place their bets. These features ensure that the levy on prizes exceeding € 454 results in objections in the implementation. That is why, in the past, a different tax base was chosen for casino games, in principle the gross winnings. A poker tournament does not have a quick series of games. As a whole, a poker tournament is one game. A poker tournament does not involve bets being placed and winnings being paid between players and the bank. Therefore, a poker tournament does not qualify as a casino game within the meaning of the Betting and Gaming Tax Act. So under the current Betting and Gaming Tax Act, the player is the taxpayer and the prize is the tax base. The players who have been in the poker tournament the longest then divide the jackpot according to a fixed schedule. So a levy on poker tournament prizes does not result in any practical objections. Although the prizes exceeding € 454 currently form the tax base for poker tournaments, Holland Casino has, based on created expectations, so far paid tax on the tournament fee. However, if Holland Casino has to start withholding tax on the prizes, resulting in a relatively large part of the stakes of players constituting tax on games of chance, Holland Casino expects that the players will go and play in foreign poker tournaments. This will also cause the domestic legal supply of poker tournaments to disappear. One of the objectives of the policy on games of chance is that, for regulated games of chance, there has to be sufficient legal supply. That is why this bill provides for the tax on games of chance

being levied from the provider in case of domestic land-based poker tournaments. The tax base constitutes the gross winnings as well as the provider's revenue for giving the opportunity to participate in poker tournaments. In practice, the gross winnings are nil, causing the tax base to be the tournament fee on balance. In practice, this bill does not change anything to the currently only legal domestic land-based casino, maintaining a legal supply of domestic land-based poker tournaments. In case of illegal domestic land-based poker tournaments, the tax liability actually shifts from the player to the provider.

Any winners - living or established in the Netherlands - of prizes from foreign land-based casino games, games of chance played on gaming machines and poker tournaments are, after this bill has entered into force, no longer liable to pay tax if a provider of a foreign land-based game of chance lives or is established in a member state of the European Union or in another state party to the Agreement on the European Economic Area. After this bill has entered into force, the winners of prizes from domestic land-based casino games, games of chance played on gaming machines and poker tournaments do not have to pay tax on games of chance either. This measure prevents Dutch winners of prizes from foreign land-based games of chance from having to pay more tax on games of chance than players who win prizes in domestic land-based games of chance.

The player becomes the taxpayer in case of domestic illegal remote games of chance, which is expected not to occur or hardly to occur as a result of the prevention of illegal supply. This creates an equal treatment with winners of prizes from foreign illegal remote games of chance who live or are established in the Netherlands. After this bill has entered into force, both the winners of prizes from domestic illegal remote games of chance and the winners of prizes from foreign illegal remote games of chance who live or are established in the Netherlands will be taxed according to the positive difference between the prizes won in a certain calendar month and the stakes in that calendar month.

The current Article 1 of the Betting and Gaming Tax Act sets out who the taxpayers are for games of chance played through the Internet. After this bill has entered into force, Article 1 of the Betting and Gaming Tax Act will henceforth speak of remote games of chance, as in Article 31 of the Betting and Gaming Act also proposed in this bill. The scope of the concept of remote games of chance is broader than just games of chance played through the Internet. Reference is made to the explanatory note to the proposed Article 2(2) of the Betting and Gaming Tax Act for an explanation of the scope of the concept of remote games of chance.

Part B (Article 2)

The proposed amendment to Article 2(1) of the Betting and Gaming Tax Act clarifies that poker is considered a game of chance for the purpose of the Betting and Gaming Tax Act, just as for the purpose of the Betting and Gaming Act. For a further explanation, reference is made to the explanatory note to the amendment to Article 1a of the Betting and Gaming Act included in this memorandum, which clarifies that poker is considered a game of chance for the purpose of the Betting and Gaming Act. In line with Article 1a of the Betting and Gaming Act, it is also clarified that a pyramid scheme is considered a game of chance.

Article 2(2) of the Betting and Gaming Tax Act gives the definition of a remote game of chance. This definition is in line with the definition of a remote game of chance as included in Article 31(1) of the Betting and Gaming Act, with one exception. Contrary to the Betting and

Gaming Act, games of chance for which a licence is granted under a title other than Title Vb of the Betting and Gaming Act are not considered remote games of chance for the purpose of the Betting and Gaming Tax Act. This exception concerns the use of Internet as a sales channel for several physical games of chance, for example the on-line sale of lottery tickets of charitable lotteries or of the State Lottery. The government deems it undesirable to use a different tax regime for lottery tickets sold on-line or for the prizes won through lottery tickets bought on-line than for lottery tickets sold “land-based” (for example in shops or by telephone) or the prizes therefrom.

Article 2(3) of the Betting and Gaming Tax Act gives the definition of a game of chance played on gaming machines. At present, the definition of a game of chance played on gaming machines is still included in Article 1(1)(a) of the Betting and Gaming Tax Act. This definition need not be changed.

Article 2(6) of the Betting and Gaming Tax Act includes a delegation provision which gives the opportunity to further implement the definition of 'games of chance' and 'remote games of chance' by ministerial regulation. With respect to the Betting and Gaming Act, a similar opportunity is also provided for in Articles 1 and 31 of the Betting and Gaming Act. This way, these concepts may continue to be dovetailed for the purpose of the Betting and Gaming Act and the Betting and Gaming Tax Act. There is currently no intention yet to exercise this delegation power.

Part C (Article 3)

Article 3 of the Betting and Gaming Tax Act provides for the tax base for the various categories of games of chance. The below table⁵⁴ shows the tax base for the various categories of games of chance before and after the legislative amendments included in this bill.

	Until 1 January 2015	As from 1 January 2015
Domestic land-based casino games and games of chance played on gaming machines	Gross winnings or tournament fee / rake / commission	Gross winnings and tournament fee / rake / commission
Domestic land-based poker tournaments	Prizes > € 454 or gross winnings or tournament fee / rake / commission	Gross winnings and tournament fee / rake / commission
Other domestic land-based games of chance	Prizes > € 454	Prizes as from € 250
Foreign land-based casino games, games of chance played on gaming machines and poker tournaments	Prizes > € 454	Prizes as from € 250
Other foreign land-based games of chance	Prize > € 454	Prizes as from € 250
Legal remote games of chance	-	Gross winnings and tournament fee / rake /

⁵⁴ If the Netherlands is not given approval on state assistance from the European Commission to introduce a games of chance tax rate of 20% for legal remote games of chance, the amounts of € 250 stated in this table must be replaced by € 450.

		commission
Domestic illegal games of chance through the Internet (until 2015) / at a distance (from 2015)	Gross winnings or tournament fee / rake / commission	Player's monthly profit
Foreign illegal games of chance through the Internet (until 2015) / at a distance (from 2015)	Player's monthly profit	Player's monthly profit

Under the current Betting and Gaming Tax Act, the tax base for games of chance to which Article 3(1)(a) applies, is the difference between the bets received in a certain calendar month and the prizes awarded, or the gross winnings, unless the prizes are awarded by a party other than the taxpayer. If the prizes are awarded by another party, the tax base is the revenue received in a certain calendar month for providing the opportunity to participate in casino games or to participate in domestic games of chance played through the Internet. The revenue received for providing the opportunity to participate in games of chance may be, for example, the tournament fee for poker tournaments, the rake for poker cash games, the commission for providing the opportunity to play baccarat or the commission for providing the opportunity to place bets with other players. In practice, it is not always clear who awards the prize and therefore what the correct tax base is. It also occurs, especially with games of chance on the Internet, that the party awarding the prize also receives a fee for giving the opportunity to participate in the game of chance. In that case, the gross winnings are often nil. The provider generates its income from the fee. In that case, according the current text of Article 3(1)(a), the tax base is nil, while the party providing the game of chance does generate income. In order to end the discussion as to who awards the prizes, and to prevent the absence of a tax base, both the gross winnings and the fees the taxpayer receives for providing the opportunity to participate in games of chance will be taxed after this bill has entered into effect as from 2015. In determining the gross winnings as tax base, it does not matter whether the taxpayer or another party receives the stakes and awards the prizes.

In case of legal remote games of chance, the tax base becomes the difference between the stakes received in a certain calendar month and the prizes awarded, or the gross winnings, as well as the revenue received by the taxpayer for providing the opportunity to participate in games of chance, such as the tournament fee for poker tournaments, the rake for poker cash games, the commission for providing the opportunity to play baccarat or the commission for providing the opportunity to place bets with other players. In case of remote games of chance, the provider sometimes grants bonuses, for example in order to stimulate players to pay an amount (credits) from the player's bank account into the player's account held with the provider. If the provider gives a bonus of € 25 when paying € 50, the credits amount to € 75. If a player uses this € 75 and wins € 60 in prizes, the gross winnings amount to € 15. This amount is calculated by deducting the stake of € 75 from the prizes of € 60.

For illegal remote games of chance, the tax base for the player becomes, after this bill has entered into force, the positive difference between the prizes won in a certain calendar month and the bets placed in this calendar month, the negative difference from domestic illegal remote games of chance being set off against the positive difference from foreign illegal remote games of chance and vice versa. The current Betting and Gaming Tax Act still distinguishes between domestic and foreign illegal games of chance played through the Internet. The proposed amendments will remove this distinction.

In Article 3(1)(a) of the Betting and Gaming Tax Act, the word "period" is twice replaced by "calendar month". This is no substantive amendment. Article 26 of the Implementing Regulations to the State Taxes Act 1994 provides that, for the games of chance to which the current Article 3(1) of the Betting and Gaming Tax Act applies, the period is a calendar month.

The purpose of the amendment to Article 3(3) of the Betting and Gaming Tax Act is to clarify and simplify the determination of the economic value in the situations in which prizes are awarded in kind by a withholding agent within the meaning of Article 6 of the Betting and Gaming Tax Act and in which a third party, not being a company affiliated with the withholding agent, charges an amount to the withholding agent for these prizes awarded. In these situations, the invoice value, including the turnover tax charged, is the standard for the valuation of the prizes. This brings the valuation of prizes in kind in line with valuation of wage in kind, as set out in Article 13(1) of the Wages and Salaries Tax Act 1964, which makes the valuation easier in practice.

The proposed Article 3(4) of the Betting and Gaming Tax Act then provides that if the prize not won in money is in the form of a provision of sector-specific products from the company of the withholding agent, the economic value of the prize won is the amount which would be charged by the withholding agent to a third party under otherwise similar circumstances. In short, the consumer price is used for sector-specific products.

For completeness' sake, it is noted that if the prizes in kind are not provided by a withholding agent, the old rules continue to apply to determining the economic value of these prizes. This means that the sum of money is taken into account which the prize winner could receive if he were to sell the prize. This is the price that, in offering the item for sale, would have been paid for this by the highest bidder in the most suitable way after the best preparations. If prizes in kind are valued in order to calculate the gross winnings of the provider, the economic value will be the invoice price.

The proposed Article 3(5) of the Betting and Gaming Tax Act includes a delegation power based on which further rules may be laid down with regard to the valuation of prizes in kind. Based on this, the Betting and Gaming Tax Implementation Decree, for example, will detail the definition of a company affiliated with the withholding agent.

Part D (Article 4)

For games of chance in which the prize is the tax base, the Betting and Gaming Tax Act provides for an exemption for prizes not exceeding € 454. This exemption is lowered to prizes not exceeding € 450 if the Netherlands is not given approval on state assistance from the European Commission for introducing a games of chance tax rate of 20% for legal remote games of chance.

Part E (Article 4)

For games of chance in which the prize is the tax base, the Betting and Gaming Tax Act provides for an exemption for prizes not exceeding € 454. This exemption is lowered to prizes not exceeding € 250. This amendment only enters into force by royal decree if the Netherlands is given approval on state assistance from the European Commission for

introducing a games of chance tax rate of 20% for legal remote games of chance.

Part F (Article 5)

If the Netherlands is not given approval on state assistance from the European Commission to introduce a games of chance tax rate of 20% for legal remote games of chance, the rate of 29% will also apply to legal remote games of chance. The amendment to Article 5(2) of the Betting and Gaming Tax Act only concerns an adjustment to a reference that is required due to an amended structure of Article 1 of the Betting and Gaming Tax Act.

Part G (Article 5)

A games of chance tax rate of 20% is proposed for legal remote games of chance. For the other games of chance, the games of chance tax rate will continue to be 29% under this bill. This amendment only enters into force by royal decree if the Netherlands is given approval on state assistance from the European Commission for being allowed to introduce a rate of 20% for legal remote games of chance. The amendment to Article 5(3) of the Betting and Gaming Tax Act only concerns an adjustment to a reference that is required due to an amended structure of Article 1 of the Betting and Gaming Tax Act.

Parts H, first paragraph, J, L and M (Articles 5a, first paragraph, 6, 8 and 8a)

Articles 5a, 6, 8 and 8a of the Betting and Gaming Tax Act relate to the manner of levying tax on games of chance on the various categories of games of chance. The proposed Article 5a(1) of the Betting and Gaming Tax Act provides that this article also applies to legal remote games of chance. As a result, the tax on games of chance owed in a certain calendar month for legal remote games of chance must be paid on the basis of self-assessment. This article also clarifies that the tax period is a calendar month. The other amendments to Article 5a(1), Article 6(1), Article 8(1) and Article 8a(1) of the Betting and Gaming Tax Act only concern adjustments to references necessary due to an amended structure of Article 1 of the Betting and Gaming Tax Act. The substantive amendments to Article 1 do have some consequences for the manner of taxation for various categories of games of chance. The below table shows the manner of taxation for the various categories of games of chance before and after the legislative amendments included in this bill.

	Until 1 January 2015	As from 1 January 2015
Domestic land-based casino games and games of chance played on gaming machines	Art. 5a, paying tax on the basis of self-assessment	Art. 5a, paying tax on the basis of self-assessment
Domestic land-based poker tournaments	Art. 5a, paying tax on the basis of self-assessment or Art. 6 taxation through deduction from prize	Art. 5a, paying tax on the basis of self-assessment
Other domestic land-based games of chance	Art. 6 taxation through deduction from prize	Art. 6 taxation through deduction from prize
Foreign land-based casino games, games of chance played on gaming machines and	Art. 8 paying tax on the basis of self-	Art. 8 paying tax on the basis of self-

poker tournaments	assessment	assessment
Other foreign land-based games of chance	Art. 8 paying tax on the basis of self-assessment	Art. 8 paying tax on the basis of self-assessment
Legal remote games of chance	-	Art. 5a, paying tax on the basis of self-assessment
Domestic illegal games of chance through the Internet (until 2015) / at a distance (from 2015)	Art. 5a, paying tax on the basis of self-assessment	Art. 8a paying tax on the basis of self-assessment
Foreign illegal games of chance through the Internet (until 2015) / at a distance (from 2015)	Art. 8a paying tax on the basis of self-assessment	Art. 8a paying tax on the basis of self-assessment

Part H (Article 5a)

Under the current Article 5a(3) of the Betting and Gaming Tax Act, negative gross winnings in a calendar month may, for games of chance whereby the gross winnings form part of the tax base, be offset against positive gross winnings in a next calendar month. The nature of the games of chance for which this opportunity for offsetting losses exists involves that negative gross winnings never occur in practice. So far, this opportunity to offset losses has never been used with good reason. However, this opportunity is sometimes used wrongly. This opportunity to offset losses is also used by participants in illegal on-line games of chance played through the Internet in their argument that it concerns unequal treatment because these participants cannot offset any losses. As the opportunity to offset losses is superfluous in practice, but does result in implementation costs incurred by the Tax and Customs Administration, this opportunity will cease to apply after this bill has entered into force as from 2015.

Part I (Article 5b)

Under the current Article 5b of the Betting and Gaming Tax Act, the taxpayer is obliged, according to regulations to be set by the Minister of Finance, to keep a register and to record the data in this register which could be important for the purpose of levying taxes. The delegation provision included in this article has not been used and there is no intention to make use of this provision in the future. The requirement to keep records set out in Article 52 of the State Taxes Act already obliges persons to keep such records that these records show the data important for the levy of tax on games of chance. For the above reasons, it is proposed to have Article 5b of the Betting and Gaming Tax Act cease to apply as from 2015.

Part K (Article 7)

The current Article 7(1) of the Betting and Gaming Tax Act imposes specific administrative obligations on withholding agents of Article 6 of this act. They must keep a register in which the data with respect to the game of chance are kept in a prescribed manner. Article 2 of the Betting and Gaming Tax Implementation Decree still assumes that the data in a register are written on paper. This is outdated. Moreover, this obligation is unnecessary due to the requirement to keep records set out in Article 52 of the State Taxes Act. That is why it is proposed to have Article 7(1) of the Betting and Gaming Tax Act cease to apply.

The current Article 7(2) of the Betting and Gaming Tax Act obliges the withholding agent to submit, on request and in a prescribed manner, proof to prize winners who include the prize in their profits from business activities. However, a prize will almost never be included in the profits from business activities, as a result of which the tax on games of chance is almost never offset against the income tax. If this situation still occurs in an exceptional situation, it may be assumed that the Dutch lottery organisation has deducted tax on games of chance. So prescribing how proof of deduction can be obtained in this exceptional situation is superfluous. It is proposed to have said provision cease to apply.

Article III (State Taxes Act)

Under the current Article 67ca(1)(b) of the State Taxes Act, anyone who does not meet the obligation imposed on him by or pursuant to Article 7(2) of the Betting and Gaming Tax Act, will be in default with respect to which the inspector may impose an administrative penalty on him. Due to the fact that Article 7(2) of the Betting and Gaming Tax Act has ceased to apply under this bill, Article 67ca(1)(b) of the State Taxes Act becomes redundant and may therefore cease to apply.

Article IV (International Assistance (Levying of Taxes) Act)

The proposed amendment to Article 11 of the International Assistance (Levying of Taxes) Act concerns an adjustment to a reference which is connected with the amendment to Article 67a of the State Taxes Act proposed in this bill.

Article V (Public Administration (Probity Screening) Act)

The purpose of the Public Administration (Probity Screening) Act is to prevent public administration from facilitating organised crime. Partly in view of this, the Public Administration (Probity Screening) Act provides that the administration - in this case the games of chance authority - may be advised by the Public Administration Probity Screening Agency about the risks of criminal facilitation in a specific case (entering into or terminating a legal relationship). The Agency consults and analyses data coming from various sources. In that case, it concerns both data on involvement - in criminal offences committed - of the licence applicant itself and of its business environment as defined in Article 3(4) of the Public Administration (Probity Screening) Act.

In the Act Evaluating and Expanding the Public Administration (Probity Screening) Act (Act of 28 March 2013, Bulletin of Acts and Decrees 125, Parliamentary Papers 32 676), Article 1(1)(c) of the Public Administration (Probity Screening) Act includes a subsection 11 which relates to the licences for operating and having gaming machines present (Articles 30b and 30h of the Betting and Gaming Act). With the amendment to Articles 30e, 30f, 30k and 30l of the Betting and Gaming Act, the Act Evaluating and Expanding the Public Administration (Probity Screening) Act also includes a statutory basis for refusing or withdrawing these licences in the cases and under the conditions referred to in Article 3 of the Public Administration (Probity Screening) Act. This proposal on the regulation of remote games of chance includes comparable provisions whose aim is to provide the same for the licences for organising remote games of chance.

The aim of the proposed Article V is to have a licence for organising remote games of chance fall under the scope of the Public Administration (Probity Screening) Act. In order to prevent these licences from being used for criminal activities, it should be possible to use the

instruments under the Public Administration (Probity Screening) Act. This prevents, for example, companies who have been refused a licence for operating gaming machines after the instruments under the Public Administration (Probity Screening) Act have been used, from focusing on providing remote games of chance.

Article VI (Anti-Money Laundering and Anti-Terrorist Financing Act)

The aim of the proposed amendment to Article 1(1)(a), subsection 16^o, of the Anti-Money Laundering and Anti-Terrorist Financing Act is to also bring providers of remote games of chance under the scope of this act. Insofar as relevant, only natural persons, legal entities or companies organising, in a professional or commercial capacity, a gaming casino within the meaning of Article 27g(2) of the Betting and Gaming Act are currently “institutions” within the meaning of the Anti-Money Laundering and Anti-Terrorist Financing Act. The proposed supplement results in those parties organising remote games of chance in the Netherlands also being subject to the obligations arising under the Anti-Money Laundering and Anti-Terrorist Financing Act, including identification of players, client investigations and reporting unusual transactions.

Article VII (Commercial Register Act 2007)

The data referred to in Articles 9 to 14 of the Commercial Register Act 2007 are authentic data (Article 15 of this act), which must be used by an administrative body which requires information about a company or legal entity in the performance of its duties (Article 30). Here, it concerns data with respect to companies (Article 9), legal entities owning a company (Article 10(1) in conjunction with Article 12), natural persons owning a company (Article 10(2)), those owning a company not being a legal entity under Dutch law and not being a natural person (Article 10(3)), branches of a company (Article 11(1)), legal entities not owning any company (Article 12), activities of a legal person not owning any company (Article 13) and branches of a legal entity not owning any company (Article 14(1)).

The use of these data by the games of chance authority is necessary for preparing decisions on applications for granting a licence for games of chance and decisions to suspend or withdraw these licences. For the purpose of efficient decision-making, it is important for these data to be classified according to natural persons, if required. This way, it can be discovered, for example whether the managing director of a recently incorporated legal entity or company about whom no negative information is known has been a managing director of a number of liquidated companies before or is still a managing director of other companies about whom negative information is known. Pursuant to the proposed amendments to the Betting and Gaming Act, the reliability of the natural persons involved in this company or legal entity is also important in order to assess the reliability of providers of games of chance. If, for example, a natural person involved in the company or legal entity has been involved in a series of earlier liquidations in the Netherlands or has any relevant criminal antecedents, the games of chance authority may discover this on the basis of data from the commercial register classified according to person. Recently incorporated companies do not yet have any history based on which the games of chance authority can assess its reliability. However, information may be known about the managing directors or key persons. Even if new managing directors enter into office in due course, it could be important to assess whether they are or have been involved in liquidated or mala fide companies. The data from the commercial register classified according to person are also important for the supervision - by the games of chance

authority - of compliance with the provisions laid down by or pursuant to the Betting and Gaming Act and the enforcement thereof.

Article VIII (evaluation)

Article VIII prescribes that this act will be evaluated within five years after it has entered into force. In any case, the following aspects will be evaluated: the extent to which the regulation of remote games of chance has achieved the objective of channelling the yet illegal supply of remote games of chance, the effects or the prevention policy together with the obligation of the licence holder to assess and intervene and the central register for exclusion from participation in games of chance, the protection of personal data, and the practicability and enforceability of the provisions included in this bill. Of course, Article VIII does not change the fact that the scope of the act will be monitored in the meantime.

The State Secretary for Security and Justice,

The State Secretary for Finance,