

The EMA's response
to the consultation on the draft Dutch 'Betting and Gaming
Act - Remote games of chance and the accompanying
explanatory memorandum'
of May 2013





I. Preface

The Electronic Money Association welcomes the opportunity to respond to the consultation issued by the Dutch Ministry of Justice on the 22 May 2013 on changes in 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.

In responding, we focus on those parts of the Act and memorandum that raise important issues for the e-money and payment services sectors. The Electronic Money Association (EMA) is the trade body representing electronic money issuers and payment service providers. These are specialised financial service institutions that offer e-money and payment facilities to companies and consumers under the regulatory regime of the Payment Services Directive and/or the Electronic Money Directive.

A list of EMA members is provided in the Annex to this document. The opinions expressed below are those of the EMA as a whole and may not represent the views of individual members.

Comments, questions or requests for further details should be addressed to:

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2. Comments on the Betting and Gaming Act and Explanatory

Memorandum

We welcome that the memorandum to the Act acknowledges the existence of other payment providers such as credit-card providers and e-wallet companies. We do note, however, that some of its provisions, by the use of the word 'bank', are drafted only with credit institutions in mind. Chapter 4.5 of the memorandum on 'measures to prevent fraud and crime' in particular appears to stipulate a number of restrictions and requirements for payment instruments that can be used for payments to gaming operators authorised in The Netherlands.

In the following, we set out the relevant text and explain the effects of these restrictions. As the memorandum carefully explains and considers the compatibility of the proposal with the relevant EU framework, we think that it cannot be the objective of the Ministry to distinguish between payments accounts that are offered by credit institutions, payment service providers and e-money issuers, effectively excluding the latter two types of institution from the Dutch gaming sector. We have therefore made suggestions to remedy this effect.

We note that the provisions set out in the memorandum are not yet part of law, and make our comments with a view to their becoming law as part of subordinated legislation under the Act in the future. We think it is important that these detailed rules are consulted on before they become law, as their implementation will in practice be subject to a number of legal and technical obstacles. We would welcome the opportunity to be involved at this stage to help assure that these are clarified before any final rules are drafted.

Verification of the player by way of a bank account - implications for the range of permitted payment instruments

Article 311 (registration and login as a player) of the Act stipulates under 4):

'By or pursuant to a General Administrative Order, further rules are laid down with regard to the registration and login as a player.'

These rules are not detailed in the proposed legal text. However, ch. 4.5 of the

memorandum gives an indication on the type of rules envisaged:

‘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.’

The requirement to specify a bank account when registering for a player account would exclude both players who are not in a possession of a bank account from playing, and non-bank payment service providers from offering their services to the gaming sector. Given that most providers of e-wallets (i.e., e-money wallets, prepaid cards and vouchers) verify the identity of the wallet holder, such exclusion cannot be justified on the basis of verification of identity concerns.

In the first instance, we therefore suggest the substitution of ‘bank account’ with ‘payment account’ in any future rules that may be made under this article (the Payment Services Directive (DIRECTIVE 2007/64/EC) defines payment accounts as ‘an account held in the name of one or more payment service users which is used for the execution of payment transactions.’)

However, we also think that, given the fact that gaming providers will themselves be under an obligation to verify the identity of the player, the range of permitted payment instruments should be extended to also include those that do not amount to a payment account, such as non-reloadable pre-paid cards or vouchers. These are already limited to small denominations, and the monitoring carried out by the e-money issuer, as well as the verification of the identity of the player carried out by the gaming provider will further reduce the risk of money laundering. We therefore suggest de-coupling the provisions on the verification of the identity of the player from the provisions on permitted payment instruments. This will facilitate the availability of a wider range of payment instruments for use on gaming sites, including those that do not amount to a payment account but offer other benefits to the player.

Chapter 4.5 of the memorandum also states:

‘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.

Apart from the exclusion of other (both payment account and non-payment account) payment instruments already mentioned above, this very specific requirement is likely to prove problematic in practice, given that only some details of the payment transaction are visible to each party in the payment chain. The text at this stage should reflect a more generic principle, and the precise responsibilities of each party in respect of correlating the payer's data should be determined when drafting the subordinate legislation.

Funding of the player account

Chapter 4.5 of the memorandum states:

'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.'

The requirement for e-wallets to be linked to a bank account excludes wallets that enable customers to fund their e-money balance with cash or another form of payment. While some e-money products link to a bank account or credit card, not all e-money products targeted at the online gaming sector do so, for privacy as well as for security reasons.

Payment of prizes

Chapter 4.5 of the memorandum states:

'Any prizes are only paid to that bank account.'

Again, this excludes those players who are not in a possession of a bank account and should be substituted with 'payment instrument used for funding the player account'.

Licensing of payment service providers

Chapter 4.5 of the memorandum states:

'... the credit card company or e-wallet provider has a bank licence in the EU.'

The requirement to hold a banking license excludes payment institutions and e-money institutions authorised in the EU from offering their services to the Dutch gaming sector. To create a level playing field between banks and other providers of online payment

products, this should be widened to also allow providers with an e-money and payment institution license.

3. Proposed amendments to chapter 4.5 of the Explanatory Memorandum

Consulted text	Proposed text
<p>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.</p>	<p>Subordinate legislation further specifies that the player has to present documents proving his identity, such as a copy or a scan of his ID. <u>To support this means of verifying identity, the gaming provider may require</u> 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 <u>both prepaid and postpaid payment instruments</u> is allowed for this, provided it <u>the payment instrument</u> is made out in the name of the player and can be traced back to the bank account number provided by him <u>verification of identity has been conducted by the payment service provider. Where payment instruments that do not amount to a payment account are permitted, the gaming provider should choose other means to establish strong verification of identity processes.</u></p>
<p>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 use</p>	<p>After registration, the player gets a unique player account which is linked to one bank payment instrument 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 payment instrument account <u>held with a bank, payment institution or e-money institution authorised in the EU or from</u></p>



<p>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.</p>	<p>a credit card or wallet (e-wallet) linked to that bank account. Any prizes are only paid to the payment instrument used to fund the player at bankaccount. . . . 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.</p>
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4. Annex

List of EMA members as of July 2013:

3mlati	Advanced Payment Solutions Ltd
American Express	Blackhawk Network Ltd
Boku Inc	Citadel Commerce UK Ltd
ClickandBuy International Ltd	Cornèr Banca SA
Eastnets Remittance Company Ltd	Emoney, s.r.o.
Euronet Worldwide Inc	Ewire Danmark A/S
Google Wallet	iCheque Network Limited
IDT Financial Services Limited	Ixaris Systems Ltd
Kalixa Pay Ltd	MasterCard International
Moneybookers Ltd	National Australia Group
Neteller UK Limited	PayPal Europe Ltd
PayPoint Plc	Paywizard
PPRO Financial Ltd	Prepaid Services Company Ltd
PrePay Technologies Ltd	PSI-Pay Ltd
R. Raphael & Sons plc	Securiclick Limited
Syspay Limited	Telefonica UK Financial Services Ltd
Ticket Surf International	Transact Network Limited
Ukash	Novum Bank Ltd
Wave Crest Holdings Ltd	Wirecard AG
Worldpay UK Limited	Yandex.Money