

European Gaming and Betting Association

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Subject: EGBA response to the Dutch consultation concerning the Decree amending the Decree on the recruitment, advertising and addiction prevention in gambling in connection with the curtailment of recruitment and advertising activities for high-risk games of chance.

We, the European Gaming and Betting Association (EGBA), the association representing the leading, online, cross-border, licensed gaming and betting operators in the European Union ('EU'), would like to bring forward our considerations regarding the draft Decree, published on 11 July 2022 which amends the Decree on Recruitment, Advertising and Prevention of Addiction to Gambling in connection with the restriction of recruitment and advertising activities for high-risk games of chance ("draft Amendment Decree")¹. The draft Amendment Decree introduces a ban on untargeted advertising and sponsorship for online games of chance².

EGBA works to promote sustainable and effective standards to support consumer protection in particular with regards to minors and vulnerable players. We believe that the draft Amendment Decree, if adopted and applied, would have the contrary effect. This is because such **advertising bans have been proven by scientific evidence to lead to a significant loss of visibility of the legal (i.e. duly licensed and controlled) offer**, leaving the player exposed to risky illegal websites, which remain widely available and accessible and do not provide any form of player protection³.

Advertising is an important element of any online service provision. In particular for online gambling, it is the most important tool **to inform and steer players to the regulated offer**, provided by licensed operators, away from the unlicensed websites that might be operated from places like Curacao or Asia. The importance of gambling advertising for channeling consumers to the regulated and supervised gambling services has been recognised in the established case law of the Court of Justice of the European Union (CJEU)⁴. Without advertising, players will not be aware of which operators are licensed and which are not. Advertising is also vital for informing players about age restrictions, the importance of staying in control of their behaviour and where to find help, if required.

¹ [Decree to amend the Decree on Recruitment, Advertising and the Prevention of Addiction to Gambling.](#)

² *Parliamentary Papers II* 2021/22, 24557, no. 186; *Parliamentary Papers II* 2021/22, 30234, no. 312.

³ Prof. Dr. Frederik Zuiderveen Borgesius, Mr. Arthur Zimin, Lauren Power, Prof. Dr. Nico van Eijk, Kansspelreclame: toestaan, beperken, verbieden? Onderzoek over mogelijke regels voor kansspelreclame. In opdracht van het Directoraat-Generaal Straffen en Beschermen van het Ministerie van Justitie en Veiligheid. Instituut voor Informatierecht (IViR), Universiteit Amsterdam (Sept. 2019); Gambling and advertising: an international study of regulatory intervention, Regulus 2019 (Annex 5) AND Regulus, Gambling and advertising: an international study of regulatory intervention, 2019 (Annex 6)

⁴ Cases: Ladbrokes Betting (C-258/08) §30, Joint cases Markus Stoß (C-316/07, C-358/07, C-359/07, C-360/07, C-409/07 and C-410/07) §101-103, Case Dickinger and Ömer (C-347/09) §69, §100.

Advertising bans have a counter-productive effect against consumer protection, as they can actually **reduce the channelling rate to the regulated offer**. A 2021 study in Italy⁵, which in 2018 introduced a total ban of gambling advertising, showed that there has been a resurgence of unlicensed operators and a loss of protection for vulnerable players. The report estimated that illegal gambling operations in Italy were worth €18bn, up from €12bn in 2019 (+50%) and warned that the illegal sector could exceed €20bn by the end of 2021. In addition, there is no definitive evidence that gambling advertising causes gambling problems⁶. A [survey](#) conducted in October 2018 by the Italian Health Institute (Istituto Superiore della Sanità) found that only 19.3% of Italians who actively gambled were inspired to play after seeing a gambling advert, while the other 80.7% said that advertising had no effect on their willingness to gamble⁷.

The imposition of the draft Amending Decree will make it impossible for the legal operators not only to promote their offer, but also for consumers to distinguish it from that of illegal operators, especially online. All users, and especially young and vulnerable groups, will continue to be exposed to aggressive promotion of illegal websites, operated with relative impunity.

In addition, such advertising bans constitute **restrictions to the free movement of services under EU law**. The Court stated that legislation of a Member State which prohibits the advertising, organisation and facilitation of games of chance via the internet, constitutes a restriction on the freedom to provide services⁸. According to the CJEU, any restriction to the freedom to provide services “*must be justified by imperative requirements in the general interest, be suitable for achieving the objective which they pursue and not go beyond what is necessary in order to attain it*”⁹. Any restriction of the freedom to provide services can be justified only by **overriding public interests**, it shall satisfy the principle of **proportionality** and shall try to attain the stated objective in a **consistent** and systematic manner.

We believe that the draft Amending Decree is not proportionate as less restrictive measures are available, but have not been examined. It is inconsistent with the public policy objective of channelling the consumer to the regulated offer and protecting players overall. Such prohibition has actually contrary effects as explained above. There are also no justifications provided with regards to why other less severe measures could not be considered, to achieve the desired public policy objective. Neither there is evidence provided with regards to the link of advertising and addiction.

Furthermore, **the draft Amending decree imposes a ban that would be discriminatory and leads to distortion of competition**. This is because, although the state is taking a (general) legal measure in respect of all market participants by prohibiting untargeted advertising and sponsoring of online games of chance, this de facto creates an advantage for the State-owned companies, thus a distortion of competition. The way the advertising ban is implemented leads to an unequal playing field on the online gaming market, as the land-based offerings (*Holland Casino* and the *Nederlandse Loterij*) are

⁵ www.censis.it/economia/rapporto-lottomatica-censis-sul-gioco-legale (Annex 11).

⁶ “Protecting consumers and ensuring gambling advertising is responsible: A brief overview”, by Dr. Mark Griffiths, Nottingham Trent University, featured in EGBA news 2019.

⁷ Istituto Superiore della Sanità (ISS), CS N° 30/2018 – Gioco d’azzardo

⁸ CJEU joined cases C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07, Stoß and Others, 8 September 2010.

⁹ CJEU case C-55/94, Gebhard., para. 37, ruling of 30 November 1995. CJEU case C-243/01, Gambelli and Others ruling of 6 November 2003, para. 65.

not subject to the far-reaching ban on untargeted advertising. The prohibition will therefore not apply to licensees offering land-based games of chance, a lottery, lotto's or scratch cards, while there are risks attached to this offer as well.¹⁰

The aforementioned restrictions would affect more heavily online gambling operators, that do not have physical shops where their brand can be made known, and therefore create an unfair competitive advantage for retail operators. Providers of online gambling services could obtain a licence, but not be able to build up a customer base. In that regard, one must bear in mind the close relationship between advertising and competition since as stated by Advocate General Jacobs, "in a developed market economy based on free competition the role of advertising is fundamental"¹¹. Moreover, total bans or very severe restrictions on advertisement jeopardize the entrance of new companies in the market. This may ultimately lead to a less competitive market, to the detriment of consumer who will have less choices and quality of offers.

Instead of heavily restricting gambling advertising, EGBA suggests alternative measures for regulators, in line with the established case law of the CJEU, to strengthen responsibility in commercial communications and safeguard a high level of consumer protection, including vulnerable groups, such as excluded players and minors. To this end, EGBA developed [the first pan-European Code of Conduct on gambling advertising](#) ('the code'), with the aim to enhance consumer and minor protection through the promotion of responsible gambling advertising. The code establishes a comprehensive list of rules on content moderation, social media, responsible gambling message and it has a dedicated focus on minors. This year, EGBA commissioned [the first monitoring exercise of the code](#), which was conducted by the European Advertising Standards Alliance ([EASA](#))¹², the Brussels-based association representing Europe's self-regulatory organisations for advertising, who found that the EGBA code is a solid basis for responsible advertising due to its comprehensive and detailed content and EGBA members already apply most of its measures¹³. The code has been endorsed by NOGA, the Dutch online gambling trade association.

For the reasons mentioned above, EGBA considers that the draft amending decree contains provisions that contravene with the principles of the free movement of services and free competition as recognized by the Treaties. Moreover, as explained above, such restrictions entail the risk of channelling the demand of Dutch players to the unregulated offer. We therefore invite the ministry to examine alternative measures to ensure not only compliance with EU law, but also effective and sustainable rules that protect players and do not jeopardise channelisation.

¹⁰ See, for example, D.E. de Bruin, Assessment of addictiveness of Dutch gambling supply, The Hague/Utrecht: Kansspelautoriteit/CVO- Research & Consultancy 2017, p. 11

¹¹ Conclusions of the AG on the Judgment of the Court (Sixth Chamber) of 9 February 1995.

Société d'Importation Edouard Leclerc-Siplec v TF1 Publicité SA and M6 Publicité SA. Case C-412/93, para. 19.

¹² EGBA consulted with EASA for advice on its code but this in no way implies that EASA or its members endorse the code in any form, which remains under EGBA's responsibility.

¹³ <https://www.egba.eu/news-post/egba-members-make-responsible-advertising-progress-with-first-code-monitoring-exercise/>