

Dutch court rules on offline gambling licensing while online gambling reform flounders

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Brussels, Today – The Council of State, the highest administrative court of the Netherlands, has questioned the granting of the country’s lotto license to the state-owned gambling operator Nederlandse Loterij after finding the existence of only one lotto license to be insufficiently justified by the national gambling regulator. The Council also ruled that the existence of a sole sports betting license for the offline market, granted also to the state-owned lottery, was justified. The Council ruling follows an appeal by the European Gaming and Betting Association (EGBA) whose members have been excluded from the Dutch sports betting market as a result of the limited availability of sports betting licenses.

The Council of State has [ruled](#) that the national gambling regulator, the Netherlands Gaming Authority or Kansspelautoriteit, must present convincing arguments to justify why it restricts the number of licenses for lotto games while it grants multiple licenses for other forms of gambling, including charity lotteries, but also not sports betting. EGBA will scrutinise whether the Council ruling is in line with recent and clear EU Court of Justice jurisprudence and the fundamental need for transparent licensing allocation and consistent national gambling policies. While the Council’s ruling does not deal with the online market and does not take into account the draft law on online gambling, that is currently under consideration by the Dutch Parliament, it does contain some useful conclusions which should be considered by Dutch policymakers during the online gambling reform:

- “The objectives of the Dutch gaming policy are pursued by leading the existing demand for gambling to a regulated and controlled supply (“channeling”)” (10.4).
- “It is therefore justifiable from the point of view of the objectives of Dutch gaming policy that no single license system has been introduced for slot machines. Such a system might not adequately meet the already existing demand for gaming machines and the existing practice, with the risk that a substantial illegal supply will develop” (10.6.2.3).

The Council’s emphasis on the need for maximum channeling of the consumer to regulated gambling products in order to provide consumers with effective consumer protection is in line with the basic premise of the draft online gambling legislation. This emphasis has also underpinned the regulatory regimes of the EU countries Member States that have introduced successful online gambling regulation which protect consumers and provide choice in the market. Countries, like Denmark, which have a multi-license system in place have proven to be much more successful in tackling grey market gambling activity and protecting consumers within the national regulated framework.

“The Council of State ruling is correct to question the justification of the Dutch Gaming Authority’s decision to grant a monopoly for lotto products. Today’s ruling not only underlines the fundamental importance of transparent licensing procedures but also underlines the need for the modernisation of the Dutch gambling laws and the regulation of the online gambling market which is unaffected by the Council’s ruling. A regulated online gambling offer is the only means to secure maximum channeling of Dutch customers, which the Council of State correctly identifies as the key policy instrument to obtain the best consumer protection. We continue to support the ongoing legislative process to regulate the online gambling market as experience from other EU countries shows that a multi-license system is best able to channel consumers to the regulated offer in the online environment,” said Maarten Haijer, Secretary General of the EGBA.

Background

- In an appeal to the Council of State the EGBA and its members had earlier complained that the country’s licensing regime was in violation of EU law, as confirmed by the EU Court of Justice in 3 recent cases¹, by

¹ Sebat Ince, C-336/14, Unibet International, C-49/16 and Sporting Odds, C-3/17.

unlawfully excluding sports betting operators from the application process for the country's sole sports betting license.

- The Council of State's ruling follows its earlier ruling in March 2011 in the case of Betfair and the position of the District Court of The Hague², which had reiterated the lack of a transparent licensing procedure in Dutch regulation for the allocation of sports licenses and the incompatibility with EU law of the Dutch gambling policy.

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About the EGBA:

The EGBA is an association of leading European gaming and betting operators Bet-at-home, BetClic, GVC Holdings PLC, Expekt, Kindred Plc, ZEAL Network, Betsson Group and bet365. The Gibraltar Betting and Gaming Association (GBGA) and Branschföreningen för Onlinespel (BOS) are affiliate members of EGBA. As a Brussels-based non-profit association, EGBA promotes the rights of more than 20 million adult European citizens to participate in online gambling of their choice in an informed, regulated, safe and secure environment. While online gambling remains a smaller part of the total gambling market (15%), based upon innovation, technology and digital consumer demand, online gambling transformed itself into an industry champion of the European digital economy with material spin-off effects towards other digital economies and strong synergies with sports. EGBA members have invested more than €600M into digital security and contributed to sports with more than €800M, mainly via sponsorship deals and purchasing innovative sports streaming rights.

² [Case SGR 15/5229](#), Court of The Hague (2016)