



Netherlands' Vision for the Regulation of Video Games

Edging towards harsher regulation?

Regulator: Dutch Gaming Authority (Kansspelautoriteit – KSA)

RISK BAROMETER:



JURISDICTION RELEVANCE:

Holland

TIMELINE:

A consultation is open until
August 20th 2020

WHAT YOU SHOULD KNOW:

- In 2017, the Netherlands Gaming Commission (KSA) consultation on the gambling assessment framework, [concluded](#) with a classic definition of prize as real “economic value.”¹ However, contemporaneously, the KSA released a [paper on loot boxes](#) which found that four of ten loot boxes in games studied constituted gambling. In these, virtual prizes could be traded on secondary markets.² It was unclear where legal culpability lay – for third party facilitators or developers themselves.
- On July 9th 2020, the KSA released a “[vision](#),” setting out core directives for monitoring gambling games in the public interest, including video games with “gambling-like” elements. The “vision” re-iterates that whether loot boxes amount to gambling “varies from case to case” and the “crucial test is whether the virtual prizes can be traded.” There is no clarity on culpability for secondary markets in virtual items.³
- The “vision” includes a detailed review of research on the addiction risks posed by loot boxes, which acknowledges a lack of causal evidence and a need for more research. The KSA hints that it might be interested in stricter age control, especially for loot boxes and a more risk based, rather than traditional, conception of gambling.
- The KSA identifies practices that should already be adhered to:
 - » **Transparency:** “In a controlled range of games with gambling elements, fair advertising and information to consumers is obvious. Examples include mentioning

in-game purchases, the potential content of loot boxes and whether it affects game performance, and the opportunities with which coveted items occur.”

- » **No virtual items should be exclusive to loot boxes:** “The accessibility of items to be won via loot boxes should also be available by other means (via direct buy within the game). This reduces the pressure to continue to buy loot boxes, and with it the addiction risk.”

MOST TELLING:

“It is logical to focus future regulation of games with gambling elements on the underlying risks as much as possible. For consumers, the distinction between games of skill and games of chance must always be clear. For young people, young adults and other vulnerable groups, the starting point is that they should never come into contact with addictive gambling elements such as loot boxes through games”

DELANY & CO HOT TAKE:

The Netherlands has been inaccurately cited by some commentators as a jurisdiction that has regulated loot boxes. This is not true and, for now, the KSA remains committed to continued dialogue as per the Association of European Gambling Regulators (GREF) [declaration and workshops](#) on shared concerns regarding blurring lines between video games and gambling.⁴ But all eyes on the call for evidence on loot boxes in the UK. If a regulatory precedent is set, traditionally more interventionist European regulators will inevitably follow.