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Many years ago, I was interviewed for a job at a very large online gambling company. The incumbent general counsel, who was essentially recruiting his replacement, posed a series of difficult questions about how I would perform the role. One question in particular stuck in my mind – he said:

*Our organisation currently takes business from more than 100 countries across the globe. How would you develop a risk strategy in relation to the legality of those operations?*

I said that I would like to build a large and interactive map of the world in my office, rather like a general’s war room, and periodically review the laws in key jurisdictions as they changed. ‘Me too’, he replied, ‘but my CEO won’t give me nearly enough budget for that’. I did not get the job.

However, his observation rang again in my ears when I was first approached to become the editor of this present work. In the intervening years, gambling law in many jurisdictions has changed and evolved significantly, but the essential predicament remains the same: staying on top of the hugely varied and constantly changing corpus of law and regulation.

And so my aim in editing this work is to create a guide that enables a lawyer or executive to swiftly and effectively ‘plug in’ to the regulatory and legal structure of a wide range of jurisdictions across the world, and understand in a few pages the legal climate, the likely issues that will arise in doing business in that jurisdiction and the overall legal risk. And above all, to remain regularly updated so as to highlight developments in the foreseeable future.

Of course, a book that seeks to cover the law of gambling in 15 jurisdictions can never hope to be a complete answer to many of the questions that will face a business. However, it will hopefully at least point the way and define the parameters of any enquiry. In addition, since its chapters are written by some of the leading lights in gambling law, it also provides an introduction to those individuals and their firms, so that they can no doubt supply a more detailed analysis of particular problems, if called upon.

As an editor, one of the problems that I have faced is choosing the jurisdictions that should be included in the review. Even if it were logistically feasible to cover them all, there
is a practical limit to the number of pages that can be contained within a hardback cover. In selecting the territories, I have sought to include a wide range of different countries across the world. The selection is based on a number of factors, including the advice of clients and practitioners, the importance of gambling activity in the jurisdiction, and even matters as simple as population and GDP. I have, I am sure (through ignorance or prejudice), missed a number of countries that thoroughly merit inclusion. I take full responsibility for (but mean no offence by) those mistakes.

I want to thank three groups of people. First, those notable practitioners who have assisted in the production of this volume and given of their time and expertise as part of this common endeavour. Many are friends and colleagues and all are absolutely excellent practitioners in their field.

Second, I want to thank my ‘partners’, using that term to encompass both my professional colleagues at Squire Patton Boggs LLP who provide daily support and my family and friends, who have to deal with me the rest of the time.

Finally, and crucially, I would like to thank those clients with whom I have worked over the years in this fascinating field. They know who they are. Clients come in a range of shades, from the generous, loyal and appreciative to the hard-bitten, taxing and sometimes frankly annoying. I am pleased to say, however, that lawyers in the field of gambling are luckier than most. Our clients bring us income, but more importantly they bring us the one thing that makes us feel valued more than anything else – problems to which we have to find solutions. For it is through problems and challenges that the gambling industry has advanced and the law has evolved. Gambling law and regulation remains a fascinating and nuanced field in which gambling operators provide enormous imaginative impetus for change and, for the most part, respect our role in helping them.

It is in that spirit that I hope that lawyers and clients alike find this work a useful addition to their shelves.

Carl Rohsler
Squire Patton Boggs
London
June 2016
I OVERVIEW

Definitions

Most of the definitions are provided for in the Act of 7 May 1999 on games of chance, betting, gaming establishments and the protection of players (Act on Games of Chance, or the Act), as amended in 2010 and implemented by multiple royal decrees.

Games of chance are defined in Article 2 of the Act on Games of Chance as any game by which a stake of any kind is committed, the consequence of which is either loss of the stake by at least one of the players or a gain of any kind in favour of at least one of the players, or organisers of the game and in which chance is a factor, albeit ancillary, for the conduct of the game, determination of the winner or fixing of the gain.

Certain games of chance under the definition laid down in Article 2 above also benefit from specific definitions. This is the case for betting (or ‘bets’), fixed-odds betting and mutual betting. Betting is defined in general terms as game of chance where each player makes a stake and that results in gain or loss that is not dependent on the acts of the player but on the occurrence of uncertain events that occur without intervention of the players. Fixed-odds betting refers to a bet where the player bets on the result of a particular fact and where the amount of the winnings is determined depending on certain fixed or conventional odds and where the organiser is personally liable for paying the amount of the gain to the players. Pool betting is defined as a bet where an organiser acts as intermediary between the different players who play against each other, where the stakes are merged and distributed among the winners, after deduction of a percentage meant for paying the taxes on games and bets, to cover the

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1 Philippe Vlaemminck is a partner and Lucas Falco is a senior associate at Pharumlegal.
organisation costs and for allocating a gain. Additionally, the Belgian Gaming Commission issued a Notice explaining that spread betting (without benefiting from a specific definition under the Act or any royal decrees) qualifies as betting as outlined above.\(^2\)

All games and activities that fall under the definition provided for in the Act on Games of Chance qualify as gambling activities subject to either a licensing regime or a strict ban.

In general, poker and other card games, dice games, slot and other types of gaming machines as well as other table games offered within casinos, gaming halls or betting shops, fall within the definition of a game of chance and are subject to the rules set out by the Act and its implementing royal decrees.

However, Article 3 of the Act on Games of Chance provides that certain games do not qualify as games of chance, namely: sports; games that only offer winnings in the form of a maximum of five free-plays; card games and other board and table games that cannot be provided within gambling premises; and games offered during fairs, or games organised by social or charity organisations for a specific philanthropic purpose or by a local association for a specific purpose and provided that this game is organised a maximum of four times a year, requires very low stakes and can only procure for the players a low-value material advantage.

Lotteries are defined in broad terms in Article 301 of the Belgian Criminal Code as any operation provided to the public and aimed at providing winnings based on chance. However, it is commonly agreed that ‘lotteries’ refer to the games provided by the National Lottery operator under the Act of 19 April 2002 on the rationalisation of the functioning and management of the National Lottery (National Lottery Act) and its implementing royal decrees defining the rules for all types of lottery game. From a general perspective, lottery games refer to lottery draw-games, such as lotto games and bingo as well as to the lottery game coordinated among multiple lottery operators from the EU, namely, Euromillions, and to scratchcards.

Online gambling is addressed under Belgian law as a mere channel of distribution and refers to ‘games of chance’ and ‘lotteries’ offered to players via information society instruments.

Finally, it must be stated that binary options are defined as unconventional financial instruments that predict whether the market price of the underlying asset (e.g., shares, resources, inflation and interest decisions) will increase or decrease. The Gaming Commission stated that although such instruments could meet the criteria to qualify as games of chance, under Belgian law they are treated as financial instruments and subject to the related regulations.\(^3\)

Moreover, to date Belgian law neither defines nor qualifies (as games of chance) fantasy sports or social gaming.

ii Gambling policy
Belgian gambling policy is based on two pillars.


\(^3\) Notice of the Belgian Gaming Commission of 12 November 2014 on binary options, available on the website of the Belgian Gaming Commission.
Belgium

The first pillar is composed of all public lotteries and contests offered under the monopoly of the fully publicly owned National Lottery operator (with small exceptions regarding low-scale charity lotteries and raffles for specific purpose and limited in time).

The second includes a strict ban on any activities that qualify as games of chance under Article 2 of the Act on Games of Chance, unless they benefit from a licence granted by the Belgian Gaming Commission.\(^4\)

As regards online gambling, the National Lottery is authorised to provide its lottery games online under the National Lottery Act, while any other games of chance may be offered online provided that operators hold the required licences pursuant to the Act on Games of Chance.

Belgium carries out a regime of controlled expansion\(^5\) in order to attract players towards a safe and regulated gambling market, through the establishment of a monopoly and the granting of a limited number of licences.

iii State control and private enterprise

As outlined in Section I.ii, supra, all public lottery games (offline and online) may only be offered by the National Lottery operator, in other words, a public undertaking fully owned by the state and subject to the direct control of the government.

The operation of other games of chance is open to competition through the attribution of a limited number of licences.

iv Territorial issues

Games of chance are regulated and licensed at federal level.

The competence granted to municipal authorities is limited to their approval for the establishment and operation of new land-based casinos\(^6\) and gaming halls.\(^7\)

v Offshore gambling

The Belgian Gaming Commission is in charge of the monitoring of the Belgian gambling sector.\(^8\) Therefore, it has the competence to receive any complaints filed by consumers against illegal gambling and to act in the appropriate manner to stop and remedy any infringements of the Belgian gambling laws. The Gaming Commission adopts a very stringent approach regarding illegal offshore gambling operators directing their activities to Belgian residents.

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\(^4\) Article 4 of the Act on Games of Chance.


\(^6\) A concession agreement must be concluded with the municipality in which the casino premises will be operated (Article 31 of the Act on Games of Chance).

\(^7\) The operation of gaming halls must be performed based on the agreement to be entered into, at the own discretion of the authorities, between the operator and the municipal authorities of the territory in which the gaming halls will be operated (Article 34 of the Act on Games of Chance).

\(^8\) Article 20 of the Act on Games of Chance.
The powers of the Gaming Commission are very broad. First, it could issue warnings against illegal operators, and subsequently issue administrative fines.\(^9\) Second, and more importantly, infringement of the strict ban on unlicensed games of chance and advertising in favour of illegal games of chance may lead to criminal sanctions (see Section III.ii, infra). The Public prosecutor, based on complaints filed by the Gaming Commission or citizens, is competent to initiate any judicial prosecution he or she deems necessary to enforce the Act on Games of Chance and sanction illegal operators. Many international operators have already been sentenced on that basis.

However, five years ago, Belgian authorities set up a mechanism to prevent Belgian residents from accessing illegal (offshore) gambling websites. This mechanism involves the drafting of a blacklist by the Gaming Commission. This blacklist includes all names and URL addresses of illegal online gambling operators and websites. Then, through cooperation between the Gaming Commission, the special police IT-crime unit and internet service providers (ISPs),\(^{10}\) the Gaming Commission informs the police of the name and details of the illegal websites; those data are then transferred to the ISP that will block the access to the website. The website will then be inaccessible to Belgian residents and will display a special webpage with the different logos of the enforcement authorities stating that the website is no longer accessible due to infringement of Belgian law. This system was initially contested by some remote gambling operators in civil courts. The Courts unanimously ruled in favour of the government.\(^{11}\)

II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

As already outlined above, all activities that qualify as games of chance fall under the ambit of the Act on Games of Chance and its implementing royal decrees.

As regards public lotteries and contests, they are regulated by the National Lottery Act, and its subsequent royal decrees, in compliance with the management agreement concluded between the National Lottery operator and the Belgian State.\(^{12}\) Regarding the case law that has shaped the Belgian gambling policy, it is worth mentioning that the Belgian Constitutional Court found in 2011 that the Belgian gambling regime based on controlled expansion is effectively pursuing consumer protection objectives, and that this regime is compliant with the case law of the Court of Justice of the European Union (CJEU).\(^{13}\)

ii The regulator

The Belgian lottery and gambling sector is governed by two distinct bodies.

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9 Article 15/3 of the Act on Games of Chance.
10 ISPs committed to cooperating voluntarily through the conclusion of an agreement – the majority of ISPs are parties to this agreement.
11 See judgment of the President of the Court of Commerce of Brussels (Flemish Chamber) of 13 June 2012 (Bwin case), and judgment of the Civil Court of First instance of Brussels (Flemish Chamber) of 11 February 2013 (Bet-at-Home case).
12 As approved by the Royal Decree of 30 July 2010.
First, the sector of games of chance falls in the competence and powers of the Belgian Gaming Commission, namely, a public body, part of the Belgian Ministry of Justice, with its own legal personality, composed of representatives of the Ministry of Justice, Finance, Public Health, Economic Affairs, and Interior, and including a representative of the National Lottery. This body is established by Chapter II of the Act on Games of Chance and is defined as ‘an advisory, decision-making and regulatory body in respect of games of chance’.

Second, the National Lottery operator and national lottery games are supervised by the Minister in charge of public undertakings and the Minister of Budget through the intervention of two government commissioners, who are competent to assess the compliance of the National Lottery’s activities and operation with the applicable laws, its obligations of public services, its by-laws and the management agreement concluded with the Belgian state. Moreover, both commissioners attend all the meetings of the National Lottery operator’s board of directors and executive committee in an advisory capacity. Finally, those commissioners hold many inspection and monitoring powers that allow them to control the operator accordingly.14

iii Remote and land-based gambling

Before the entry into force of the act of 10 January 2010 that amended the Act on Games of Chance to regulate all types of games of chance, including online gambling, only the National Lottery operator was allowed to provide online, the same games it was offering offline. At that time, the Belgian Constitutional Court found that the particular situation of the National Lottery company regarding the provision of its activities online was in line with the case law of the CJEU, considering, among other things, the characteristics of the operator and its missions of public services.15

However, with the entry into force of the newly amended Act on Games of Chance in January 2011, all games of chance the operation of which is allowed under the Act can be offered online. Nonetheless, the mere fact operators are duly licensed to provide games of chance offline is not sufficient. The same operators have to apply for and be granted an online gambling licence, corresponding to their offline gambling licence (qualified as ‘plus licence’) to provide online, games of the same nature as their authorised land-based activities.

In general, all games of chance are subject to specific rules in addition to the rules already applicable to their offline equivalent. Moreover, specific rules are also in place, such as, for instance, the fact all players must be aged at least 21 years old to play online (while some land-based gambling premises are only authorised to accept players aged 18 or above); the obligation to open a player account (e.g., this obligation does not exist as such in land-based gambling premises) before being allowed to play; a specific solvency ratio of 40 per cent under the Royal Decree of 21 June 2011;16 and distinct security and technical requirements.

14 Under Chapter V of the National Lottery Act.
16 Royal Decree of 21 June 2011 regarding qualitative conditions to be fulfilled by additional licences applicants. This ratio enables the Gaming Commission to ensure the applicant/operator does benefit from sufficient financial means to guarantee the payment of winnings to players, and differs from one type of game to another.
iv Land-based gambling

The Act on Games of Chance defines four categories of gambling premises (the operation of which is subject to the prior granting of a specific and distinct licence).

Class I venues, or casinos, are subject to the prior granting of an ‘A Licence’ (duration of 15 years, renewable). Those venues are allowed to offer games of chance, automatic or not, in addition to socio-cultural events. The number of casinos is strictly limited to nine by the Act on Games of Chance and the locations of those premises are strictly enumerated in the Act.¹⁷

Class II venues, or gaming halls are subject to the granting of a ‘B Licence’ (duration of nine years, renewable). Those venues are only allowed to offer automatic games of chance. Moreover, their number is strictly limited to 180 throughout the country. The number of B Licences or gaming halls per municipality is limited and defined through a distribution system set out in a specific royal decree.¹⁸ Finally, gaming halls must not be located close to hospitals, prisons, schools, churches and other religious temples, or places where young persons regularly meet.

Class III premises refer to pubs and bars, and require a ‘C Licence’ to operate a maximum of two gaming machines (low-scale gaming machines, e.g., bingo-type gaming machines). Duration of the C Licence is five years, renewable.

Class IV venues are betting shops (either fixed or mobile) the purpose of which is exclusively to engage bets (with the exception of the sale of newspapers and non-alcoholic drinks as, for example, press shops). Betting shops may either be fixed (i.e., permanent venue) or mobile (i.e., temporary betting shop operated at the occasion of a specific sporting event, at the place of the event and for its duration only). The operation of betting shops requires an ‘F2 Licence’ (i.e., a bookmaker licence allowing to take bets on behalf of a betting organiser). F2 Licences have a duration of three years, renewable. However, F2 licensees have the obligation to take bets on behalf of a betting organiser, namely, an F1 Licence holder. F1 Licences are required to organise betting activities and are granted for periods of nine years, renewable. The number of betting organisers (hence F1 Licences) is limited to 34. In addition, the number of fixed betting shops is limited to 1,000, and mobile betting shops to 60.¹⁹ Moreover, the distance between each betting shop operated after 1 January 2011 must be of 1,000 meters (door-to-door walking distance). However, this rule does not apply to betting shops in operation before that date and that have never discontinued their operation since then.²⁰

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¹⁷ Article 29 of the Act on Games of Chance.
¹⁸ Royal Decree of 22 December 2000 on the functioning and management of Class II gaming venues, on application modalities and the form of B Licences (Chapter IV).
¹⁹ Article 1 of Royal Decree of 22 December 2010 setting the maximum number of fixed and mobile betting shops, the criteria aimed at ensuring a spread of those venues, and the treatment procedures for applications when a licence is released due to a withdrawal or a waiver.
²⁰ Article 2 of Royal Decree of 22 December 2010 setting the maximum number of fixed and mobile betting shops, the criteria aimed at ensuring a spread of those venues, and the treatment procedures for applications when a licence is released due to a withdrawal or a waiver.
All games provided by the National Lottery company (i.e., lottery games and sports betting) can be offered via its retail agents who concluded retail agreements with the National Lottery. However, in order to offer betting activities on behalf of the National Lottery, its agents must hold the required F2 Licence. Finally, it must be mentioned that there is no limitation as such on the number of retailers for the National Lottery, nevertheless, the operator must ensure a reasonable cover of the whole Belgian territory, without presenting an offer regarded as excessive, in order not to infringe the objectives pursued by the controlled expansion policy (namely, player protection, fight against addiction, fight against fraud).

Remote gambling
First, online public lottery games fall under the monopoly of the National Lottery and therefore cannot be offered by any other operators.

Second, as regards other games of chance allowed under the Act on Games of Chance, a land-based presence is required in order to be allowed to provide games of chance online, considering that only land-based licensees may apply for online gambling licences (namely, A+ Licence – online casino games; B+ Licence – online gaming machines; and F1+ Licence – online betting activities). Moreover, online licences only authorise operators to provide via information society means games of the same nature as the games they are allowed to offer based on their land-based licences. For information purposes, it must be added that the ‘plus licences’ have the same duration as their related land-based licences.

In addition, Article 43/8 of the Act on Games of Chance strictly requires that the server on which data and the structure of the websites are located is stored in a permanent establishment located in Belgium.

Ancillary matters
The provision, renting, selling, putting at disposal, import and export, production and any services of reparation and maintenance of gambling equipment require the possession of a specific licence granted by the Gaming Commission, namely, the E Licence. This licence is granted for renewable periods of 10 years. Furthermore, any equipment put on the market or supplied to an authorised operator must also receive a certification from the services of the Gaming Commission or another accredited body. It is important to note that Article 27 of the Act on Games of Chance strictly prohibits cumulating any gambling licences with an E Licence, either directly or indirectly (by means of subsidiaries or branches).

Furthermore, any persons seeking to perform an occupational activity of any nature in a casino, gaming hall or a betting shop must also hold a D Licence. D Licences are granted by the Gaming Commission for undefined duration.

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21 This stems among other things from Article 4 of the Royal Decree of 30 July 2010 approving the management contract between the National Lottery and the Belgian state.
22 For example, through websites accessible via tablets, computers or apps.
23 Article 52 of the Act on Games of Chance.
24 However, in practice the Gaming Commission usually accepts such a double possession when a gambling licensee holds as well an E Licence via one of its subsidiaries, provided that a certain threshold relating to the shares held by the gambling licensee within that subsidiary is not met.
Finally, directors or persons who occupy the managing or executive positions of a gambling operator must not obtain any licences. Nevertheless, the details as well as a copy of their criminal records are requested during the application process, hence entitling the Gaming Commission to raise objection or criticism regarding possible suitability and fitness concerns.

III THE LICENSING PROCESS

i Application and renewal
Applications for any type of gambling licence must be submitted with the Gaming Commission through registered mail or, when available, online. Specific forms are made available by the Gaming Commission.

The eligibility criteria for any type of licence are the following: as an individual, be a citizen of one of the EU Member States or, as a legal person, be incorporated in Belgium and under the laws of any EU Member States; provide the proof of the necessary solvency (including compliance with the required solvency ratio); provide a description of the shareholding structure; provide proof that the company has no outstanding debts with the tax authorities of any EU Member States; provide a copy of the criminal records of the directors of the applicant; provide a list and rules of games to be offered; as well as other requirements depending on the type of licence, such as the address of the place where the server is located in Belgium (online gambling licence); name and details of the bookmaker or betting organiser (F1 and F2 licences); all responsible gaming policies; advertising policy to be implemented; map outlining the structure of the future website; and description of the security and technical measures to be implemented to protect players, avoid breaches, protect payments, and so on.

Renewal of licences follows the same principles. However, under Belgian law the granting of a F1 Licence that has been released must follow a transparent, competitive and non-discriminatory award procedure. Furthermore, concession agreements, the conclusion of which is required to be granted an A Licence, are subject to the rules requiring the strict setting-up of transparent, non-discriminatory and competitive award procedures based on predetermined objective criteria. This stems from the case law of the CJEU and from the Concession Directive 2014/23, and also applies to the renewal of concession agreements (hence to the renewal of A Licences).

No particular timing is set out for the treatment of the licence applications. Finally, any applicants must first set up a bank security (prior to receiving any licence) to ensure the payment of the winnings to players. The amount of this bank guaranty varies between zero and €250,000 depending on the type of licence sought. In addition, the

25 It must be noted that non-profit associations are not allowed to apply for gambling licences.
26 Royal Decree of 22 December 2010 setting the maximum number of betting organisers and the treatment procedure for applications when a licence is released due to a withdrawal or a waiver.
27 CJEU, judgment of 16 February 2012, Costa and Cifone, joined cases C-72/10 and C-77/10, EU:C:2012:80, Paras. 54–57.
operational costs of the Gaming Commission are fully paid by the operators through an annual licensing fee, the amount of which varies between €118 and €21,163 (for the year 2016).29

ii Sanctions for non-compliance

Any licensees who breach the terms of their licences can be subject to different sanctions, varying from simple warnings to administrative fines, suspension, withdrawal of their licences, and even criminal fines, closure of the gambling venue and prison sentences. In any case, before issuing an administrative fine or any other sanctions of administrative nature, the Gaming Commission must give the offender the possibility to be heard and to remedy its breach.

The criminal sanctions applicable to illegal (offshore) operators also apply to any persons who promote the illegal operation of gambling activities or who facilitate in any way whatsoever that operation, or who advertise those activities or recruit for those operators, and as well to players who participate in illegal gambling activities.30

For the unlicensed organisation or operation of a game of chance or a gaming establishment; for illegally cumulating or transferring gambling licences; for the unlicensed provision of services requiring an E Licence; and for breach of rules applicable to D Licences, a person found guilty may be sentenced to between six months’ and five years’ imprisonment, fined between €600 and €600,000, or both.

For the advertising of illegal games of chance or gaming premises; the participation in games of chance known to be illegal; the recruitment of players for illegal gaming establishments or games of chance; a breach of rules on betting or breach of the obligation to identify anyone entering a casino or gaming hall; as well as breach of rules relating to bonuses paid to customers, a person found guilty may be fined between €156 and €150,000, subject to imprisonment for between one month and three years, or both. These sanctions may be doubled in case of a second offence within five years of a first conviction or when the offence has been committed by minors (i.e., those under 18 years old). Moreover, judges are empowered to seize the funds, materials, tools, machines and any other means used to perform the illegal activity. Finally, judges can also order the closure of the gaming premises or the withdrawal of a licence by the Gaming Commission.31

As regards breaches of the National Lottery’s monopoly, they are subject to the following sanctions under the Criminal Code.

Individuals or directors of companies found guilty of organising illegal lotteries may be sentenced to between eight days’ and three months’ imprisonment plus a fine of between €300 and €18,000. Any remaining prize money, facilities and materials linked to the illegal lottery game are forfeit to the state. If any real-estate property was offered as a prize, it will be seized by the state and the operator will be fined between €600 and €600,000. The distributors, promoters and any person who placed advertisements in any form and by any

29 Royal Decree of 29 February 2016 on the contribution to the functioning, personnel and organisational costs of the Gaming Commission due by holders of licences A, A+, B, B+, C, E, F1, F1+, F2, G1 and G2 for the civil year 2016.
30 Article 4 of the Act on Games of Chance.
31 Chapter VII of the Act on Games of Chance.
means whatsoever, may be fined between €300 and €18,000 or sentenced to between eight
days’ and one month’s imprisonment. All remaining lottery tickets would also be seized and
destroyed.32

IV WRONGDOING

Until the future adoption and entry into force of the national Act implementing the Fourth
Anti-Money Laundering Directive33 and subjecting all gambling and lottery operators to its
due diligence obligations, the current Belgian act implementing the Third AML Directive34
only applies to land-based casinos. Land-based casinos are consequently subject to due
diligence obligations, such as identification of players and final beneficiary, permanent
monitoring of the transactions above €1,000, etc.35 The Gaming Commission controls
the respect of the anti-money laundering act, in cooperation with the Belgian Financial
Intelligence Processing Unit, police forces, and public prosecutors. The same obligations and
regime (with appropriate adaptations) should soon apply to all gambling operators through
the implementation of the future act implementing the Fourth AML Directive.

However, the current gambling and lottery regime already puts in place measures
to detect and report suspicious gambling patterns and identify players in certain situations.
For instance, the National Lottery operator identifies players for any payments of winnings
above €2,000. In addition, any betting operators must register players who place bets for an
amount of €1,000 or above. All those measures already follow the purpose of fighting against
illegal gambling pattern (including match-fixing), money laundering and terrorist financing.

Finally, match-fixing as such is not set as a criminal offence under Belgian law. However,
match-fixing falls in the scope of the provisions sanctioning private corruption
and corruption of persons exercising public functions,36 and is subject to criminal sanctions
accordingly.

V TAXATION

First, it must be mentioned that winnings coming from lotteries or any other games of chance
are exempt from taxes.

Furthermore, in addition to the general corporate taxes, all gambling operators are
subject to a specific gambling tax, the rate of which depends on the type of game and on

32 Articles 302 and 303 of the Belgian Criminal Code.
system for the purposes of money laundering or terrorist financing, amending Regulation
2006/70/EC.
34 Directive 2005/60/EC of 26 October 2005 on the prevention of the use of the financial
system for the purpose of money laundering and terrorist financing.
35 See among others, Articles 4 and 9 of the Act of 11 January 1993 on the prevention of the
use of the financial system for the purpose of money laundering and terrorist financing.
36 Articles 246, 504 bis and 504 ter of the Criminal Code.
the Region of the country in which the operator provides its game.37 This tax is in principle levied on the gross gaming revenue (i.e., profits obtained by the operator after deduction of the winnings paid out to players). However, gaming machines are subject to a gambling tax in the form of a fixed amount per machine per year (differing as well per region and type of gaming machine).

The National Lottery operator does pay gambling taxes on its sports betting activities licensed under the Act on Games of Chance. On its public lottery activities the National Lottery is obliged to pay a monopoly rent, the amount of which is calculated annually and published in a royal decree, as well as ‘subsidies and special contributions’.

VI ADVERTISING AND MARKETING

As already outlined in Section III.ii, supra, advertising for unlicensed gambling activities falls under a strict ban and can lead to criminal sanctions. Thus any operators not duly licensed under Belgian law, or any other persons promoting the activities for unlicensed operators may be subject to sanctions.

However, licensed gambling operators and the National Lottery operator are both allowed to advertise for their activities, with a certain restraint in order not to undermine the consistency and the objectives pursued by the whole Belgian gambling policy.

Royal decrees are yet to be published regarding the requirements applicable to advertising for legal (online) gambling activities. In the meantime, the Gaming Commission assesses during the application process the advertising policy sought to be implemented by the future operators and may raise criticisms or ask to make modifications should the policy be deemed too aggressive. In addition to the main principles applicable to commercial advertising laid down in the Belgian Economic Code,38 gambling advertising is subject to commonly agreed rules in order to prevent risks of addiction and excessive gambling, such as: advertising is only allowed during certain hours; gambling should not be portrayed as socially attractive or as a way to have a successful life; operators must display a message stating that gambling could lead to addiction and present certain risks, etc. The non-compliance with those rules could lead to the imposition of sanctions by the Gaming Commission.

The National Lottery follows the same rules and principles but has recently signed a Code on ethical advertising. In any case, the National Lottery must advertise for its activities in a responsible manner and with a certain restraint, taking account, especially, of its missions of public services as mentioned in the Management Agreement.

VII THE YEAR IN REVIEW

As already outlined above, the National Lottery holds a monopoly in terms of online and offline lottery games, but entered into the competitive online and offline sports betting market approximately three years ago. Private betting operators filed different claims against the National Lottery alleging, for example, the illegal use of the National Lottery’s reputation

37 For information, Belgium is divided into three economic regions, namely the Flemish region, the Walloon region, and the region of Brussels-Capital.
38 Their infringement could lead to action for damages before commercial courts.
or logo to enter the competitive market; the use of customer database coming from its monopoly activity to start its sports betting activities under a competitive regime; and the establishment and signing of non-compete clauses with its retail agents. In September 2015, the Belgian Competition Authority found that the National Lottery operator effectively abused its dominant position in the lottery market to facilitate, through the use of a customer database obtained via its monopoly activity, its entry into the sports-betting market (and especially, its advertising campaign). The Authority considered that the customer database used by the National Lottery could not reasonably be reproduced by its sports betting competitors in terms of costs and time. Given the fact that this abuse was strictly limited in time, the Competition Authority reached a settlement and fined the National Lottery operator for minor offence to competition law rules.

Moreover, in July 2015, the Belgian Gaming Commission expressed its desire to modify the policy applicable to gambling activities, and in particular to gaming halls, betting outlets and virtual sports betting. Concerning gaming halls, the Gaming Commission seeks to reduce the number of authorised gaming halls from 180 to 165 in 2016 and to 150 in 2017. The Gaming Commission also aims to reduce the number of betting outlets allowed under Belgian law from 1,000 to 600.

The Gaming Commission has also planned to define, qualify and regulate virtual betting games in the near future.

Finally, in recent months, the Gaming Commission has, for the first time, fined multiple players for participating in illegal gambling activities, and has opened an investigation against a social gaming operator, leading to the transfer of the case to the public prosecutor.

VIII OUTLOOK

In the context of the infringement proceedings ‘reactivated’ in November 2013 by the European Commission, Belgium received an official request for information targeting the transparency of its gambling system as regards, especially, the rules relating to the legal conduct of online gambling businesses; the required physical presence in order to be granted an online gambling licence; and the granting to the National Lottery of a betting licence (F1 Licence). The European Commission still needs to announce whether or not to pursue or close those infringement proceedings. Therefore, Belgium could well see its case moving forward or being dropped in the coming months.

In January 2016, a commercial court of Brussels found that the offer of online casino games and betting activities on the same website was in breach of the Act on Games of Chance, since the Act prohibits the operation of land-based betting activities within the same premises as casino venues and gaming halls. However, this judgment only has legal value between the parties and cannot be regarded as an interpretative ruling. It is expected that the judgment will be overruled in appeal. Nevertheless, in a case before the Belgian Council of State, a subsidiary request for preliminary ruling before the Constitutional Court has been filed in order to know whether any difference of treatment between land-based venues (prohibition to offer betting and casino games) and online websites (provision of both

39 Commercial Court of Brussels (Flemish Chamber), judgment of 27 January 2016.
activities on the same website) is compliant with the Belgian Constitution (especially, its Articles 10 and 11 carrying the principle of non-discrimination). The case is pending before the Council of State. It is unclear where this will lead.

In general, the Belgian legal environment is very stable after some initial years of litigation mostly initiated by the remote gambling operators. As The Belgian state did win these cases, settlements were reached with all these operators who have in the meantime integrated the Belgian legal system. Today the Belgian gaming policy is often referred to as an example of a successful policy.
PHILIPPE VLAEMMINCK
Pharumlegal
Philippe Vlaemminck has more than 30 years' specialist experience in EU law (regulatory and litigation) and trade law (WTO and anti-dumping). Philippe has considerate litigation experience before the CJEU and the EFTA court (total more than 80 cases). He is widely regarded as a leading player in the current debate on state lotteries and gambling in the EU and WTO, and has been involved as a Member State representative in every gambling case before the CJEU and the EFTA court (more than 40 cases). He also acts as a legal advisor to various EU Member States on EU law, and is regularly invited as a speaker to lottery and gambling conferences and seminars or to chair panels throughout the EU. He regularly publishes articles on any topics impacting the lottery sector. Moreover, Philippe is one of the few individuals who have received the Public Gaming World Lottery Hall of Fame award, in recognition of its outstanding knowledge of the lottery and gambling sector.

LUCAS FALCO
Pharumlegal
Lucas Falco is a senior associate in Philippe Vlaemminck’s team. During the past six years, Lucas has developed an in-depth expertise in the lottery and gambling sector with a particular focus on innovative technology. Lucas regularly advises national authorities and international companies in relation to gambling and lottery laws. He is also regularly asked to draft high-level legal comparative analysis in relation to gaming and entertainment laws and has a considerable experience in litigation before all national courts, concerning all gambling-related matters in particular. Lucas has been invited as a speaker to several conferences and seminars across the EU to outline many aspects in relation to gambling laws. In addition, Lucas regularly publishes articles in international law and industry reviews.