

G-Regs™

Netherlands – Promotional Games of Chance



Full title of law or regulation	<p>The Code of Conduct for Promotional Games of Chance (<i>Gedragcode Promotieele Kansspelen 2014</i>) from the Gaming Authority (<i>Kansspelautoriteit</i>)</p> <p>http://g-regs.com/downloads/NECodeConductGamesofChanceJan14Dutch.pdf</p> <p>For context, see also the Gaming Authority website:</p> <p>http://www.kansspelautoriteit.nl/nieuws/alle-nieuwsberichten/december/1-januari-2014/</p>
Title of relevant section	All
CODE OF CONDUCT FOR PROMOTIONAL GAMES OF CHANCE 2014	
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Preamble

1. The Betting and Gaming Act forbids the offering of opportunities to compete for prizes or gifts if the winners are to be selected by chance determination over which the participants are generally unable to exercise any decisive influence, unless a licence has been issued for such activity.
2. A licence for organising promotional games of chance cannot be issued pursuant to the Betting and Gaming Act. However, if the terms and conditions described in this code of conduct are met, promotional games of chance may be organised. If this code of conduct is not met, the provider is in breach of the Betting and Gaming Act.
3. The amended code of conduct for promotional games of chance enters into force on 1 January 2014.
4. Promotional games of chance may only serve to promote a product, service or organisation and may not be operated as an independent/ autonomous activity.
5. The provider undertakes to organise a promotional game of chance in compliance with the provisions of this code of conduct. This includes not only the letter of the code but also its spirit.
6. The code of conduct for promotional games of chance will be reviewed again while drawing up the Betting and Gaming Act on remote games of chance.

Article 1**Definitions**

The following definitions apply to this code:

1. Provider: a natural or legal person who offers an opportunity to participate in a promotional game of chance.
2. Communication fees: fees directly related to bringing about a connection or contact between a provider and a participant in a promotional game of chance.
3. Participant: a natural or legal person competing for prizes or gifts in a promotional game of chance.
4. Minor: a natural person who has not attained the age of 18.
5. Parent: a parent or legal guardian of a minor.
6. Promotion: any kind of direct or indirect promotion of the brand recognition of an organisation or the sale of goods or services.
7. Promotional game of chance: giving the opportunity by way of promotion to compete for prizes or gifts where the designation of the winners takes place by a chance determination over which the participants are generally unable to exercise decisive influence.
8. Drawing: The designation of the winner(s) of prizes or gifts at a specific time.

Article 2**Time and quantity**

A provider may offer a promotional game of chance at most once a year per product, service or organisation. All promotional games of chance are temporary in nature and may comprise of no more than twenty draws.

Article 3**Fees**

1. No extra communication fees shall be associated with participation in a promotional game of chance other than those referred to in the second paragraph.
2. The provider may charge person participating in a promotional game of chance communication fees no higher than €0.45 per participation.

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3. The amount of the fees referred to in the second paragraph must be clearly made known prior to participation in a promotional game of chance.
 4. Products or services to which the opportunity of participation in a promotional game of chance is linked may not have a higher purchase price than products or services offered without such an opportunity.
 5. If requested, the provider shall provide the gaming authority with information concerning the communication fees.
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Article 4

Prizes or gifts

1. The total economic value of the available prizes or gifts shall not exceed €100,000 per year per promotional game of chance.
 2. Prior to participation, the provider of a promotional game of chance shall make clear the total value of the prize package, and which and how many prizes or gifts can be won per promotional game of chance.
 3. A description must be given of all the prizes or gifts from which the economic value can be seen or inferred.
 4. The prizes must be in accordance with good taste, public morality and decency.
 5. The designation of the winner(s) of prizes or gifts from among the participants shall be made impartially.
 6. At the request of the gaming authority, the provider shall demonstrate how the designation of winners takes place.
 7. At the request of the participant or the gaming authority, the provider shall provide an overview of the distributed prizes or gifts of the promotional game of chance.
 8. The results of a drawing shall be announced within three months after the end of the promotional game of chance.
 9. All promised prizes or gifts to which participants are entitled must be actually distributed.
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Article 5

Soliciting and promotion

1. The invitation to participate in a promotional game of chance must contain the name of the product, service or organisation being promoted. This invitation and the substantive information about a promotional game of chance shall in no way be misleading or incomplete, and shall not create false expectations among participants.
 2. The provider shall ensure that soliciting and advertising activities take place in a careful and balanced way, with particular care not to encourage immoderate participation in promotional games of chance organised by the provider.
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Article 6

Minors

1. The provider shall exercise great care and restraint when offering a promotional game of chance to minors or when inviting minors to participate in a promotional game of chance.
 2. For promotional games of chance targeting or partly targeting minors, the prizes or gifts offered must be suitable for minors and not cause them any moral, mental or physical harm. Account must be taken of the level of comprehension and the expectations of minors concerning the prizes or gifts on offer.
 3. The provider of a promotional game of chance is not allowed to collect the personal information of minors, nor have this information collected, without the verifiable
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consent of a parent of the minor, except for the need to request from the minor the contact details of his or her parent in order to obtain permission for awarding prizes or gifts.

4. The provider must make a minor's participation in a promotional game of chance conditional on permission from his or her parent.

Article 7**General game terms and conditions**

1. The provider of a promotional game of chance shall draw up general game terms and conditions. The general game terms and conditions must be provided free of charge to participants and potential participants, and must be able to be easily consulted.

2. The general game terms and conditions of a promotional game of chance must contain at least the following information:

- a. the name and address of the provider;
 - b. the name of the product, service or organisation being promoted;
 - c. the period within which participation in the promotional game of chance is possible;
 - d. the way in which the participant can participate;
 - e. the amount of any communication fees, with a maximum of €0.45 per participation;
 - f. the number of prizes or gifts to be won and their description and value;
 - g. how winners will be designated and the number of drawings;
 - h. how the winner(s) will be announced;
 - i. the date of the drawing and presentation of prizes or gifts;
 - j. a statement that participation in the promotional game of chance by a minor under 16 requires the consent of a parent;
 - k. the way in which possible taxes on games of chance are withheld or declared;
 - l. how the general game terms and conditions or any other information concerning the promotional game of chance can be obtained;
 - m. the way in which complaints concerning the promotional game of chance can be submitted and the procedure to be followed; and
 - n. a statement that the provider is acting in accordance with this code of conduct.
3. The general game terms and conditions may not be changed to the detriment of the participants during the period of a promotional game of chance.
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Article 8**Small promotional games of chance**

1. A promotional game of chance is considered a small promotional game of chance if the total value of the prizes or gifts does not exceed € 4,500.

2. The following articles of this code of conduct shall not apply to a small promotional game of chance:

- a. article 2;
 - b. article 4.1; and
 - c. article 7.
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Article 9**Complaints**

URL of source: <http://www.kansspelautoriteit.nl/nieuws/alle-nieuwsberichten/December/1-January-2014/>

1. Anyone who believes that a promotional game of chance being offered does not meet one or more provisions of this code of conduct may submit a written complaint in this regard to the provider(s) of the game.

2. If the complaint relates to a promotional game of chance that involves multiple providers, it is sufficient that the complainant files his or her complaint with one of the providers. In this case, the party addressed is deemed to be the provider of the promotional game of chance.

3. A provider is obliged to set up a complaints procedure and to announce the address and/or telephone number that can be used to file possible complaints.

4. If the complaint is not resolved to the satisfaction of the complainant, the complainant may still submit his or her complaint to the gaming authority.

5. If in derogation of the first or second paragraph a complainant files his or her complaint directly with the gaming authority, the gaming authority shall send the complaint to the provider for resolution.

Article 10**Information on the code of conduct**

For information on how this code of conduct is applied, please contact:

The Gaming Authority
P.O. Box 298
2501 CG The Hague
070-302 1300
info@kansspelautoriteit.nl

Article 11**Entry into force**

This code of conduct shall enter into force on 1 January 2014 and replace the code of conduct in force since 1 January 2006.

NOTES TO CODE OF CONDUCT FOR PROMOTIONAL GAMES OF CHANCE

Notes to the Preamble

Offering games of chance without a licence is not permitted under the Betting and Gaming Act. The law makes no distinction between games of chance with or without wager. The licensing requirement applies in principle to all types of games of chance, including promotional games of chance. This licensing requirement need not be fulfilled if the promotional games of chance satisfy the conditions laid down in this code of conduct.

The code of conduct facilitates the main objective of Dutch policy on games of chance, i.e. 'regulating and controlling games of chance, with special attention paid to preventing gambling addiction, protecting consumers and combating illegality and criminality': by setting such strict conditions, the financial risks and risks of gambling addiction for consumers will be reduced. At the same time, it meets the needs of gaming licensees and business to offer promotional games of chance, and the need of consumers to participate in promotional games of chance.

By promotional games of chance is understood: giving the opportunity by way of promotion to compete for prizes or gifts where the designation of the winners takes place by a chance determination over which the participants are generally unable to exercise decisive influence.

The games of chance referred to in the Betting and Gaming Act may also be offered as a promotional game of chance provided that the conditions of this code of conduct are met. Any intellectual property rights attached to specific games of chance or game

concepts must of course be respected.

Licensees and games of chance for which a licence is issued. Games of chance for which a licence is issued fall outside the scope of the code of conduct. However, if a licensee organises a promotional game of chance for which its own product is a prize, the licensee must also meet all requirements of the code of conduct. The promotional game of chance may be offered only if specific conditions in the licence or, for example, a specific advertising code does not prohibit this. If an unlicensed provider offers a product of a licensee, with its consent, as the prize for a promotional game of chance, this provider must meet all the requirements of the code of conduct.

Notes to article 1
Definitions

Paragraph 6. Promotion

Organising a game of chance for the sole purpose of collecting personal data violates the code of conduct.

Paragraph 7. Promotional game of chance:

In offering the promotional game of chance, the object of the promotion must be clear. In addition, the element of chance is decisive: a player may not have decisive influence on the winning of prizes or gifts.

Examples of the element of chance in promotional games of chance are:

- a. participants must send in an answer to a question. A winner will be drawn from all correct entries. The element of chance is the drawing from all correct entries;
- b. a random bag of chips containing an object that gives a right to prizes or gifts;
- c. sweepstakes in which the winners or winning elements of prizes or gifts have been determined prior to participation.

Paragraph 8. Draw:

A promotional game of chance is temporary in nature and may not comprise more than 20 draws. Multiple winners may be designated in a draw. Providers must clearly distinguish between the winners who are determined by a single draw, and the way in which winners will be announced. If a provider chooses, for example, to announce a winner every hour, it must be clear that these winners are the result of the draw on date X at time Y.

Notes to article 2 Time
and quantity

The word 'or' is used in article 2. This also includes the situation in which more than one of the named cases occurs simultaneously.

In the following, a few examples are described to indicate what falls within the framework of the code of conduct.

Example 1: A soft drink producer called FRIS may promote the brand FRIS with a promotional game of chance once per year. In addition, FRIS may promote its product FRIS Light using a promotional game of chance once per year. In the same year, FRIS may also offer a promotional game of chance for its orange juice product. The same example applies to a product's flavour variants. These are considered separate products.

Example 2: A monthly magazine may organise a draw every four weeks for the promotional game of chance that runs throughout the year to promote the magazine. Within the framework of the code of conduct, advertisers' products may be promoted in the magazine using a promotional game of chance.

Example 3: A specific series on television may be promoted with a promotional game of chance once a year. If this series is broadcast each week, one or more winners may be designated twenty times per broadcast. A series is a logical set of programme broadcasts that belong together (e.g. a series, quiz or the morning show on the radio).

Example 4: Branches are part of an organisation, but may be an independent provider of a promotional game of chance without this jeopardising the one opportunity to offer a game of chance per year per organisation. The distinguishing criterion is the local or regional character of the promotional game of chance. This means that the local or regional promotional game of chance must be distinguished from a nationally targeted promotional game of chance for the entire organisation. This can be expressed, for example, in the method of communicating with the target group or the distribution region of the promotional material.

Example: A branch of a do-it-yourself retailer in Rotterdam organises a promotional game of chance. The retailer may also organise a nationwide promotional game of chance for all of its subsidiaries. The two promotional games of chance must have a different character and stand alone.

Notes to article 3 Fees

The provider of a promotional game of chance may only charge the participant for communication fees, including VAT, possibly via an intermediary such as a telecoms company. If fees are charged to the participant that exceed € 0.45 per participation or do not fall under the definition of communication fees, these fees are considered as a wager. In which case the promotional game of chance falls outside the scope of the code of conduct. Pursuant to the Betting and Gaming Act, offering this game of chance without a licence is prohibited.

Notes to article 4 Prizes or gifts

Paragraph 1. The prizes or gifts of branches of an organisation added together in a national campaign may not exceed €100,000, exclusive of taxes on games of chance.

Paragraph 2. No other consideration may be expected of a participant to qualify for a prize than the fact he or she has verified or had verified entitlement to a prize. The decision to participate or not in promotional activities may not result in higher prizes or gifts than those that were announced prior to participating in the promotional game of chance.

Paragraph 3. It is not always possible to describe or clarify the economic value of prizes or gifts. In some cases a description of the prizes or gifts is sufficient. Example:

A prize in a promotional game of chance by a music broadcaster is a meeting with a musician. This prize does not have a specific economic value. A description of the prize prior to the drawing is sufficient.

Paragraph 5. The concept of 'impartially' can be understood in multiple ways with the awarding of prizes or gifts by:

- a. a civil-law notary;
- b. a judicial officer;
- c. a person who has no direct interest in the provider or game of chance offered;
- d. a device (for example a computer) that is able to designate winners impartially. This does not prejudice the fact that the provider may award other persons a prize, provided that this can be regarded as impartial.

Paragraph 9. This paragraph is intended to protect consumers. So-called sweepstakes are still allowed.

Notes to article 5 Soliciting and promotion

Soliciting and promotion may not be misleading. Misleading examples include:

- a. the suggestion that the recipient has already won a prize, for example by mentioning the name of the recipient on an extract from the list of winners;
- b. using imitations of cheques or other negotiable instruments without any indication that it is a 'sample' or without other indication that this is only a sample without value;

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- c. the suggestion that the recipient has a greater chance of winning a prize than other participants, by for example foreseeing the name of another with the stamp 'loser';
 - d. mentioning in large letters that the recipient has already won a prize, while a reading of the general terms and conditions indicates that the recipient has only a chance of winning;
 - e. inadequate warning is given to the recipient of the odds against winning, but instead he/ she is given the impression that he/ she has already won, and the impression is not corrected in the mailing itself but only in the attached small print or regulations;
 - f. the qualification of each recipient of a sweepstakes as a 'winner' ('everyone's a winner' method), in which a prize of minimal value is awarded.
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Notes to article 6 Minors

Paragraph 1. A special duty of care applies when offering a promotional game of chance to minors. A duty of care means taking into account the level of comprehension of minors. There is no general standard for this. However, the duty of care concerns everything that is considered normal in the average interaction with minors of a given age.

Paragraph 2. The prizes offered must be consistent with the expectations and the level of comprehension of a minor.

Example: It is not appropriate to offer a car as a prize in a promotional game of chance targeting minors.

Paragraph 4. For minors, the parents or legal guardians must consent to the participation in the promotional game of chance. The existence of consent can be verified, for example during the award ceremony.

Notes to article 7 General game terms and conditions

The provider of a promotional game of chance shall draw up general game terms and conditions and make these known to the participants. These terms and conditions may be mentioned, for example, on the product itself, the channel's teletext or on the internet site of the programme. This contains items such as the general game terms and conditions, the fee for participation and a hotline for registering complaints

Notes to article 8 Small promotional games of chance

This article sets a lower limit for small promotional games of chance. In particular, small and medium enterprises and small retailers require the possibility to offer small promotional games of chance in the promotion of products, services or organisation, without excessive administrative burdens.

Providers of prize puzzles and other small promotional games of chance also require an opportunity to make available relatively small prizes for promotion without excessive administrative burdens and restrictions in time and quantity.

Promotional games of chance with a prize package up to € 4,500 but for which the communication fees for a participant exceed the limited communication fees are not included as small promotional games of chance and must meet all the requirements of the code of conduct.

Promotional games of chance with a prize package between € 4,500 and € 100,000 for which no communication fees are charged are not counted as small promotional games of chance and must meet all the requirements of the code of conduct.

The restriction that they may be offered only once a year does not apply to small promotional games of chance. However, the temporary nature of a promotional game of chance continues to apply. Therefore multiple small promotional games of chance organised for the same product must be clearly different in character for the same product, service or organisation.

Although it is not required to prepare comprehensive game terms and conditions for a free, small promotional game of chance, it is recommended to prepare (brief) game terms and conditions in order to provide clarity for both provider and participant.

Notes to article 9
Complaints

Paragraph 1. The complaint must be duly justified.

Paragraph 4. If a complaint is filed with the gaming authority, this complaint will be handled in accordance with its complaints regulations.
