

CODE OF CONDUCT FOR PROMOTIONAL GAMES OF CHANCE 2014

"This is a translated document. The Dutch version of the document is the only applicable and authentic version."

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Preamble

1. Under the Betting and Gambling Act [*Wet op de kansspelen*] it is forbidden to provide the opportunity to compete for prizes or premiums if designation of the winners occurs by means of any determination by chance, to which the participants cannot practice any dominant influence in general, unless a licence has been issued for that game.
2. No licence may be issued for the organisation of promotional games of chance on grounds of the Betting and Gambling Act. However, if the conditions as set out in this code of conduct have been met, then it is permitted to organise promotional games of chance. From the point at which the code of conduct is no longer complied with, then the supplier is contravening the Betting and Gambling Act.
3. The amended code of conduct for promotional games of chance comes into force on 1 January 2014.
4. Promotional games of chance may only be offered to promote a product, service or organisation and may not be offered as an independent activity.
5. The supplier is obliged to organise a promotional game of chance in accordance with the provisions set out in this code of conduct. This means that the code should not only be followed to the letter, but also in the spirit of the code.
6. The code of conduct for promotional games of chance will be revised once again after the Betting and Gambling Act comes into force for regulating remote gambling.

Article 1 Definitions

In this code, the following definitions are understood to mean:

1. **Supplier:** a natural person or legal entity offering the opportunity to participate in a promotional game of chance.
2. **Communication costs:** costs that are directly connected with effecting a connection or contact between the supplier and participant of a promotional game of chance.
3. **Participant:** a natural person or legal entity competing for prizes or premiums in a promotional game of chance.
4. **Minor:** a natural person who has not yet reached the age of 18 years.
5. **Parent:** a parent or the legal representative of a minor.
6. **Promotion:** every form of promotion, whether direct or indirect, of the public profile of an organisation or the sales of goods or services.
7. **Promotional game of chance:** giving the opportunity by means of promotion to compete for prizes or premiums, whereby the designation of the winners occurs solely by means of determination by chance, to which the participants cannot practice any dominant influence in general.
8. **Draw:** the designation of the winner(s) of prizes or premiums at a particular point in time.

Article 2 Time and quantity

A supplier may offer a promotional game of chance up to a maximum of once a year per product, service or organisation. A promotional game of chance has a temporary nature and comprises twenty draws at most.

Article 3 Costs

1. Participation in a promotional game of chance may not involve any other communication costs than those cited in the second paragraph.
2. The supplier may only charge a participant communication costs amounting to EUR 0.45 at most per participation in a promotional game of chance.
3. The level of the costs cited 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 possibility is associated of participating in a promotional game of chance may not carry a higher purchase price than products or services offered without such a possibility.
5. If asked, then the provider will supply the *Kansspelautoriteit* (the Netherlands Gambling Authority) with information concerning the communication costs.

Article 4 Prizes or premiums

1. The total economic value of the prizes or premiums made available per promotional game of chance amounts to a maximum of EUR 100,000.- per year.
2. The supplier of a promotional game of chance will make it clear prior to participation what the total value is of the package of prizes and which prizes and how many prizes or premiums per promotional game of chance can be won.
3. A description must be given of all of the prizes or premiums, which will give an indication of the economic value or from which the economic value can be deduced.
4. The prizes should comply with the generally accepted standards of good taste, common decency and respectability.
5. Designation of the winner(s) of prizes or premiums from amongst the participants will take place in an impartial manner.
6. At the request of the *Kansspelautoriteit* the supplier will show how the winners are designated.
7. The supplier will provide the participant or the *Kansspelautoriteit* with a list of the prizes or premiums that have been awarded in connection with the promotional game of chance.
8. The results of the draw will be announced within three months after the end of the promotional game of chance.
9. All prizes or premiums offered to which participants have a right must actually be awarded.

Article 5 Promotion

1. The invitation to participate in a promotional game of chance must contain the name of the product, service or organisation to be promoted. This invitation, as well as the substantive information about a promotional game of chance, may not contain any misleading or incomplete information in general terms, or raise any false expectations in the participants.
2. The supplier is responsible for the promotional and advertising activities being composed in a careful and balanced manner, whereby care is taken in particular not to encourage excessive participation in the promotional games of chance organised by the supplier.

Article 6 Minors

1. The supplier must exercise the greatest care and restraint when offering a promotional game of chance to minors or calling upon minors to participate in a promotional game of chance.

2. In the case of promotional games of chance that are aimed entirely or partly at minors, the prizes or premiums offered must be suitable for minors and should not be the cause of any moral, mental or physical damage. Account should also be taken thereby of the capacity to understand and the expectations of minors in relation to the prizes or premiums offered.
3. The supplier of a promotional game of chance may not gather any personal details of minors, nor permit these to be gathered, without verifiable permission from a parent of the minor, unless that is necessary to request the minor to provide contact details of his/her parent for the purpose of gaining permission for distributing prizes or premiums.
4. The supplier informs the minor of the condition that his/her parent must give permission for the minor to participate in a promotional game of chance.

Article 7 General conditions for games

1. The supplier of a promotional game of chance must compile general conditions for games. The general conditions for games must be made available to participants and potential participants free of charge and they must be made easily available for viewing.
2. The general conditions for games of a promotional game of chance must contain at least the following details:
 - a. the name and address of the supplier;
 - b. the name of the product, service or organisation to be promoted;
 - c. the period within which participation is possible in the promotional game of chance;
 - d. the manner in which the participant can participate;
 - e. the level of any communication costs, with a maximum of EUR 0.45 per participation;
 - f. the number of prizes or premiums that can be won and a description of these as well as their value;
 - g. the manner in which the winners will be designated and the number of draws;
 - h. the manner in which the winner(s) will be announced;
 - i. the date of the draw and the presentation of the prizes or premiums;
 - j. the statement that permission must be given by a parent before a minor under the age of 16 years may participate in the promotional game of chance;
 - k. the manner in which deduction or declaration of any tax on games of chance will be effected;
 - l. the manner in which the general conditions for games and any other information concerning the promotional game of chance can be acquired;
 - m. the manner in which complaints about the promotional game of chance can be submitted and the procedure that entails; and
 - n. the statement that the supplier is acting in accordance with this code of conduct.
3. The general conditions for games may not be amended to the disadvantage of the participants during the period of validity of a promotional game of chance.

Article 8 Small promotional game of chance

1. A promotional game of chance will be designated as a small promotional game of chance if the total value of the prizes or premiums amounts to EUR 4,500.- at most.
2. The following articles in this code of conduct do not apply to a small promotional game of chance:
 - a. article 2;
 - b. article 4.1; and

c. article 7.

Article 9 Complaints

1. Anyone who thinks that the promotional game of chance on offer does not comply with one or more of the provisions set out in this code of conduct may submit a written complaint to the supplier(s) of this game.
2. In cases whereby the complaint concerning a promotional game of chance involves different suppliers, the complainant is only required to submit his/her complaint to one of the suppliers. In that case the party to whom the complaint is addressed will represent the implied supplier of the promotional game of chance.
3. A supplier is obliged to set up a complaints procedure and to make the address and/or telephone number publicly available that can be used for submitting any complaints.
4. If the complaint is not handled to the satisfaction of the complainant, then the complainant may subsequently submit his/her complaint to the *Kansspelautoriteit*.
5. If a complainant, contrary to that which is set out in the first or second paragraphs, submits his/her complaint directly to the *Kansspelautoriteit*, then the *Kansspelautoriteit* will forward the complaint to the supplier for handling by the supplier.

Article 10 Information about the code of conduct

For information about how this code of conduct works, please contact:

The *Kansspelautoriteit*
PO Box 298
2501 CG The Hague
070-302 1300
info@kansspelautoriteit.nl

Article 11 Commencement date

This code of conduct comes into force on 1 January 2014 and replaces the code of conduct that had previously been in force since 1 January 2006.

NOTES ACCOMPANYING THE CODE OF CONDUCT FOR PROMOTIONAL GAMES OF CHANCE

Notes accompanying Preamble

Under the Betting and Gambling Act it is not permitted to offer games of chance without a licence. The law does not differentiate thereby between games of chance with or without monetary stakes. The obligation to have a licence applies in principle to all types of games of chance, including promotional games of chance. However, this obligation to have a licence does not apply if promotional games of chance comply with the conditions set out in this code of conduct.

The main objective of the Dutch games of chance policy of 'regulating and managing games of chance, while paying particular attention to discouraging addiction to games of chance, the protection of the consumer and counteracting illegality and crime' is served by the code of conduct: by setting strict conditions, the financial risks and the risks of addiction to games of chance will be limited with regard to the consumers. At the same time concessions are made to the needs of games of chance licence holders and the business community to offer promotional games of chance and also to the needs of consumers to participate in promotional games of chance.

Promotional games of chance are understood to include: providing the opportunity, by means of promotion, to compete for prizes or premiums, whereby the designation of the winners occurs solely by means of determination by chance, to which the participants cannot practice any dominant influence in general.

The games of chance cited in the Betting and Gambling Act may also be offered as promotional games of chance insofar as the conditions set out in this code of conduct are complied with. Any intellectual ownership rights that are established on certain games of chance or games concepts should of course be respected.

Licence holders and games of chance for which a licence has been issued

The games of chance for which a licence has been granted fall outside the scope of applicability of the code of conduct. If a licence holder organises a promotional game of chance, whereby one of the licence holder's own products serves as a prize, then in such cases the licence holder will be required to comply with all the conditions set out in the code of conduct. The promotional game of chance may only be offered if certain condition in the licence or, for example, a specific advertising code does not forbid this. If a supplier without a licence offers a product from a licence holder, with his/her permission, as a prize in a promotional game of chance, then in that case this supplier must comply with all the conditions set out in the code of conduct.

Notes accompanying article 1 Definitions

Paragraph 6. Promotion

Organising a game of chance with the sole purpose thereby of gathering personal details does not comply with the code of conduct.

Paragraph 7. Promotional game of chance:

It must be clear when offering the promotional game of chance what the design of the promotion entails. In addition, the element of chance is a determining factor: a player may have no dominant influence over winning prizes or premiums.

Examples of the element of chance involved in promotional games of chance include:

- a. participants submit an answer to a question. A winner is chosen from all the correct answers. The element of chance lies in the draw from all the correct answers;
- b. a random packet of crisps containing an object that gives the right to prizes or premiums;
- c. sweepstakes whereby the winners or winning elements of prizes or premiums are determined prior to participation.

Paragraph 8. Draw:

A promotional game of chance has a temporary nature and involves 20 draws at most. More than one winner may be designated in any one draw. Suppliers must explicitly differentiate between winners designated by a single draw, as well as the manner in which winners are chosen. If a supplier chooses, for example, to designate a winner once every hour, then it must be clear that these winners are the result from the draw held on X date and at Y time.

Notes accompanying article 2 Time and quantity

The word 'or' is used in article 2. Included thereby is the situation that more than one of the cited cases can occur at the same time.

A few examples are described here below in order to give an indication of what is included within the framework of the code of conduct.

Example 1:

A soft drinks manufacturer called FRESH is permitted to promote the FRESH brand once a year through a promotional game of chance. In addition to this, FRESH may also promote its product FRESH Light once a year on the basis of a promotional game of chance. During the same year FRESH may also offer a promotional game of chance for its orange juice product. The same example can be given relating to varieties of flavour of a product. These are therefore considered to be separate products.

Example 2:

A monthly magazine may organise a draw once every four weeks for a promotional game of chance that runs for the whole year in the promotion of the monthly magazine. Under the scope of this code of conduct, various different products from advertisers may be advertised by means of a promotional game of chance.

Example 3:

A particular series of programmes on the television may be promoted once a year by means of a promotional game of chance. If this series is aired every week, then twenty times one or more winners may be designated per broadcast. A series of programmes is a series of broadcasts of a particular programme that logically relate to each other (such as, for example, a series, quiz or the morning show on a radio station).

Example 4:

Branches of companies form part of an organisation, but they can also be independent suppliers of a promotional game of chance without this affecting the sole possibility of an offer per year per organisation. The distinguishing criterion is based in the local or regional nature of the promotional game of chance. This means that the local or regional promotional game of chance must differentiate itself from a promotional game of chance targeted nationally for the whole organisation. This can be reflected, for example, in the manner of communication with the target group or the distribution area of the promotional material.

Example:

The branch of a DIY chain of stores in Rotterdam organises a promotional game of chance. The chain of stores may in addition organise a national game of chance for all of its branches. The two promotional games of chance must have different natures and be independent of each other.

Notes accompanying article 3 **Costs**

The supplier of a promotional game of chance may only charge communication costs, including VAT, to the participant, possibly via an intermediary such as a telecom company.

If costs are charged to the participant that fall above EUR 0.45 per participation or do not fall under the definition of communication costs, then these costs will be considered to be a stake. This will place the promotional game of chance outside the boundaries of the code of conduct. Under the Betting and Gambling Act it is forbidden to offer this game without a licence.

Notes accompanying article 4 **Prizes or premiums**

Paragraph 1. The prizes or premiums of branches of an organisation may not add up to more than EUR 100,000.- for a national campaign, excluding tax on games of chance.

Paragraph 2. No other action may be expected from a participant in exchange for being eligible for a prize than the participant being able to verify or have verified that the right to a prize exists. Whether or not a person cooperates in promotional activities may not lead to higher prizes or premiums than those announced prior to participation in the promotional game of chance.

Paragraph 3. The economic value of prizes or premiums cannot always be described or clarified. In such cases then simply a description of the prizes or premiums will suffice.

Example:

A prize in a promotional game of chance from a music station will involve a meeting with a musician. This prize has no fixed economic value. A description of the prize prior to the draw will suffice.

Paragraph 5. The notion of 'in an impartial manner' can be interpreted in the award of prizes or premiums by:

- a. a civil-law notary;
- b. a court bailiff;
- c. a person who has no direct interest in the supplier or the game on offer;
- d. an instrument (for example, a computer) that is able to designate winners in an impartial manner.

This does not affect the supplier's possibility to designate other people to be allocated a prize, as long as they qualify for this in an impartial manner.

Paragraph 9. This paragraph serves to protect the consumer. So-called sweepstakes remain permissible.

Notes accompanying article 5 Promotion

Promotion may not be misleading in any way.

A few examples of what may be misleading include the following:

- a. the suggestion that the recipient is already the winner of a prize, for example by means of reporting the name of the recipient in an excerpt from the list of winners;
- b. the use of imitations of cheques or other valuable papers, without inclusion of the printed word 'specimen' or other indication that its use involved an example of no value whatsoever;
- c. the suggestion that the recipient had a greater chance of receiving a prize than other participants, for example by providing another name together with the printed word 'loser';
- d. stating in large print that the recipient is already a prizewinner, while it appears from the general conditions that the recipient only has a chance at winning a prize;
- e. not depicting the chance of the recipient winning in a sufficiently fair light by giving the impression that the recipient has already won a prize, while this is not refuted in the mailing itself, but only in the appendix or appendices or the regulations; and
- f. by designating every recipient of a sweepstake as 'winner' ('everybody wins' method), whereby only one prize of minimal value will be awarded.

Notes accompanying article 6 Minors

Paragraph 1. A special duty of care applies in the case of minors when offering a promotional game of chance. A duty of care means that account is taken of the capacity of minors to understand. A general standard is not available for this. However, the duty of care should fit in with the average manner of acting with minors that is considered to be normal with regard to a particular age group.

Paragraph 2. The prizes offered should fit in with the expectations and capacity of minors to understand.

Example:

In the case of a promotional game of chance aimed at minors, it would not be suitable to offer a car as a prize.

Paragraph 4. The parents or legal representatives of minors should give their permission for participation in a promotional game of chance. A check can be carried out as to whether permission has been given at the time that the prizes are handed over, for example.

Notes accompanying article 7 General conditions for games

The supplier of a promotional game of chance must compile general conditions for games and make these known to the participants. These conditions can be printed on the product itself, for example, or included in the teletext of the television channel or on the website of the programme. This should include matters such as the general conditions of the game, the tariff involved in participation and details of a complaints procedure.

Notes accompanying article 8 Small promotional game of chance

A minimum is set by this article for small promotional games of chance. Particularly in the case of small to medium-sized businesses and in the retail sector the need exists to be able to offer a small promotional game of chance for promoting products, services or the organisation, without requiring too much in the way of an administrative burden.

There is also the need for suppliers of prize puzzles and other small promotional games of chance to provide the opportunity, without involving too much administrative burden and limitations in time and quantity, to make relatively small prizes available in connection with a promotion.

Promotional games of chance with a package of prizes up to EUR 4,500.-, but for which the communication costs for the participant calculate out at above the limited communication costs, will not be considered to be small promotional games of chance and they must comply with all the conditions of the code of conduct.

Promotional games of chance with a package of prizes between EUR 4,500.- and EUR 100,000.-, for which no communication costs are calculated, will not be considered to be small promotional games of chance and must comply with all the conditions of the code of conduct.

The limitation does not apply to small promotional games of chance that these can only be offered once a year. What continues to apply, however, is that a promotional game of chance must have a temporary nature. Different small promotional games of chance that are organised for one and the same product, service or organisation should therefore clearly differ in nature from each other.

Although it is not obligatory to compile extensive conditions for a game in the case of a free small promotional game of chance, it is however recommended that game conditions (possibly concise) are compiled in order to provide clarity to both the supplier as well as the participant.

Notes accompanying article 9 Complaints

Paragraph 1. The complaint should be argued soundly.

Paragraph 4. If a complaint is submitted to the *Kansspelautoriteit* then this authority will handle the complaint in accordance with its complaints procedure.