

## Limited chances: evaluation of the Dutch Gambling Authority 2012-2016

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### Summary

The *Kansspelautoriteit* (KSA - Gambling Authority) is the independent regulator for gambling. The tasks of the KSA are laid down in Article 33 of the *Wet op de Kansspelen* (WoK - Gambling Act): issuing permits to suppliers, encouraging the prevention of gambling addiction, monitoring compliance with gambling legislation, and ensuring that legislation is enforced, including the suppression of criminal activity. The KSA was founded in 2012 as a so-called ZBO, a non-departmental administrative body. This evaluation has been conducted under assignment from the *Wetenschappelijke Onderzoek- en Documentatiecentrum* (WODC - Research and Documentation Centre). The evaluation concerns the period between 2012 and 2016, the first five years of the KSA's existence. The creation of the KSA was part of the modernisation of gambling legislation. During the research period, various policy changes were made and announced, including the intention to privatise Holland Casino and the recalibration of the lottery. However, most of the significant changes for the KSA were contained in the *Wet Kansspelen op Afstand* (KOA - Online Gambling Act). The expectation was that this law would go into effect roughly one year after the KSA was founded, but as of 2017 this still has not happened. Our evaluation shows that this has had significant consequences for the performance of the KSA as well as the effectiveness of its regulation.

### Assessment framework

For this evaluation, we have developed a theoretical framework. This is based on the theory of public value by Mark Moore. This theory has become the standard when evaluating and improving public organisations, both internationally as well as in many Dutch public organisations. The theory is based on a strategic triangle in which three aspects of performance are summarised: effectiveness of policy, efficiency of the organisation, and legitimacy in/through collaboration with stakeholders. The research and this report follow the logic of this model. Chapter 2 presents the analytical framework, after which the findings are reported per aspect: effectiveness in Chapter 3, efficiency in Chapter 4, and legitimacy and collaboration in Chapter 5. Next, we discuss the balance between the three aspects in Chapter 6, which we use to draw a conclusion regarding the public value of the KSA. Finally, the research questions are answered in Chapter 7 and we formulate ten recommendations.

### Research design

The central research question is as follows: To what extent is the KSA effective and efficient? An account of the research design is given in Chapter 1 and in the appendices. An analysis of internal and public documents, interviews (29 interviews with 42 respondents) and a network analysis of an online questionnaire (N=37) were used.

## Effectiveness

Chapter 3 provides an extensive description and assessment of the effectiveness of the KSA.

The KSA has formulated the following mission: “*Voor het bewaken van een veilig en betrouwbaar kansspel aanbod*” (For monitoring safe and reliable gambling opportunities). It operates based on the following public goals: protecting and informing the consumer, suppressing gambling-related illegal and criminal activity, and the prevention of gambling addiction. It has turned out to be difficult to measure to what extent the activities of the KSA contribute to realising these goals, because no outcome indicators are used.

The KSA is not responsible for market organisation—nevertheless the activities of the KSA bring about market structuration. For instance, this is shown in the application of the so-called prioritisation criteria for online providers: online gambling games are illegal under the current legislation, but providers are not fined or prosecuted if they do not meet the prioritisation criteria. Issuing permits is not based on an explicit vision on market structuration in which the balance is established between attractive offerings and limiting risks such as addiction and criminal activity. In the deliberations of the KSA, considerations regarding competition, a level playing field, and the appeal of games rarely play a role. The current range of legal gambling games is comparable to the online supply, but they are less appealing. We did not encounter KSA considerations regarding the size of the market in relation to addiction prevalence. All in all, the current supply does not strike a good balance between creating appealing games while limiting risks such as addiction and criminal activity. Although the outdated legal framework is largely to blame for this, the KSA could have looked into the options for enabling innovation and monitoring the associated risks. The KSA sets strict requirements on innovations for parties with permits, while online providers can fully innovate their offerings as well as their method of operations for customer loyalty. With the introduction of the KOA law, the new providers have an advantage. It should be noted that this transitional phase is taking much longer than the KSA had predicted.

The process of issuing permits is transparent and explicit. Providers who request a permit know where they stand. The KSA gives attention to the integrity of permit holders and reviews them in an appropriate fashion, both in the gambling machine market, in which integrity and tax deductions are of concern, and in the lottery market, in which the reliability of systems is of concern. More attention could be paid to the improper use of permits in the gambling machine market. In the lottery market, both parties still have to adapt to the recent intensification of assessment. Although a learning process is certainly ongoing, the efforts of the KSA to make the assessment more meaningful are of great importance.

Enforcement should contribute to compliance with the WoK and prevent gambling addiction, the misleading of consumers, and criminal activity in the gambling sector. Enforcement should be risk-based. In the early years of the KSA, the inventory of risks provided too little insight into the main risks and problems in the gambling market, including the risk of addiction and new risks stemming

from technological developments. In the KSA's initial years, its risk analyses were very broad, which made the supervision primarily incident-focused. KSA risk analyses give relatively little attention to consumer behaviour and addiction prevention. With the more thematic and content-focused additions to the risk analyses that have recently been implemented, in which not only the descriptive data, but also the compliance information was used, the KSA is heading towards a more risk-based approach in which priorities are connected to the inventory of risks. The depth and precision of the risk analyses can certainly be improved in the years to come. The same is true for their transparency. The KSA must also make an effort to establish concrete goals and develop activities in response to the priorities.

Although the KSA is under the political microscope, enforcement by the KSA is decidedly independent of politics. In its enforcement, the KSA has also shown significantly little sensitivity towards the vested interests in the gambling market.

In its supervision, the KSA has placed emphasis on consumer protection and addiction prevention in the lottery market and at Holland Casino. At the same time, these are the market segments and parties for which various studies have shown that the risks are relatively limited or which have been fairly well protected. The KSA has given little priority to the slot machine sector, yet the risks there are greater. The KSA has taken enforcement action against excesses in the online market. As a result of the prioritisation criteria that the KSA considers to be a political directive, online market parties have still been able to accumulate a significant market share despite the fact that online gambling is illegal. This market has also produced a great number of problem players. The distribution of attention across the various market segments is therefore not in keeping with the risks in these segments. Furthermore, it seems as if the KSA gives more priority to the reliability of gambling than the prevention of addiction.

The enforcement by the KSA, when it does so, is effective. The KSA strikes a good balance between warning, standardisation, and sanctioning, and uses its penalty instrument proportionately. The KSA prefers to intervene in a smart manner, by throwing up barricades against the facilitation of illegal offerings rather than by sanctioning. This is efficient and effective. The KSA enforcement policy is state-of-the-art, given what has been formulated in the assessment framework. KSA provides indispensable expertise regarding the detection of illegal gambling and its partners provide a highly valued operational capacity. The KSA definitely contributes to a more effective, integral approach to tackling damaging criminal activity. This limits the risk of participation in illegal, country-specific gambling, but other negative consequences of damaging criminal activity are prevented as well.

The enforcement policy is generally transparent, but the strategy could be better fleshed out and announced sooner, so that the policy is also known.

In KSA monitoring, attention is placed on preventing consumers from being misled. The KSA's goal of playing a coordinating role in addiction prevention policy through various permit holders and social partners has yet to be fulfilled. Specifically, collaboration with the municipalities can be improved. The KSA's strategy regarding addiction prevention is quite general and contains no concrete activities

or indicators. With regard to the number of problem players, the House of Representatives set the maximum at the 2011 level. Due to the large interruptions in reliability and variations in the measurement methods throughout the years, it cannot be established whether the difference in the estimated number of problem players in 2011 (20,300) and 2016 (79,000) implies growth. Nevertheless, the KSA has made no special efforts to monitor the number of problem players or to prevent them from increasing and this maximum does not seem to have played a significant role in KSA policy with regard to addiction prevention. Compliance activities have focused on Holland Casino, while supervision in the slot machine market has been limited and has only been intensified recently after it was indicated that obligations were still not being sufficiently followed. In the online market, online addiction obviously occurs as well. However, due to the postponement of the KOA law, the KSA cannot play any role here. KSA could have made a bigger contribution to the prevention of addiction and informing consumers.

The KSA provides solicited and unsolicited advice to the ministry of safety and justice on legislation and regulations. If necessary, the KSA puts new risks on the policy agenda. This has demanded a significant amount of the available regulatory capacity in recent years. KSA policy recommendations regarding gaming legislation reflect modern views on regulation. The KSA argues for principle-based legislation. The KSA does this using based on its expertise in regulation and, recently, has also issued legislative letters, in accordance with modern views on the independent position of regulators in the policy cycle. The needs of the KSA to mitigate risks via permits and generic regulations is at odds with the political desire to combat risks with detailed regulations (rule based orientation).

KSA knowledge of regulation is state-of-the-art. Its knowledge of operational practice and the business operations of gambling providers as well as addiction prevention is still being developed.

## Efficiency

Chapter 4 describes our findings on the operations of the KSA and the efficiency of the organisation. These show that the organisation can be somewhat affluent in some areas (e.g. staff, housing, reserves), but on the other hand, it does not over-spend when compared with other regulators and/or government bureaus. The growth of the organisation is related to the expectation that the KOA law would quickly take effect after the KSA was founded. However, this did not happen.

In the meantime, the organisation has developed, also in the field of business operations. For example, the first multi-year budget was developed in 2016—an initiative that should be continued. The same is true for the expansion of management reports with more or different indicators—especially where outcomes are concerned. Finally, the investment policy could be considered further: the KSA has own reserves at its disposal that could be used instead of borrowing money.

The method of funding could also be given some more thought, but that is more the remit of the ministry. The KSA is not a market regulator like the ACM, therefore funding through the market (tariffs) is less expected. On the other hand, when the KOA law is passed, legal providers will have an interest in a 'clean' sector and could be willing to pay for this. At the practical level, charging tariffs and the legal basis for tariffs create a rather static system: changes are permitted, but have never

been made so far. More flexibility would enable the KSA to respond to market developments or vary more between market segments.

On a number of points, there is certainly room for improvement in KSA's operational capacity, but in general, we did not encounter any significant problems in the business operations of the KSA.

#### Legitimacy and collaboration with stakeholders

For the assessment of legitimacy, we used interviews and a network analysis. The results are shown in Chapter 5.

The KSA has contact with all the parties involved and collaboration takes place both domestically and abroad. Although the stakeholders are not equally satisfied about all of these contacts in all areas, the KSA enjoys a neutral to positive reputation and some degree of legitimacy among the stakeholders. According to them, the KSA is open to information and detection from the field and they can easily reach the KSA. There were some complaints about long processing times and the sometimes formal attitude of the KSA and, sometimes the treatment by individuals. Collaboration with partners in criminal prosecution is excellent, but there is room for improvement with other parties (e.g. the VAN) (see also Chapter 3).

The current permit holders find that the KSA should be more decisive in taking action against illegal (online) providers and, in addition to a more extensive and stricter approach. The new approach fits with their wish. However, self-regulation by providers has not occurred in a way that is convincing or influential. In some interviews with stakeholders, a desire was expressed for more "servitude" from the KSA with respect to the sector, something that does not fit the self-image nor tasks of the KSA. At this point, we have recommended that the KSA must do more about the management of expectations: it is not always clear to the stakeholders what the KSA does/does not do or must/can do. Finally, the self-image of the KSA is much more positive than the opinion of the stakeholders. Communication is an important means of addressing this. Also, the recently implemented track, with a more extensive and stricter approach to online gamblers, will contribute to the reputation and transparency of the KSA.

All parties seem to agree that the KSA is making great progress in spite of its young age as an organisation, but that it certainly still has a way to go. However, the need for the existence of an independent regulator in this sector is endorsed by everyone.

#### Public value

The KSA is involved with multiple goals and tasks in a complex field of stakeholders and a range of new and elusive risks. The model of public value proposes that in such a context, it is important for public organisations to properly define the public value that the organisation wants to realise. For the KSA, this leads to the question of how the KSA defines its public value, how this is translated into concrete objectives and qualitative and/or quantitative performance indicators, and to what extent these objectives have been realised. In order to create public value, public support must come from

the KSA stakeholders, there must be collaboration, and the KSA itself must have the operational capacity to realise its goals. There must be a balance between the three circles of the model. How has this taken place in the case of the KSA?

The three goals of the KSA—protecting and informing the consumer, suppressing gambling-related illegal and criminal activity, and preventing gambling addiction—offer a clear definition of the public value that the KSA wants to realise. They are also unchallenged and shared by all stakeholders. The KSA, as a regulator, and the goals that it sets are also legitimate. In its five-year existence, the KSA has generated public support for the organisation and its duties.

However, the realisation of public value and the effectiveness of the organisation still fall short in the eyes of many stakeholders. The KSA has made a very valuable contribution to the suppression of damaging criminal activity, both in terms of operations and by providing training. The KSA has also effectively taken action against certain sectors of the online gaming market, but the important areas remain undisturbed. In recent years, the public value of the KSA has focused on the monitoring of lotteries, the prevention of misleading advertising, and maintaining the level of addiction prevention at Holland Casino. Since there are no serious issues for these points that would not be resolved without the KSA, the advantage of the KSA has remained limited. These KSA priorities do not reflect the greatest risks in the gambling market. The KSA has ultimately not lived up to its goals for addiction prevention. The importance of addiction prevention is unchallenged in the market, but opinions differ on what the right approach is and not every provider translates these good intentions into practice. KSA's public value would be greater if it would place addiction prevention first in its priorities and work towards it with the same urgency with which it addresses suppression of criminal activity. In short, although public support exists for the public value as defined by the KSA, this value has not been realised by the KSA in a number of important areas. Primarily, the KSA can improve its public value if it were to set more precise priorities and concrete goals, specifically with regard to the desired outcomes of gambling regulations.

The KSA is an organisation in development and has come to the same conclusions itself on several of the aforementioned points. The KSA has already implemented or begun working on improvements for many points. However, this is not always visible to the outside world. The self-image of the KSA does not always coincide with the image that the stakeholders actually have. That affects the legitimacy and potentially even the effectiveness of the supervision, which is why it must be improved. However, our research shows that the operations of the KSA are in good order and it is prepared for the expansion of its regulatory tasks when it comes to staffing, organisation, and resources. The staff members are also skilled in the area of regulation. A deeper understanding and sense of operational practice in the gambling market can still be improved, e.g. by involving more people from the sector itself and prioritising multidisciplinary skills and diversity in the strategic staffing policy. With regard to addiction treatment, more expertise can be gained. In the next stage of its existence, the KSA can further develop into an expertise centre, because there is a need for scientific and practical knowledge regarding effective prevention of addiction. This can draw on best practices from abroad or other regulators that already have experience with utilising behavioural insights. The KSA can also gain authority and legitimacy by acting in both a preventive and suppressive manner.

The gap between the mission and the objectives of the KSA, as well as the realisation of these, results in a lack of legitimacy. However, this largely stems from waiting for the KOA law. This has resulted in little attention from the KSA for enforcing the WoK. The lack of effectiveness on the part of the KSA therefore limits its legitimacy, but on the other hand, it is also true that the lack of a legal framework for the regulation of online gambling limits the effectiveness of the KSA in light of societal expectations. The dynamics, interests, and lack of clarity surrounding the modernisation of gambling legislation has led to significant differences in expectations among the various stakeholders for how the KSA should act, sometimes resulting in the feeling that it “never does it right.” The relationship between the authorising environment and the KSA is problematic from both ends. The political and policy-based environment has left the KSA in an insufficient position to realise public value. The legitimacy of the KSA will therefore increase if the political and policy-based mandate and the policy and legislative framework remain explicit. That will also contribute to it improving the effectiveness of its operations.

When collaborating with the stakeholders, the KSA is accessible and approachable, but does not know how to mobilise its social arms in order to achieve its objectives. The KSA communicates often, but performs its regulatory acts as a solitary unit far too often. Its good collaboration in suppressing damaging criminal activity is an exception to this and immediately leads to a high degree of effectiveness. For a regulator such as the KSA, collaboration is essential in order to realise goals. The fact that this still does not happen sufficiently leads to critiques regarding a (perceived) lack of action—even by politicians—on the one hand, and may lead to the KSA being blamed for trying to stress its distinctive features too hard in its communication strategy, on the other. The first issue is partly the result of the KSA’s decision to expect self-regulation – as is appropriate for modern regulation – but we also got the impression that the KSA could and should develop more concrete activities in various areas in order to stimulate effective self-regulation, e.g. through more intense regulation of the compliance by permit holders. More structural transparency of analyses and strategy would contribute to a better understanding of the KSA’s decisions.

In summary, the KSA enjoys legitimacy when it concerns its existence and objectives, but the realisation of these objectives must further be developed. A clearer mandate would put the KSA in a position to act more effectively and gain more legitimacy. Better collaboration with stakeholders may also increase its effectiveness. Therefore, the KSA certainly has the potential and the capacity to realise public value, but this can be improved even more in the years to come, provided it is put in a better position to do so.

## Recommendations

Based on the research, the following recommendations have been made (see Chapter 7 for an explanation):

1. The KOA law should be adopted and implemented as soon as possible.

2. Currently, the repositioning of the KSA is not being discussed, but over time it should be considered whether to bring it under the umbrella of a different ministry (such as Economic Affairs) perhaps as a part of the ACM or independently.
3. The KSA must develop a market vision in which attention is given to the consequences for market structuration. This must become a part of the regulatory strategy.
4. The KSA must translate its regulatory strategy and risk analyses into concrete activities and goals that are measurable more often, not only at the level of output, but also at the level of outcome.
5. The KSA must fulfil its role regarding the stimulation of addiction prevention in a more active and concrete way. It is important to formulate goals for these and not just conduct research. In this area, there should also be more investment into contacts with and information to the municipalities.
6. The KSA can give more attention to strategic staffing policy, multidisciplinary skills, and the diversity of its staff (in terms of origins and experience).
7. The current management construction seems too complex for a relatively small organisation and also deviates from what is common for these types of public bodies. For this reason, the board model should be re-evaluated.
8. The Ministry of Safety and Justice must invest more in the professionalisation of the relationship with the KSA (more priority, more continuity) and its own knowledge of regulation and regulators.
9. Gambling legislation should use a more principle-based approach. Certain regulations are currently overly detailed and antiquated, which can result in a legal vacuum and/or excessively complicated procedures (e.g. for permit applications).
10. The current way in which the tariff financing has been arranged should be reconsidered. There is currently no recalculation mechanism and in terms of financial arrangements, it deviates from common practices for public bodies.