

Title:**The liberalization and (re)regulation of Dutch gambling markets: national consequences of the changing European context.**

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Abstract

This paper deals with the liberalization of Dutch gambling markets, in particular the (re)regulation of these markets after 2002. It is argued that during the 1990s a neo-liberal ‘risk-regime’ of gambling regulation replaced the traditional moralizing and restrictive gambling policies. However, this risk-regime has recently been challenged by the development of Internet gambling, the discussions about the ‘service directive’ in the European Parliament and cases brought to the European Court of Justice. These circumstances are redefining the European context for national gambling policies and gambling organizations. In combination with a growing risk-awareness, this changing context has caused the Dutch government to reconsider its gambling policies. This paper outlines the basic features of the ‘risk-regime’ of gambling regulation, and makes clear that after a decade of great leniency and tremendous market growth, the Dutch gambling markets, including casinos, lotteries and slot machines, were confronted with second thoughts and serious backwashes.

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1. Introduction

In the past few decades gambling markets in many countries have been legalized and liberalized. Especially since the 1990s, these markets have expanded significantly. The visibility of gambling has increased through sensational advertising, the establishment of luxurious amusement arcades and casinos at top locations, the spread of electronic gaming machines (EGMs) in many jurisdictions, and spectacular gaming shows on television. Gambling organizations and their products have become ubiquitous, and the returns of most gambling markets have grown enormously. Gambling can now be reckoned to be among the fastest growing industries in the world; the proliferation of gambling is indeed a global phenomenon (McMillen 1996; Eadington 1997; Reith 2002). The most recent development is the virtualization of gambling markets through forms of remote gambling, such as Internet gambling, which has had the consequence of challenging traditionally tight state sovereignty in many national gambling jurisdictions.

The world-wide expansion, liberalization and virtualization of gambling markets concerns a specific form of gambling, that is gambling as commercial entertainment. With the rise of the post-modern consumer society gambling has generally come to be regarded as an acceptable leisure-time pursuit. Gambling can, at least in some of its forms, be regarded as 'edgework', characterized by voluntary risk-taking as an end in itself, similar to other kinds of risky leisure pursuits like sky-diving, mountaineering or drug taking (Lyng 2005). Paradoxically, gambling in its commoditized shapes is marketed and presented as a 'safe risk', in which the risks of gambling are largely (claimed to be) brought under control (Gephart 2001).

In the Netherlands the expansion wave of gambling entertainment included the legalisation of slot machines (1986), the expansion of the number of legal casinos to thirteen, the introduction of the Postcode Lottery (1989) and the denationalisation of the State Lottery (1992). The Dutch government seems to treat gambling increasingly as a free market in the entertainment economy. The reverse side of this, however, is that in the same period the problematic of gambling addiction increased as well. In the Netherlands in the early 1990s the social unrest over gambling addiction increased significantly, notably through media attention. Initially this concern was mainly directed at slot machines but soon this concern spread over almost the entire field of gambling. Treatment centres for addiction developed specific information campaigns and treatment programmes for problem gamblers. Social-

scientific researches are conducted in order to map the prevalence of gambling addiction (Kingma 1993; Koeter 1996; Bruin de, Meijerman et al. 2005). Within the national gambling policy the turmoil over gambling addiction, and the crime associated with this, was even translated into measures to freeze and curb gambling markets (Ministerie van Justitie 1995). Gambling addiction also appears as a major concern in the field of gambling studies (Smith, Hodgins et al. 2007).

The negative side-effects of the expansion of commercial gambling markets not necessarily undermine the expansion and treatment of gambling as a free entertainment market, if we conceive of gambling markets as part of what Ulrich Beck has described as the *Risk Society* (Beck 1992). Then gambling is regarded as a type of 'risky consumption' (Cosgrave 2006). Gambling organizations - lotteries, casinos, amusement arcades and bingo-halls - offer risks for consumption, but also project risks onto their environments due to the possible dangers and harms related to gambling addiction and crime. These organizations bring promises of financial gain to operators, local communities and states as well as to the gamblers, but at the same time these ventures are associated with the possibilities of the negative consequences of financial loss, corruption, theft, moral decay, the disruption of family lives, and even the suicide of gambling addicts. Contemporary gambling organizations are therefore increasingly associated with, and involved in, risk regulation and risk management.

In this paper I will argue that in the Netherlands indeed a neo-liberal 'risk regulation regime' (Hood, et al. 2001) for gambling markets seems to have emerged. This regime treats gambling as a legitimate entertainment market and regulates these markets through their external effects, the returns as well as the negative side effects. However, recently this risk-regulation regime seems to crumble due to a new focus on market restrictions in the reregulation of gambling markets that took place since 2002. The new focus on market restrictions seems to be partly motivated and reinforced by market interferences on the level of the European Union, which, paradoxically, favors neo-liberal market conditions like the free movement of persons and trade. The new restrictive policies, the reregulations and the role of the European Union will be addressed in the second part of the paper.

2. The risk-regulation regime

The integration of risks in gambling policies and the dynamics of risk management take shape in the context of the development of a new regime of gambling regulation. In *The Gambling*

Complex (Kingma 2002), I analysed this regime in terms of the ‘risk model’. Typical features of the risk model are: a) a liberal political consensus on the legitimacy of gambling as commercial entertainment; b) acknowledgement of the economical importance of the gambling sector; and c) control of gambling markets, primarily to confront the risks of addiction and crime. The rise of the risk model should be understood as part of a ‘paradigm shift’ (Kuhn 1970) in regulation, leaving behind a former regulation model, which I called the ‘alibi model’. In discourses characterized by alibis, gambling is still intrinsically controversial and considered a vice. Gambling can be legalized to avoid illegal markets, and the exploitation of gambling is severely restricted by discouraging the private pursuit of profit, and by allocating gambling revenues to social interests, in terms of welfare, sports and other ‘just causes’. Because of the restrictive policies and the central role of the government in organizing gambling markets, the alibi model closely concurs with the principles of the welfare state. The alibi model is best understood as an intermediary regulation model in between the risk model and the prohibition model, in which gambling is considered morally wrong and legally fought as much as possible. *Table 1* gives an overview of the succeeding regulation models.

It should be stressed that gambling organizations are part of complex networks, which involve economic as well as state and civil society related organizations. The state is probably the most important gambling organization in general terms, especially if it has a monopoly on gambling. Regulatory issues raised by the neo-liberal state regarding public financing and

TABLE 1	Prohibition model	Alibi model	Risk model
Moral meaning of gambling:	It's a sin	It's a vice	It's entertainment
Political strategy:	Conflict	Compromise	Consensus
Rationale for gambling law:	Gambling is considered dysfunctional for social order	Gambling can be valued as a social activity, and legalization can be important for countering illegal markets.	Gambling markets are economically important
Destination of returns:	Returns, if any, only go to the treasury	Good causes	Private profit is also allowed
Central concern:	Fighting the exploitation of gambling	Criminal involvement in gambling enterprises	External effects like gambling excesses and problem gambling.
Exploitation:	Illegal enterprises	Oligopolies	High-risk organizations
Controlling institutions:	Policing	Legal norms and social values	Scientific research and health care
Idealtypical state:	The nation state	The welfare state	The risk society
Derived from: <i>S. Kingma, The Gambling Complex, 2002</i>			

social responsibilities, as well as the globalization of gambling, are particularly relevant here (Della Sala 2004). In most jurisdictions the state has, to a greater or lesser extent, not only a role in the regulation of gambling, but also in the operation of gambling enterprises and in the

distribution of revenues (Kingma and Van Lier 2006). Government, commerce and science each influence the perception of risk. How are risks translated and affected in terms of the various interests? How do changing interests affect the perception of risk? These are the central concerns guiding the regulation of gambling in the risk society.

In the risk-regime of regulation (self-) regulation at the level of organizations is as important as state-regulation by government agencies. Organizations are both centers for processing and handling risks and potential producers and exporters of risk (Hutter and Power 2005). In the particular case of gambling, risk management does not pertain only to the managing of negative consequences to individuals that arise through their participation in gambling activities. It refers also to the potential consequences faced by organizations through their production of gambling addicts and other undesirable outcomes. As a significant feature of the risk faced here relates to organizational legitimacy, the way gambling activities become defined, known, and communicated to the public relates directly to the risk-managing practices of gambling organizations.

Gambling organizations therefore seek to minimize (or negate) gambling risks, but have to acknowledge at the same time that the risks are to a certain extent inevitable and beyond the control of individuals, organizations or even states. Particularly with state-run gambling enterprises, the social benefits must be perceived by the public to outweigh the social costs: risks must be seen as managed and manageable. Indeed, in the context of gambling legalization, most states argue that if they fail to legalize, neighbouring states will, or gambling will proliferate illegally.

The existence of problem gambling has prompted political concern with harms, producing forms of 'sub-politics' (Beck 1992, pp 183-187) that are taking over the leading role of politics in dealing with problem gambling. As Beck argues: 'Governmental monitoring agencies and a risk-sensitive media publicity sphere begin to talk their way into and govern the "intimate sphere" of plant management.' (p.186). A feature of gambling organizations' management of risks is the need to demonstrate that gambling-related social problems can be successfully controlled. This is one of the major assumptions of the risk model of regulation, which in its pure form is grounded on cost-benefit analyses. Gambling organizations increasingly depend upon scientific analyses of the external effects of their games. This is how gambling organizations legitimate their interests in the activity, and for possible expansion of the market (Kingma 2004). The use of science here relies on a logic of control that assumes the scientific manageability of problems; at any rate science is a tool of legitimation, and the use of numbers and statistics is particularly significant, specifically in

terms of the 'prevalence' of problem gambling. In any case since the early 1990s researches into the prevalence of problem gambling figure prominently in the debate on gambling regulations. The most recent research indicates that in the Netherlands there must be some 40.000 problem gamblers, mostly associated with casino's and slot-machines (Bruin de, Meijerman et al. 2005). Characteristic of the focus on risk in gambling regulations is a distinction between so called high-risk games, like casino games, and low-risk games, like lotteries.

The interest in risk-management within gambling enterprises like casinos and arcades has led several casino companies and state-run gambling agencies to develop so-called 'responsible gambling policies'. In the case of high-risk gambling organizations like casinos, such programs often include, next to information campaigns and treatment programs, a strategy of 'self-exclusion' to limit access to gaming opportunities for problem gamblers, which, in turn, aids in the elimination or reduction of harm experiences (Blaszczynski, Ladouceur et al. 2007). These strategies are typical 'technologies of agency' (Dean 1999), which engage us as active and free consumers, and as 'agents capable of taking control of our own risk'.

According to Blaszczynski et. al. (2007) a self-exclusion program for casinos was first formally constituted in Manitoba, Canada in 1989, and in 1996 the Missouri Gaming Commission implemented the first such program in the USA. Currently, self-exclusion programs operate in many casinos worldwide. Although not mentioned as such by Blaszczynski et.al. (2007), the Dutch casino monopoly, Holland Casino, should be regarded as one of the first and most advanced casino companies in the area of responsible gambling and self-exclusion programs. This self-exclusion program has also been seriously evaluated (Bruin de and Leenders 2001). The research clearly states that 2.1 per cent of the gamblers at Holland casino are 'problem gamblers', which, apparently, seems to be an acceptable percentage.

The risk-regime of regulation that has emerged in the field of gambling includes, in short, both the introduction of the principle of cost-benefit analyses as a standard for policy making, and the reinforcement of self-regulation mechanisms on the level of organizations and individuals, in order to prevent and deal with the adverse consequences of commercial gambling. To a considerable extent a governance approach towards risk, in which risk 'represents a specific way in which aspects of reality can be conceptualized and rendered controllable' (Taylor-gooby and Zinn 2006, p.45), has been adopted in Dutch gambling policies. Since there is widespread recognition now that gambling risks are endemic, the issue

seems to have become one of managing an acceptable level of risk, rather than the elimination of risks. In this way in particular the Dutch casinos and amusement arcades offer strong examples of ERM (enterprise risk management), as defined by Power (2007). According to Power the rise of ERM represents a new phase of corporate governance. In this new phase internal control becomes as important, and sometimes takes precedence over, external control and regulations. Self-regulation and compliance to normative rules of organizational conduct becomes the new standard to which external control agencies develop a complementary role. In the process the work of external control agencies, which primarily becomes relevant in the case of (repeated) failure of internal controls, is redefined in terms of meta-control or 'the control of control'.

3. Neo-conservative reregulation?

3.1 The risk-regime

The succession of the restrictive alibi-model by risk-model principles of regulation became apparent in the decisions concerning, and developments following, the legalization of the slot machines in 1986, the expansion of the number of casinos in the late 1980s and in the legalisation of the instant lottery in 1993 (Kingma 2004). In the debates concerning these decisions economic motives were taking precedence over moral concerns and gaming addiction emerged as a relevant issue for regulation. The expansion of the gambling market as a whole and the growing concern about addiction led to a 'legitimation crisis' (Habermas 1973) in Dutch gambling policies, because the expansion of the market was in many cases justified by pragmatic reasons, rather than by sound legal argumentations. In fact, because of the growing concern over gambling addiction this unclear situation in 1995 led to a government decision, following the policy report *Games of Chance Revisited* (Ministerie van Justitie 1995) to for that moment freeze the gambling market.

A prominent and clear expression of the risk principles of regulation in Dutch gambling policies, as theoretically indicated in the previous section, could be found in the report published in 2000 by the MDW-study group on the Dutch gambling act (MDW-werkgroep-kansspelen 2000; Huls 2004). MDW [Mededinging, deregulering, wetgevingskwaliteit] stands for 'competition', 'deregulation' and 'quality of law'. With the MDW program the Dutch government sought to explore the options for the introduction of neo-liberal principles of governance in a wide range of policy areas, principles such as privatisation, market mechanisms, empowerment and self-regulation. The objective was to

reduce and simplify government rules that hindered the development of civil initiatives and business ventures, and at the same time to enhance the efficacy and efficiency of government. Gambling law was selected as one of the potential areas of interest. The objective of the study group on gambling was 'to research the options to improve the performance and perseverance of Dutch gambling law'. It is important to note that the MDW procedure merely had in mind the study of the policy options and not directly aimed at policy changes and interventions, although the political decision to include gambling law in the MDW procedure, comparable to for instance the law on taxi drivers or the law on the opening hours of shops, clearly indicated that the government at that time considered a neo-liberal turn in this policy area.

In its problem definition regarding the gambling policies of the 1990s the MDW-report stated that these policies were no longer adequate to deal with a number of social, technological, legal and international developments. In particular the development of promotional television games and Internet gambling, the increasing cultural acceptance of gambling and the rapid market expansion would, as expected by the officials that put together the MDW report, in time lead to an increasing diversity and increasing scale of the gambling industry. The study group practically defined its objectives in terms of the introduction of a risk-regulation regime, by stating that the study group would search for 'a right balance between on the one hand the public interest, in particular by preventing addiction and crime, and on the other hand preventing the imposition of unnecessary limitations on market freedoms'. In order to reach such a regime the report considered that more market competition would be necessary, in particularly the gambling monopolies should be opened. This also counted for the 'closed system' regarding the distribution of revenues to state and civil society interests like the 'good causes' associated with gambling. The study group aimed for instituting a 'level playing field' for gambling corporations. In its gambling regulations the government should further give less detailed prescriptions and set more consistent conditions for gambling operations. In this respect the study group made a plea for the implementation of a system of 'legal conditioned self-regulation', notably regarding the prevention of under aged gambling, consumer protection and the setting of operational standards for gambling technologies. In addition the government should more closely monitor the gambling market. A final significant consideration was that a strict national ordering of the gambling market would not hold because of globalization, notably the development of Internet gambling. Therefore the MDW report advised to liberalize the Dutch market and to open the market, ultimately, for foreign providers.

The study group itself qualified the recommendations for market liberalization of the MDW report in terms of a 'radical turn' in Dutch gambling policies. The study group was convinced, however, that the recommended changes would in the longer run, in a period of about 5 years when a new gambling law could be anticipated, provide the best preparation for the technological and socio-economic challenges faced by the gambling industry.

3.2 The restrictive turn

Since we are now well over this 5 year period and a draft for a new gambling law has been publicized (in august 2007), it is interesting to learn how Dutch gambling policies have progressed since the MDW report, and what in fact happened with its recommendations. Although during this period gambling policies have been intensively debated, many initiatives have been taken and a new encompassing law has been conceived, virtually nothing remains from the recommendations to liberalize the market as proposed by the year 2000 MDW report. In fact, recently the most concrete liberalizing proposals following the MDW report, namely to allow promotional gambling games and to have an experiment with Internet gambling, have been turned down. What is more, the draft for the new Dutch gambling act does not at all follow the logic of the MDW report. Quite the contrary, instead of a radical turn by instituting a new risk-regime of gambling regulation, the new law takes a regressive turn by reverting to the principles of the 1964 Gambling Act. And these principles are exemplary for the alibi-model of regulation (Kingma 2002). In its rationale the draft for the new gambling act explicitly reverts to the 1964 gambling act and its principle of 'channeling' [kanalisatie] (Memorie-van-toelichting 2007, p.2). This means that in response to a market demand and illegal supply of gambling products, a restricted and legal alternative will be offered under strict external government control. The explicit intention of this approach is to keep the supply of gambling products below the level of market demand, to restrict market competition between providers as much as possible and to restrict the exploitation of gambling for private profit. This means that gambling monopolies and the allocation of the revenues for public funds, charities and good causes remain primary features of Dutch gambling policies, and that market extensions are only conceivable in direct reference to illegal parallel markets.

The return towards a traditional restrictive gambling policy seems unmistakable and could be referred to as a neo-conservative instance of reregulation. To which extent is this qualification justified, and how can we account for this remarkable turn, given the sharp deviation from the trajectory as proposed by the MDW report?

Of course, the new law, as it was proposed, does not lead us back to the 1964 legal and market situations. The new law claims to bring the legal provisions for gambling ‘up to date’ and even to ‘modernise’ them. In particular the terms of gambling licenses, notably regarding the percentages of the stakes that have to be paid out in prizes, are made more equal over the various gambling operators. And government control over gambling is made more effective and efficient by centralizing control and by introducing a refined system of sanctions. However, as said, the monopoly system continues, the entrepreneurial freedoms of operators are very restricted, and market expansions are kept at a minimum. The new law did anticipate an ‘experiment’ with Internet gambling, to be offered in a monopoly structure by Holland Casino, but parliament recently blocked the temporary provision which would have enabled this.¹ It is not only because the new law is restrictive, which is not ruled out in a risk-regime of regulation, but because the rationale of the law and the ordering of the market, in particular the system of gambling monopolies and the focus on tight state control, that one could speak of a neo-conservative turn and the reinforcement of the alibi-model of regulation.

The major difference between the new proposed law and the alibi-model, as underlying the 1964 Gambling Act, seems to be that gambling restrictions are not any longer informed by the moral condemnation of gambling, at least not in a direct and obvious way. Gambling markets are restricted in order to reduce negative side-effects like gambling addiction and crime. However, it is not an increase or re-evaluation of such side-effects that primarily motivated the restrictive turn, which could very well have been in line with a risk approach. Nor does the new law strictly aim at addressing and mitigating side-effects. It is a fear of possible negative consequences and a loss of government control that in the new law makes gambling itself suspicious and an object of restrictive interventions. In this sense, the perception of possible negative consequences affects the moral meaning of gambling. In fact the new law clearly defines gambling as a suspicious activity. It states, contrary to the MDW report, that ‘gambling should not be regarded as a normal economic market’, because it carries the risks of addiction, fraud and deceit (Memorie-van-toelichting 2007, p.2). This feature alone, the fact that they *carry a risk*, and not the fact that there are signs that they increasingly materialize risks, seems to justify the restrictive measures turn taken by the Dutch government. With the new law the government seeks to rule out in advance the possibility of gambling markets causing trouble and getting out of control.

¹ The law for internet gambling passed the house of commons [tweede kamer] but was on april 1 2008 narrowly voted down, with 35 against 37 votes, by the house of lords [eerste kamer].

The question is why and how the government opted for this restrictive trajectory, instead of the one projected by the MDW study group. Initially, following the publication of the MDW report, plans were made to follow a trajectory in line with the MDW proposals (Ministerie-van-Justitie 2002). This included policies to firmly fight illegal gambling on the one hand and plans to legalize promotional gambling games and to expand the number of casinos and lotteries in the Netherlands on the other. These plans were expressed in the ‘first gambling policy report’ as presented to Parliament on June 5 2002. (Eerste-voortgangsrapportage-kansspelen 2002).

However, shortly after that, in July 2002, a new government was installed which ended the dominance of social-liberal policies, so called ‘third-way’ policies as they had dominated the 1990s and which also informed the MDW policy trajectories. The new neo-conservative government led by the ‘confessionals’ reflected a significant change in the power balance within Dutch politics. In this new government the Ministry of Justice, with a primary responsibility for gambling law, was headed by Minister Donner, one of the ideological leaders of the Christian Democrats (CDA) who also happened to have a personal background in gambling policies. Shortly after he came into office he announced a change in gambling policies. He clearly expressed his views on gambling policies in a meeting for which most of the Dutch gambling regulators and operators were invited, views which became the basis of the ‘second gambling policy report’ as presented to Parliament on March 31 2003 (Tweede-voortgangsrapportage-kansspelen 2003). In this document the restrictive turn and the objectives for the new gambling act were formulated, including the founding principles that reflected the alibi-model of regulation as indicated above. In this document also the plans for legalizing promotional gambling games and for expanding the casino and lottery markets were abandoned or postponed, awaiting new research in the prevalence of gambling addiction. In addition, about a year later, the Minister of Justice declared in a letter to Parliament that gambling advertising was causing concern and was thought to be deviating from a restrictive gambling policy.² However, the plan to have an experiment with Internet gambling was for that moment continued, in order to offer a legal and controlled alternative to Dutch gamblers for the illegal, international supply of e-gaming. This conforms to the alibi line of reasoning. In short, the reorganisation plans as outlined by the MDW study group were selectively adopted. While plans to enhance government control over gambling were carried through, the plans for market expansion and deregulation were at the same time abandoned.

² Kamerstukken II, 2004/06, 24 036, 24 557, nr.310

3.3 The European context

So far it seems that the restrictive turn was primarily informed by a domestic change of the power balance in Dutch politics. However, the neo-conservative turn would most likely not have been as effective in case this turn had not been supported by international developments, notably at the regulatory level of the European Union. Regulatory EU policies in view of the common market usually aim at establishing a level playing field for corporations by enhancing market harmonisations and conditions for the free movement of persons and trade across the EU. Therefore the EU typically reinforces neo-liberal policies focussed on the establishment of free market conditions, unless there are compelling reasons not to do so and to leave market regulations, in reference to the principle of subsidiarity, to the authority of national governments. In fact, since 1992 gambling markets were explicitly regarded by the EU as a national competency, because of the controversial nature of these markets and the national interests involved. However in 2004, in the context of the decision making concerning the 'service directive', which is directed at removing the restrictions on the internal market for services – a motive similar to the Dutch MDW programme, the issue was brought up again. In this process the application of the principle of subsidiarity was put to the test. Ultimately, in 2006, gambling was excluded from the service directive and also from the e-commerce directive, which means that the EU will not introduce gambling legislation and that national gambling regulation will not be liberalized and harmonized because of the EU. In principle national government has the authority to develop its own gambling laws and regulations, provided that it adheres to general regulatory principles as adopted by the EU, like the free movement of services (article 49 of the EU treaty) and the freedom of establishment (article 43).

These last principles can, for instance in view of national gambling restrictions, be lifted under specific circumstances and for good reasons only. It is these circumstances and reasons that have become the subject of political and legal controversy, and which are setting new conditions for national gambling regulations. Jurisprudence has developed in which the circumstances and reasons for restrictions are further defined by the European Court of Justice (ECJ), notably in court cases dealing with sports betting concerning Gambelli (2003) and Placanica (2007). Generally it is concluded from such cases, also by the Dutch government, that national governments are allowed to restrict gambling markets for reasons of public interest and consumer protection. The restrictions, however, must be necessary, consistent, systematic, non-discriminatory and proportionate to the specified policy objectives. These

circumstances are being challenged not only by gambling companies trying to intervene on foreign markets, but also by the European Commission (EC) in so called infringement procedures. Such procedures are generally started based on complaints by providers of gambling services. In an infringement procedure the EC questions the compatibility of restrictive measures with EU law, like Article 49 of the Treaty. In the case of the Dutch sports betting monopoly the EC maintained that:

‘A Member State cannot invoke the need to restrict its citizens’ access to gambling services if at the same time it incites and encourages them to participate in state lotteries, games of chance or betting which benefits the state’s finances. The Commission considers that in both Greece and the Netherlands the recent introduction of new addictive games, intensive and increasing advertising, and the absence of concrete measures against gambling addiction together constitute clear evidence of the absence of a consistent and systematic policy aimed at genuinely reducing gambling opportunities’.³

In april 2006 the EC started its infringement procedure against the Netherlands, together with six other EU members. While the Dutch government is convinced that the restrictions of the Dutch gambling policy are in line with the framework offered by the ECJ, the infringement procedure makes clear that the EC is persistent and explores all options to liberalize gambling markets. The Dutch government has responded in detail to the infringements by the EC.⁴ It clearly stresses that the allocation of gambling revenues for public causes should be understood in relation to the traditional ‘moral and channelling’ objectives of Dutch gambling policies. It stresses in addition the consideration that gambling should not be exploited for private profit. In its response to the EC, the Dutch government argues that the allocation of gambling revenues to the treasury, to good causes and to charities should not be regarded as the objective but as a ‘positive side-effect of Dutch gambling policies, which are aimed at controlling and regulating gambling’. The Dutch government also complains that the EC is turning around the onus of proof, in its allegation that sports-betting (the primary objective of the infringement procedure) in the Netherlands is not intended for countering illegal practices because the Dutch government allegedly didn’t provide sufficient proof of the actual existence of such illegal practices. In a similar way the Dutch government denied that the planned experiment with Internet gambling signalled a relaxation of gambling policies, but

³ IP/08/330, Brussels, 28 February 2008.

⁴ Reactie op kanttekeningen Commissie bij het Nederlandse kansspelbeleid, Kamerstukken II, 2006-2007, 24 557, nr. 77.

should instead, also be understood as a restrictive legal alternative for illegal gambling ventures.

For the Dutch gambling policies, the pressure on market liberalizations in the context of the EU seems to have a paradoxical effect. Instead of pushing it further in the direction of market liberalizations and regulatory relaxations, it strengthens, in a reflex, its restrictive policies. Because restrictions in the European context are now only allowed if they are 'consistent and systematic', the Dutch government has developed an interest in systematically strengthening the consistency of its restrictive policies, and has therefore as a consequence become very reluctant regarding market expansions, deregulations and gambling advertising. Also the recent voting down of the experiment on Internet gambling was partly, and perhaps decisively, informed by the fear that this expansion might be used in court cases and by the EC to further question the consistency of Dutch gambling policies.

4. Conclusion

In this paper I have outlined the emerging risk-regulation regime in Dutch gambling policies. In the course of the 1990s, on the level of organizational practice increasingly principles of risk-regulation and risk-management have been adopted. Also, on the level of regulatory risk discourse, in particular the MDW-report, offered a clear expression of risk-regulation principles. It seems that in response to market forces risk principles have developed as an integral part of Dutch gambling regulations. However, after 2002 the risk-regulation principles quickly seemed to have lost ground to the more restrictive principles of the traditional alibi-model of gambling regulation. In this concluding paragraph I want to discuss how we can account for this restrictive turn.

First, we should note that regulation models are not one dimensional, clearly defined and mutually exclusive. They can be conceived that way 'as models' but not 'as practice'. In practice various regulatory principles compete, co-exist and operate together in regulation regimes which are not necessarily and always unambiguous and coherent systems. This means that those regulation regimes and the relative weight of particular principles can change over time, dependent on changing experiences and circumstances.

Second, in this perspective the revitalization of the restrictive principles of the alibi-model after 2002, does not so much signal the end of the risk-model of regulation but the beginning of a transitory phase where risk and alibi criteria are applied side-by-side. Gambling regulation represents a differentiated system in which various actors are pushing in

different, sometimes opposite, directions. And it is, of course, not only a matter of market developments and persuasion, but also a matter of power in which direction the system as a whole will turn. It seems only logical, following the logic of actor-network-theory (Callon 1986; Latour 2005), that the changing power structure in Dutch politics which occurred around 2002, was followed by a translation of gambling policies in terms of the newly dominant neo-conservative political parties. It should more or less be regarded as a coincidence that this restrictive turn was reinforced by the pressures exerted from the EU level to liberalize the gambling market. These pressures signalled an extension of the actor-network relevant to gambling, including the ECJ and the EC. In the Dutch political context these pressures had an adverse effect. Instead of stimulating market liberations it triggered restrictive responses.

Third, important for Dutch gambling policies is that with the restrictive turn new hybrid regulatory standards for Dutch gambling are formulated and introduced. A new moral understanding of gambling seems to arise, in which external effects, notably gambling addiction, make gambling itself a suspicious activity. In the process gambling policies become increasingly reflexive and are flexibly adapted to the changing images of its reputation and its external effects. With the 'Europeanization' of the debate on gambling regulations the discussion turns more to the criteria of 'necessity' and 'proportionality' of regulatory restrictions, which have to be increasingly accounted for vis-a-vis transnational regulatory actors. In line with Ulrich Beck's risk-society thesis (Beck 1999), national governments and gambling policies become increasingly reflexive as they now have to 'prove' that restrictive measures are really necessary for and proportionate to the objectives of the indigenous gambling policies. At the same time scientific research becomes increasingly important for developing and justifying gambling policies.

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