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 “Services 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. Together with a growing risk awareness, this 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 serious backwashes.

Keywords: gambling, risk regimes, regulation, Netherlands, European Union.

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 advertising, new amusement arcades and casinos at top locations as well as the spread of electronic gaming machines (EGMs) in many jurisdictions, and gaming shows on television. Gambling organizations and their products have become ubiquitous, and the returns from most gambling markets have grown enormously. Gambling is among the fastest growing industries in the world (McMillen 1996; Eadington & Cornelius 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 worldwide expansion, liberalization and virtualization of gambling markets led to the rise of gambling as commercial entertainment. With the rise of the postmodern
consumer-society gambling has generally come to be regarded as an acceptable leisure time pursuit. Gambling might, 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 such as skydiving, 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 of gambling entertainment included the legalization of slot machines (1986), the expansion of the number of legal casinos to 13, the introduction of the Postcode Lottery (1989), and the denationalization of the State Lottery (1992). Between 1995 and 2005, the joint net returns of the major Dutch gambling operators grew from about €340m to €760m (College van Toezicht op de Kansspelen [Gaming Commission] 2006).1 This figure does not include the many slot machines in Dutch arcades and in establishments such as restaurants and bars. In 2004, the net returns for the private slot machine market outside of Holland Casino were estimated at about €700m (KPMG 2005). The problem of gambling addiction also increased and in the early 1990s the social unrest relating to gambling addiction increased significantly. Initially, public concern was mainly directed toward slot machines but soon this concern spread over almost the entire field of gambling. Treatment centers for addiction developed specific information campaigns and treatment programs for problem gamblers. Researches were conducted in order to map the prevalence of gambling addiction (Kingma 1993; Koeter et al. 1996; Bruin de et al. 2005). This controversial addiction is extremely hard to define and to quantify, but the various researchers gave estimates of between 30,000 and 70,000 people with gambling related problems (approximately 0.3% of the Dutch population). Within the national gambling policy the turmoil over gambling addiction, and the crime associated with it, was even translated into measures to freeze and curb gambling markets (Ministerie van Justitie 1995). In particular, the number of slot machines in cafeterias and bars was seriously reduced. Gambling addiction also rapidly developed as a dominant object of research in the international field of gambling studies (Smith et al. 2007).

The negative side-effects of the expansion of commercial gambling markets do not necessarily undermine the expansion and treatment of gambling as a free entertainment market, if we consider gambling markets to be 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 the promise 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 during the 1990s in the Netherlands a neo-liberal “risk regulation regime” for gambling markets seems to have emerged. The notion of a regime here refers to the “complex of institutional geography, rules, practice, and animating ideas that are associated with the regulation of a particular risk or hazard” (Hood et al. 2001, p. 9). This regime treats gambling as a legitimate entertainment market and regulates these markets through their external effects, their returns, and their negative
side-effects. However, recently this risk regulation regime has been challenged by a new focus on restrictions in the re-regulation of Dutch gambling markets that took place since 2002. Market restrictions on the national level were partly motivated by EU interferences, which, paradoxically, favored neo-liberal market conditions such as the free movement of persons and trade. The new restrictive policies and the role of the EU 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, I analyzed this regime in terms of the “risk model” (Kingma 2002). Typical features of the risk model are: (i) a liberal political consensus on the legitimacy of gambling as commercial entertainment; (ii) acknowledgement of the economic importance of the gambling sector; and (iii) 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) replacing the 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, such as 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 aligns 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 to be morally wrong and is legally opposed. Table 1 provides an overview of the succeeding regulation models.

It should be stressed that gambling organizations are part of complex networks which comprise economic organizations as well as those related to the state and civil society. The state is possibly the most important gambling organization, especially if it has a monopoly on gambling. Regulatory issues raised by the neo-liberal state regarding public financing and social responsibilities, as well as the globalization of gambling, are particularly relevant (Della Sala 2004). In most European jurisdictions the state has, to an 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 & 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 evolving 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 organizational level of gambling operators is as important as state regulation. Organizations are both centers for processing and handling risks and potential producers and exporters of risk (Hutter & Power 2005). In the case of gambling, risk management does not pertain only to individuals managing the negative consequences which arise through their participation in gambling activities. It refers also to the potential consequences faced by organizations through their “creation” of gambling addicts. As organizational legitimacy constitutes a significant element of the risk, the way in which gambling activities are defined and communicated to the public relates directly to the risk managing practices of gambling organizations.
Gambling organizations seek to minimize or negate gambling risks, but must also acknowledge that the risks are, to an 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 to be managed and manageable. With regard to gambling legalization, most states argue that if they fail to legalize, neighboring states will do so, or gambling will proliferate illegally.

The existence of problem gambling has prompted political concern about harms, producing forms of “sub-politics” (Beck 1992) which are taking over the leading role of formal politics in dealing with problem gambling. As Beck argued: “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 in order to legitimate their interests in the activity, and possible expansion of the market (Kingma 2004). The use of science relies on a logic of control which assumes the scientific manageability of problems; science is a tool of legitimization, particularly in terms of the “prevalence” of problem gambling. Characteristic of the focus on risk in gambling regulations is a distinction between so called high-risk games, such as casino games, and low-risk games, such as lotteries.

The interest in risk management within gambling enterprises such as casinos and arcades has led several casino companies and state-run gambling agencies to develop

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<th>Table 1 Three models of gambling regulation</th>
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<td><strong>Time frame</strong></td>
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<td>Until 1950s</td>
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<td><strong>Moral meaning of gambling</strong></td>
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Source: Derived from Kingma (2002).
so-called “responsible gambling policies.” In the case of high-risk gambling organizations such as casinos, such programs often include, alongside information campaigns and treatment programs, a strategy of “self-exclusion” to limit access to gambling opportunities for problem gamblers (Blaszczynski et al. 2007). These strategies are typical “technologies of agency” which engage us as active and free consumers, and as “agents capable of taking control of our own risk” (Dean 1999, p. 147).

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 US. 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 et al. 2001). The research found that 2.1% of the gamblers at Holland Casino are “problem gamblers,” which apparently seems to be an acceptable percentage, given the fact that Dutch regulators and politicians hardly disputed it.

The risk regulation regime which has emerged in the field of gambling includes 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 gambling corporations. Dutch gambling policies are therefore increasingly characterized by a governance approach toward risk. In a governance approach risk “represents a specific way in which aspects of reality can be conceptualized and rendered controllable” (Taylor-Gooby & Zinn 2006, p. 45). Since there is widespread recognition 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. Dutch casinos and amusement arcades offer particularly strong examples of enterprise risk management (ERM). According to Power (2007) 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 re-regulation?

3.1 The risk discourse

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 slot machines in 1986, the expansion of the number of casinos in the late 1980s, and in the legalization of the instant lottery in 1993 (Kingma 2004). In the debates concerning these decisions economic motives were taking precedence over moral concerns and gambling 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. The expansion of the market was in many cases justified by pragmatic reasons, rather than by sound legal arguments. Growing concerns over gambling addiction led to a government decision, following the policy report Games of Chance Revisited (Ministerie van Justitie 1995), to 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 2006). 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 such as privatisation, market mechanisms, empowerment, and self-regulation in a wide range of policy areas. The objective was to reduce and simplify government rules which hindered the development of civil initiatives and business ventures, as well as 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 study the options to improve the performance and perseverance of Dutch gambling law.” It is important to note that the MDW procedure merely intended to study the policy options, rather than being directly aimed at policy changes and interventions, although the political decision to include gambling law in the MDW procedure, comparable for instance to the law on taxi services or the law on the opening hours of shops, clearly indicated that the government at that time considered a neo-liberal direction in this policy area.

The MDW report stated, in its problem definition regarding the gambling policies, 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 (free gambling games used for marketing purposes) and Internet gambling, the increasing cultural acceptance of gambling and the rapid market expansion would, as expected by the officials who compiled the MDW report, lead over time to an increasing diversity and increasing scale of the gambling industry. The study group defined its objectives in terms of the introduction of a risk regulation regime, by stating that the study group was searching 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, and that the gambling monopolies should be opened. This also applied to the “closed system” regarding the distribution of revenues to state and civil society interests such as the “good causes” associated with gambling. Of approximately €760m in revenues earned by major Dutch gambling operations in 2005, the state gained approximately €390m in profits and taxes (College van Toezicht op de Kansspelen [gaming commission] 2006). Approximately €370m was shared by good causes in the areas of developing countries and human rights (33%), nature and environment (22%), welfare (15%), culture (10%), public health (6%), and sports (15%). Under the new gambling law, a new model for the distribution of gambling revenues has been proposed (Schuyt 2005).

The MDW study group aimed to institute a “level playing field” for gambling corporations. Moreover, in its gambling regulations the government should provide 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 underaged 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 the liberalization of the Dutch market and, ultimately, opening it to foreign providers. As in many EU states, national gambling enterprises were, and in most cases still are, protected from competition from abroad and are usually not allowed to expand their activities beyond national borders.

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 within a period of approximately five years, the recommended changes would provide the best preparation for the technological and socio-economic challenges faced by the gambling industry.

3.2 The restrictive turn
Since this five-year period has now passed and a draft for a new gambling law has been publicized (in August 2007),\(^2\) it is interesting to learn both how Dutch gambling policies have progressed since the MDW report, and the results of its recommendations. Although during this period gambling policies have been intensively debated, many initiatives have been undertaken, and a new encompassing law has been conceived, virtually nothing remains from the recommendations to liberalize the market as proposed by the report. In fact, recently the most concrete liberalizing proposals, namely to allow promotional gambling games and to experiment with Internet gambling, have been turned down. Moreover, the draft for the new Dutch gambling act does not follow the logic of the MDW report. On the contrary, instead of a radical turn by instituting a new risk regime for gambling regulation, the new law takes a regressive turn by reverting to the principles of the 1964 Gambling Act. These principles are typical of 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 maintain the supply of gambling products below the level of market demand, to restrict market competition between providers and to restrict the exploitation of gambling for private profit. This means that gambling monopolies and the allocation of 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.

This return toward a traditional restrictive gambling policy was widely recognized and could be referred to as a neo-conservative instance of re-regulation. To what extent is this qualification justified, and how can we account for this remarkable turn, given the sharp deviation from the trajectory 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 “modernize” them. In particular the terms of gambling licenses, notably regarding the percentages of the stakes which must be paid out in prizes, are made more equal across the various gambling operators. Moreover, government control over gambling is made more effective and efficient by centralizing control and by introducing a refined system of sanctions. However, the monopoly system continues, the entrepreneurial freedoms of operators are very restricted, and market expansions are kept to a minimum. The new law did anticipate an “experiment” with Internet gambling,
to be offered in a monopoly structure by Holland Casino, but the Senate blocked the temporary provision which would have enabled this.\textsuperscript{3} 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, the ordering of the market, and 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 proposed new law and the alibi model which underpinned the 1964 Gambling Act, seems to be that gambling restrictions are no 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 such as gambling addiction and crime. However, the primary motivation behind the restrictive turn was not an increase or re-evaluation of side-effects which could have aligned with a risk approach. After all, in the risk model of regulation negative side-effects are the primary reason for control measures. Also, the new law does not strictly aim to address and mitigate side-effects. It is a fear of possible negative consequences and a loss of government control which, in the new law, makes gambling itself suspicious and an object of restrictive interventions. Accordingly, the perception of possible negative consequences affects the moral meaning of gambling. In fact, the new law clearly defines gambling as an irregular market. Where the MDW report perceived gambling as an ordinary leisure market, the new law explicitly states 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 the market carries risks, and not the fact that there are signs that they increasingly materialize risks, seems to justify the restrictive 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 becoming out of control.

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). These included policies to firmly fight illegal gambling, and, in contrast, plans to legalize promotional gambling games and to expand the number of casinos and lotteries in the Netherlands. These plans were expressed in the “first gambling policy report” as presented to Parliament on 5 June 2002. (Eerste-voortgangsrapportage-kansspelen [first gambling policy report] 2002).

Soon after that, however, in July 2002, a new government was installed which ended the dominance of social-liberal policies, so-called “third-way” policies which had dominated the 1990s and 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. As in many Western European countries, the political spectrum in the Netherlands is dominated by the three power blocks of socialist, liberal, and confessionnal parties. Confessional politics are loosely based on religious, Christian, ethics. In the new government, the Ministry of Justice, with a primary responsibility for gambling law, was headed by Minister Donner of the Christian Democrats (CDA). Soon after he came into office he announced a change in gambling policies. He clearly expressed his views on gambling policies in a meeting to which most of the Dutch gambling regulators and operators were invited, and stated among other things: “for the time being I do not see any good in letting the gambling market grow any further” (Donner 2002). The views expressed in this speech became the basis of the “second gambling policy report,” as
presented to Parliament on 31 March 2003 (Tweede-voortgangsrapportage-kansspelen [Second gambling policy report] 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. Also in this document, the plans for legalizing promotional gambling games and for the expansion of the casino and lottery markets were abandoned or postponed. In the case of the casinos, the restrictive turn was informed by the expectation that gambling addiction would grow together with the expansion of the number of casinos, and in the case of promotional gambling games, the government feared an uncontrolled proliferation of these games. In addition, some 12 months 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. However, the plan to conduct an experiment with Internet gambling was progressed at that time in order to offer a legal and controlled alternative for Dutch gamblers to the illegal, international supply of e-gaming. This conforms to the alibi line of reasoning. In short, the reorganization plans as outlined by the MDW study group were only partly adopted. While plans to enhance government control over gambling were carried through, the plans for market expansion and deregulation were abandoned.

3.3 The European context

Thus 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 was also reinforced by international developments, notably at the regulatory level of the EU. Regulatory EU policies in view of the single market usually aim to establish 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 focused 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. The principle of subsidiarity is a political principle which organizes the responsibilities between higher and lower authorities. It maintains that higher, supranational authorities such as the European Parliament should not interfere in matters better dealt with at the lower, national, level of government. Following this principle, 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 decision-making concerning the “Directive on Services in the Internal Market,” often referred to as the “Services Directive,” the issue was raised again. As one of the outcomes of the Lisbon Agenda set in 2000, which aimed to make the EU states more competitive in the global economy, the Services Directive was intended to remove restrictions on the internal market for services – a motive similar to the Dutch MDW program. In this process the application of the principle of subsidiarity was put to the test. Ultimately, in 2006, gambling was excluded from the Services Directive and also from the e-commerce directive. This means that the EU will not introduce gambling legislation and that national gambling regulation will not be liberalized and harmonized. In principle, national governments have the authority to develop their own gambling laws and regulations, provided that they adhere to general regulatory principles as adopted by the EU, such as the free movement of services (Article 49 of the EU Treaty) and the freedom of establishment (Article 43). With the exclusion of gambling from the
Services Directive, gambling appears to be one of the areas in which the contradiction between the forces of market liberalization and globalization, and the contrasting protection of social and national interests, become manifest. This contradiction can be considered crucial for the contemporary development of the EU (Giddens et al. 2006).

Articles 43 and 49 of the EU Treaty can, for example in view of national gambling restrictions, be lifted under specific circumstances and for good reasons only. It is these circumstances and reasons which 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 the court cases dealing with sports betting concerning Gambelli (2003), and Placanica (2007). Generally, it is concluded from these 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 attempting to intervene in 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, such as 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.”

In April 2006, the EC started an 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 consistent 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. It stresses that the allocation of gambling revenues for public causes should be understood in relation to the traditional “moral and channeling” objectives of Dutch gambling policies. It also stresses 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 did not 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 should instead 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 provided they are “consistent and systematic,” the Dutch government has developed an interest in systematically strengthening the consistency of its restrictive policies and, as a consequence, has become reluctant to support market expansions, deregulations, and gambling advertising. The 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. During the course of the 1990s, on the level of organizational practice, principles of risk regulation and risk management have increasingly been adopted. On the level of regulatory risk discourse, the MDW report in particular, 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 would like to highlight the major implications of this restrictive turn.

First, we should note that regulatory models are not unidimensional, clearly defined, or mutually exclusive. They can be conceived as “models” but not as “practice.” In practice, various regulatory principles compete, coexist, and operate together in regimes which are often ambiguous and incoherent. This means that those regulatory 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 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, and sometimes opposite, directions. The direction in which the system will turn does not only depend on market developments and persuasion, but also on power. 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 be regarded as a coincidence that this restrictive turn was reinforced by the pressures exerted by 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 liberation it triggered restrictive responses.

Third, with the restrictive turn, new hybrid regulatory standards for Dutch gambling were formulated and introduced. A new moral understanding of gambling has seemed to arise, in which external effects, notably gambling addiction, change the political meaning
of gambling itself and define it as an irregular market. 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 to the criteria of “necessity” and “proportionality” of regulatory restrictions, which must increasingly be accounted for vis-à-vis transnational regulatory actors. In line with Beck’s (1999) risk society thesis, national governments and gambling policies become increasingly reflexive as they must now “prove” that restrictive measures are 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.

Notes

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1 This includes the gambling monopolies (single licences for particular game types) of the State Lottery, the Postcode Lottery, the Bank/Giro Lottery, the Lotto and Sports Betting operator, the Instant Lottery (scratch cards), and Holland Casino.
3 The law for Internet gambling passed Parliament [Tweede Kamer] but was, on April 1 2008, narrowly voted down by the Senate [Eerste Kamer], with 35 to 37 votes.
4 Kamerstukken II, 2004/06, 24 036, 24 557, nr.310
5 Gambelli and others (2003); Tribunale di Larino (Italy) v. Placanica (2007).
7 Reactie op kanttekeningen Commissie bij het Nederlandse kansspelbeleid, Kamerstukken II, 2006–2007, 24 557, nr. 77. [Response to the EC].

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