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Online Gambling, Regulation, and Risks: A Comparison of Gambling Policies in Finland and the Netherlands

ALAN LITTLER* AND JOHANNA JÄRVINEN-TASSOPOULOS[°]

L'objectif de cet article est de comparer les différentes approches à la réglementation adoptées par la Finlande et les Pays-Bas face aux pressions exercées par le droit de l'Union européenne, le jeu non autorisé et les effets nocifs qui peuvent naître du jeu. Les deux pays membres utilisent deux modèles de réglementation du jeu différents: selon Kingma, les modèles renvoient à des attitudes et préoccupations distinctes suscitées par le jeu à des périodes différentes. Selon nous, en ce qui concerne la réglementation du jeu, la Finlande colle à un « modèle qui sert d'alibi », alors que les Pays-Bas adoptent un « modèle axé sur le risque ». Les deux pays ont décidé de restreindre le mouvement transfrontalier des services de jeu, même si la Finlande a opté pour un système de monopole et les Pays-Bas se dirigent vers un système d'octroi de permis. Nous adoptons l'approche à plusieurs volets (*Multiple Streams Approach*) pour expliquer les raisons pour lesquelles la Finlande et les Pays-Bas ont pris des avenues politiques et législatives différentes. Pendant de nombreuses années, les politiques finlandaises relatives au jeu ont dirigé la demande vers les sites nationaux de jeu en ligne. Les Pays-Bas tentent plutôt de diriger 80 % de la demande vers les opérateurs en ligne locaux autorisés. Les deux pays membres poursuivent les mêmes objectifs, soit protéger les consommateurs du jeu compulsif en réduisant la présence des opérateurs non autorisés sur leurs marchés nationaux respectifs.

The purpose of this article is to compare the different regulatory approaches taken by Finland and the Netherlands in response to the pressures of European Union law, unlicensed gambling, and the harmful effects which can arise from gambling. The two Member States represent two different models of gambling regulation. According to Kingma, the models refer to different attitudes and concerns towards gambling in different timeframes. We argue that Finland fits the “alibi model” of gambling regulation, whereas the Netherlands aligns with the “risk model”. Both countries have decided to restrict the cross-border movement of gambling services, even though Finland has opted for a monopoly system and the Netherlands is heading towards a licensing system. We employ the “Multiple Streams Approach” to explain why Finland and the Netherlands have taken different political and legislative paths in the regulation of gambling services. For several years, Finnish gambling policy has focused on channeling demand towards domestic online gambling sites, which have been represented as more secure than foreign online gambling sites. The Netherlands seeks to channel 80 percent of demand to locally licensed online operators. Both Finland and the Netherlands seek the same objective: to protect consumers from the excesses of gambling in part by reducing the presence of unlicensed operators in their respective national markets.

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THIS ARTICLE COMPARES THE DIFFERENT REGULATORY approaches taken by Finland and the Netherlands in response to the pressures created by of European Union (EU) law, unlicensed gambling, and the harmful effects that arise from gambling. Whilst consumer protection and the prevention of gambling addiction are central objectives of gambling regulation in both countries, these states have addressed these objectives through the development of significantly different regulatory regimes. Existing law in the Netherlands places a prohibition on unlicensed gambling whilst lacking a legal basis for the regulator to award licenses for online gambling. Legislative proposals seek to dissolve the considerable *de facto* gambling market and introduce a licensing regime which will not put a cap on the number of licences available.¹ On the other hand, Finland has maintained a monopoly system that includes both land-based and online gambling, despite the liberalization of gambling markets in other EU Member States and detailed scrutiny under EU law and its regulatory approach.² In this paper, we ask why the Netherlands and Finland have taken different political and legislative paths with respect to gambling regulation, despite similar pressures from technological developments and the EU.

The internet has “transformed not only the traditional ways of providing gambling, but also the established approaches to gambling regulation.”³ EU Member States have responded differently to the emergence of online gambling. The United Kingdom liberalized its online gambling market in 2007.⁴ It is “actively encouraging [internet gambling providers] to establish operations on its shores.”⁵ In 2010, France opened its online gambling market to outside providers, who required state authorization to offer horse and sports betting and poker online.⁶ Monopolies for sports betting and horserace betting were maintained in the land-based sphere. The French system compels online gambling providers to conform to consumer protection laws, but it also offers a “competitive alternative to unlicensed gambling.”⁷ Denmark has recently opted for controlled liberalization of online gambling by allowing some games to be organized by operators other than the monopolist Danske Spil.⁸ 2018 has also seen Sweden, after several years of debate, move towards opening up the online market to locally licensed operators. Under the new regulatory system, the Swedish online gambling market would be divided into three sections: in the first section, the state would have exclusive rights, the second section would be open for all gambling companies, and the third section would be held by the non-profit sector.⁹ Sweden follows a general trend amongst EU Member States, such as Bulgaria, the Czech Republic, Poland, Portugal, Romania, and Spain—all of which have opened their online markets to private operators over the past few years.

¹ Sally Gainsbury, *Internet Gambling: Current Research Findings and Implications* (New York: Springer, 2012) at 56.

² Antti Myllymaa, *The Political Economy of Online Gambling in the European Union* (Doctoral Thesis, University of Helsinki Department of Economic and Political Studies, 2017).

³ Natalia Zborowska, Sytze F. Kingma & Phill Brear, “Regulation and Reputation: The Gibraltar approach” in Robert J. Williams, Robert T. Wood & Jonathan Parke, eds, *Routledge International Handbook of Internet Gambling* (London & New York: Routledge, 2012) at 84.

⁴ Gainsbury, *supra* note 1 at 31.

⁵ Betsi Beem & John Mikler, “National regulations for a borderless industry: US versus UK approaches to online gambling” (2011) 30:3 *Policy & Society* 161 at 174.

⁶ Virve Marionneau, *Socio-cultural contexts of gambling: A comparative study of Finland and France* (Doctoral Thesis, University of Helsinki Department of Social Research, 2015).

⁷ Virve Marionneau & Johanna Järvinen-Tassopoulos, “Consumer protection in licensed online gambling markets in France: The role of responsible gambling tools” (2017) 25:6 *Addiction Research & Theory* 436 at 442.

⁸ Myllymaa, *supra* note 2.

⁹ Jenny Cisneros Örnberg & Jörgen Hettne, “The Future Swedish Gambling Market: Challenges in Law and Public Policies” in Michael Egerer, Virve Marionneau & Janne Nikkinen, eds, *Gambling Policies in European Welfare States: Current Challenges and Future Prospects* (Cham: Palgrave Macmillan, 2018) at 198.

Technology has allowed several jurisdictions (*e.g.* Alderney, the Isle of Man, Gibraltar, and Malta) to serve as “regulatory hubs” from where online gambling operators receive licenses and then “export” their gambling services to other EU Member States.¹⁰ While technological advances have driven changes to gambling opportunities and modalities, it also provides opportunities to mitigate the negative externalities associated with online gambling. This dual aspect of the impact of technology on gambling has not occurred in the vacuum of cyberspace. Rather, it has occurred against the backdrop of regulatory regimes of various EU Member States as well as developments in EU law.

In common with other economic activities, the ability of Member States to regulate gambling within their respective jurisdictions must take into account the fundamental principles of EU law as established in the Treaty on the Functioning of the European Union and general principles of EU law. From the early 1990s onwards there has been a stream of case law from the Court of Justice of the European Union (“CJEU”) shaping the application of EU law to national-level gambling rules and regulations. Member States’ regulatory regimes had to respond to problems arising from both online gambling and the scrutiny of their regulatory requirements under EU law.

We begin by situating the regulatory approaches taken by the Netherlands and Finland within the different models of gambling regulation developed by the Dutch sociologist Sytze Kingma.¹¹ During this exercise, we will draw on data derived from national legislation and legislative proposals, national reports, EU case law, and policy documentation. From here, we will outline the Multiple Streams Approach (“MSA”) as a framework to explain how national governments make policies under conditions of ambiguity and to understand gambling-related public policy.¹² We use the Multiple Streams Approach, because we view online gambling as a “policy problem” in both Finland and the Netherlands. This framework enables us to analyse policy developments in both countries and the solutions that have been turned into policies.¹³ We then turn our attention to EU law, unlicensed cross-border gambling, and the harmful effects of gambling before applying the MSA to understand how both jurisdictions have responded to these pressures. Finally, we draw attention to similarities and discrepancies between Finland and the Netherlands.

I. SITUATING FINLAND AND THE NETHERLANDS: ALIBI AND RISK MODELS OF GAMBLING REGULATION

Governments regulate gambling in accordance with national policy preferences and standards. While gambling involves risks to consumers, it is regulated for reasons other than protecting consumers and the prevention of gambling addiction. States regulate gambling in order to prevent crime associated with gambling, combat money laundering, and generate revenues for the treasury or good causes.

¹⁰ Zborowska, Kingma & Brear, *supra* note 3 at 88.

¹¹ Sytze Kingma, “Gambling and the risk society: the liberalization and legitimation crisis of gambling in the Netherlands” (2004) 4:1 *International Gambling Studies* 47; Sytze F Kingma, “The liberalization and (re)regulation of Dutch gambling markets: National consequences of the changing European context” (2008) 2:4 *Regulation & Governance* 445.

¹² See John W. Kingdon, *Agendas, Alternatives, and Public Policies*, 2nd ed (New York: Longman, 2003).

¹³ See Paul Cairney & Michael J Jones, “Kingdon’s Multiple Streams Approach: What Is the Empirical Impact of this Universal Theory?” (2016) 44:1 *Policy Studies J* at 40.

In previous gambling studies, scholars have argued that the liberalization of gambling markets has led the regulatory focus to shift “from a rule-based mode towards a risk-based mode of regulation” or in other words, from “a monopoly situation in which the operator is severely constrained” to a different regulatory situation.¹⁴ Kingma has discerned three models of regulation, the prohibition model, alibi model, and risk model, that represent different attitudes towards gambling, regulatory approaches, and concerns regarding gambling operation in different timeframes.¹⁵

In comparing gambling and regulatory developments in Finland and the Netherlands, we focus on the most recent models, the alibi model and the risk model. The typical features of the alibi model are: gambling can be legalized to avoid illegal markets; the exploitation of gambling was severely restricted by discouraging the private pursuit of profit; and gambling revenues were allocated to social interests, in terms of welfare, sports, and other “just causes.” On the other hand, the typical features of the risk model are: a liberal political consensus on the legitimacy of gambling as commercial entertainment; acknowledgement of the economic importance of the gambling sector; and control of gambling markets, primarily to confront the risks of addiction and crime.¹⁶ In Table 1, we highlight the key characteristics of these models and their relationship to Finland and the Netherlands. We argue that while Finland more closely fits the “alibi model”, the Netherlands aligns with the “risk model” of gambling regulation.

Table 1. Models of gambling regulation in Finland and the Netherlands

	Alibi model/ Finland	Risk model/ The Netherlands
Time frame	2000s onwards	1990s onwards
Moral meaning of gambling	It is a potentially harmful activity	It is entertainment
Political strategy	Status quo	Consensus
Rationale for gambling law	Prevention of gambling harms and crime	Gambling markets are economically important
Destination of returns	Good causes	Private profit is also allowed
Central concern	Competition from unlicensed cross-border gambling operators, loss of gambling proceeds	External effects like gambling excesses and problem gambling
Exploitation	Monopoly system	High-risk organizations
Controlling institutions	Legislation and gambling administration	Scientific research and health care
Ideal type state	The welfare state	The risk society

The alibi model of gambling regulation is clearly evident in Finland. From the early 2000s onwards, gambling has been framed as a potentially harmful activity. Problem gambling started to be considered a social problem.¹⁷ In 2007, the government, led by Prime Minister Matti Vanhanen, stated in its programme that it will act on social problems related to problem gambling, fight criminal activity, maintain the monopoly system, and guarantee enough

¹⁴ Zborowska, Kingma & Brear, *supra* note 3 at 86-87.

¹⁵ Kingma (2008), *supra* note 11.

¹⁶ *Ibid.*

¹⁷ Tuukka Tammi, “The form and transformation of gambling policy in Finland” in Pauliina Raento, ed, *Gambling in Finland: Themes and Data for Qualitative Research* (Helsinki: Gaudeamus, 2014) at 77.

resources to tackle unregulated gambling.¹⁸ Since then, the major protective measures have been the consolidation of the age limit of gambling to 18 years and a marketing ban on foreign gambling providers. Maintaining the monopoly system has long been a priority in Finland and the legislation has been reformed in order to limit the impact of unlicensed gambling operators in Finland. First, the three national gambling operators' licenses were legalized.¹⁹ Later these three operators merged and a new state-owned company, Veikkaus, was given monopoly to operate in Finland.²⁰

Finland is part of a group of “social democratic states, where entitlement is based on citizenship principles and where the objective is a high level of universal protection against social risks.”²¹ As funding of social and health organizations is considered a “good cause”, gambling proceeds are important from a welfare perspective. Without gambling proceeds, many good causes would have to be funded via taxation and charity. The concept of “common good” can be linked to “approval and support for the welfare state”, but the outcome of the organization of the common good depends on how social equality and welfare are comprehended.²² In the Finnish view, the state and civic society are allied, not in conflict. Finnish civic society exists in the form of associations and club activities, non-profit organizations that are rather close to the state.²³

In contrast to Finland, the Netherlands has seen the risk model replace the alibi model of gambling regulation. Gambling is no longer considered a vice, and the Netherlands has moved towards liberalization of the gambling market and a more flexible approach to gambling policies. Both the modernization of gambling practices and services and the political and operational acknowledgement of gambling addiction and its consequences are part of the Dutch risk model.²⁴

Games of chance are regulated pursuant to the *Wet op de kansspelen* 1964 (“Betting and Gaming Act”) which Fijnaut describes as “hopelessly complex”.²⁵ Kingma’s classification of the Netherlands as a risk model of regulation arose while the *de facto* prohibition on online gambling prevailed. State monopolies provided gambling services (e.g. the national lottery, casino gambling) and the role of private operators was limited. The Netherlands has since seen the expansion of state-operated gambling in the area of sports betting, which stands in contrast to 2016 government statements to the effect that it was not the task of the state to provide

¹⁸ Johanna Järvinen-Tassopoulos, “Rahapelipolitiikkaa eurooppalaisissa raameissa” [Gambling Policy in the European Context] in Mikko Niemelä & Juho Saari, eds, *Politiikan polut ja hyvinvointivaltion muutos* (Helsinki: Kelan tutkimusosasto, 2011) at 272.

¹⁹ L575/2011; See Johanna Järvinen-Tassopoulos, “Gambling, policy issues and the public good: The case of Finland” in Matilda Hellman, Gun Roos & Julius von Wright, eds, *A Welfare Policy Patchwork: Negotiating the Public Good in Times of Transition* (Helsinki: Nordic Centre for Welfare and Social Issues, 2012) at 86.

²⁰ Jukka Tukka & Elina Rydman, “The transition of the Finnish gambling system” in Johanna Järvinen-Tassopoulos, ed, *State of Play 2017: A Review of Gambling in Finland* (Helsinki: National Institute for Health and Welfare, 2018) 19 at 20.

²¹ Peter Taylor-Gooby, “New Risks and Social Change” in Peter Taylor-Gooby, ed, *New Risks, New Welfare: The Transformation of the European Welfare State* (Oxford: Oxford University Press, 2004) at 13.

²² Johanna Järvinen-Tassopoulos & Risto Eräsaari, “Conceptions of the Common Good” in Egerer, Marionneau & Nikkinen, *supra* note 9 at 266.

²³ Timo Rusanen, “Challenging the Risk Society: The Case of Finland” (2002) 24:2 Science Communication 202 at 203.

²⁴ Kingma, “Gambling and the Risk Society,” *supra* note 11 at 64.

²⁵ Cyrille Fijnaut, “Changes Large and Small in Dutch Policy on Gambling” in Alan Littler et al, eds, *In the Shadow of Luxembourg: EU and National Developments in the Regulation of Gambling* (Leiden: Martinus Nijhoff Publishers, 2011) at 210.

gambling services, made during a debate over a pending bill before the Senate, which will end the monopoly on the provision of casino services enjoyed since 1974 by the state-owned casino operator, Holland Casino, and privatize the company.²⁶ Furthermore, since 2016 the Senate has been considering a legislative proposal that would enable private operators to obtain a licence to lawfully provide their online gambling services, subject to national regulatory preferences and standards.²⁷ Only when the specific details of the regulatory regime are known, following the publication of secondary legislation for consultation, can a detailed analysis be done on how such legislation aligns itself with the risk model. However, it is not anticipated that it will reverse the prevailing direction of travel.

The alibi and risk models offer ideal type visions of gambling practices, policies, and concerns in Finland and the Netherlands. The two main differences are in the moral meaning of gambling and the political strategy (including exploitation). Nevertheless, both societies have undergone changes and their welfare systems have been influenced by values such as freedom of choice and individual responsibility.²⁸ These changes have also affected attitudes towards gambling and prevailing gambling cultures. The internet and especially online gambling are good examples of the contradiction between the apparent freedom of choice offered to gamblers by numerous gambling operators and efforts to prevent gambling harms promoted by responsible states and other stakeholders.

II. THE MULTIPLE STREAMS APPROACH

We used Kingma's models of gambling regulation as a starting point in our analysis of the regulatory response to online gambling in Finland and the Netherlands. Now, in order to explain why the Netherlands and Finland have taken different political and legislative paths in relation to gambling regulation, we employ the MSA.

According to Zahariadis, the MSA seeks to “[explain] how policies are made by national governments under conditions of ambiguity.”²⁹ Ambiguity refers to the existence of many ways of thinking about the same circumstances or phenomena—ways of thinking that may not be reconcilable.³⁰ The MSA is “applied to understand public policy at the system level, modeling context to understand specific policy decisions”³¹, and “it yields insight into the dynamics of an entire policy process—agenda setting, decision-making, and

²⁶ Netherlands, Tweede Kamer, *Wijziging van de Wet op de kansspelen in verband met de modernisering van het speelcasinoregime: Memorie van toelichting* [Amendment of the Betting and Gaming Act in connection with the modernization of the gaming casino regime: Explanatory Memorandum] 34 471 no 3 (2015-2016).

²⁷ Netherlands, Tweede Kamer, *Voorstel van wet: Wijziging van de Wet op de kansspelen, de Wet op de kansspelbelasting en enkele andere wetten in verband met het organiseren van kansspelen op afstand* [Bill: Amendment of the Betting and Gaming Act, the Betting and Gaming Tax Act and some other laws relating to the organization of remote games of chance] (2013-2014), 33 996 no 2, 24 July 2014, online <https://zoek.officielebekendmakingen.nl/kst-33996-2.html>> and *Memorie van toelichting* [Explanatory memorandum] (2013-2014), 33 996 no 3, 24 July 2014, online <https://zoek.officielebekendmakingen.nl/dossier/33996/kst-33996-3?resultIndex=138&sorttype=1&sortorder=4>.

²⁸ Anja Eleveld & Olaf van Vliet, “The Dutch Welfare State: Recent Reforms in Social Security and Labour Law” (2013) 4 *Diritto Pubblico Comparato Ed Europeo* at 1371.

²⁹ Nikolaos Zahariadis, “Ambiguity and Multiple Streams” in Paul Sabatier & Christopher Weible, eds, *Theories of the Policy Process* (Boulder: Westview Press, 2014) at 25; Evangelia Petridou, “Theories of the Policy Process: Contemporary Scholarship and Future Directions” (2014) 42:S1 *Policy Studies J* at S21.

³⁰ Zahariadis, *supra* note 29 at 26.

³¹ Michael D Jones et al, “A River Runs Through It: A Multiple Streams Meta-Review” (2016) 44:1 *Policy Studies J* at 14.

implementation.”³² MSA examines three streams of input into policy decisions making has: the problem stream, the policy stream and the politics stream (see Fig. 1). In Kingdon’s theory, the three streams develop and operate independently of one another, but: “these separate streams come together at critical times. A problem is recognized, a solution is available [and] the political climate makes the time is right for change...”.³³

The problem stream considers how the problem comes to the fore. Policy makers only become aware of a small number of problems, sometimes because of dramatic events or recognition that a potential solution has already been developed in a different context.³⁴In the MSA model (Figure 1), “indicators” refers to actors who identify and monitor potential problems and to different rates and ratios (*e.g.* unemployment rate, increasing costs). “Focusing events” are attached to particular problems and provide impetus for action or change. “Load” is related to the capacity of institutions to deal with problems and “feedback” is information provided by programs related to the problem.³⁵

The policy stream considers which possibilities for policy action or inaction get identified, assessed, and narrowed down to feasible options.³⁶ Viable solutions take time to develop; different actors consider and reconsider policy solutions as some issues take time to become accepted within policy networks.³⁷ Many potential policy solutions originate with communities of policy makers, experts, and lobby groups.³⁸ “Value acceptability” refers to proposals that survive because they conform to existing values. “Resource adequacy” refers to whether the resources required to implement the proposal are obtainable, and network integration” is the extent to which an idea achieves proliferation or extinction.³⁹

The politics stream considers why and how policy makers work to find a solution. Factors that influence the nation, such as executive or legislative turnover, and interest group advocacy campaigns can be relevant here.⁴⁰ They can cause fluctuations in public opinion.⁴¹ Policy makes have to consider many factors, including their own beliefs, and the feedback they receive from interest groups and political parties.⁴² “National mood” refers to the general orientation of the public toward issues or values relevant to the policy problem. “Party ideology” refers to the orientation of political parties within relevant institutions. “Balance of interests” refers to the position of relevant interests.⁴³

Policy windows are opportunities for change – policy entrepreneurs make the most of those opportunities. The opening of a policy window can be predictable or unpredictable; they open infrequently and do not stay open long.⁴⁴ The opening can be caused by the appearance

³² Zahariadis, *supra* note 29 at 25.

³³ Kingdon, *supra* note 12 at 88.

³⁴ Daniel Béland & Michael Howlett, “The Role and Impact of the Multiple-Streams Approach in Comparative Policy Analysis” (2016) 18:3 J Comparative Policy Analysis at 222.

³⁵ Jones et al, *supra* note 31 at 15.

³⁶ Béland & Howlett, *supra* note 344 at 222.

³⁷ Cairney & Jones, *supra* note 13 at 40.

³⁸ Michael Howlett, Allan McConnell & Anthony Perl, “Streams and stages: Reconciling Kingdon and policy process theory” (2015) 54.3 European J Political Research 420 at 421.

³⁹ Jones et al, *supra* note 31 at 16.

⁴⁰ Béland & Howlett, *supra* note 34 at 222.

⁴¹ Howlett, McConnell & Perl, *supra* note 38 at 421.

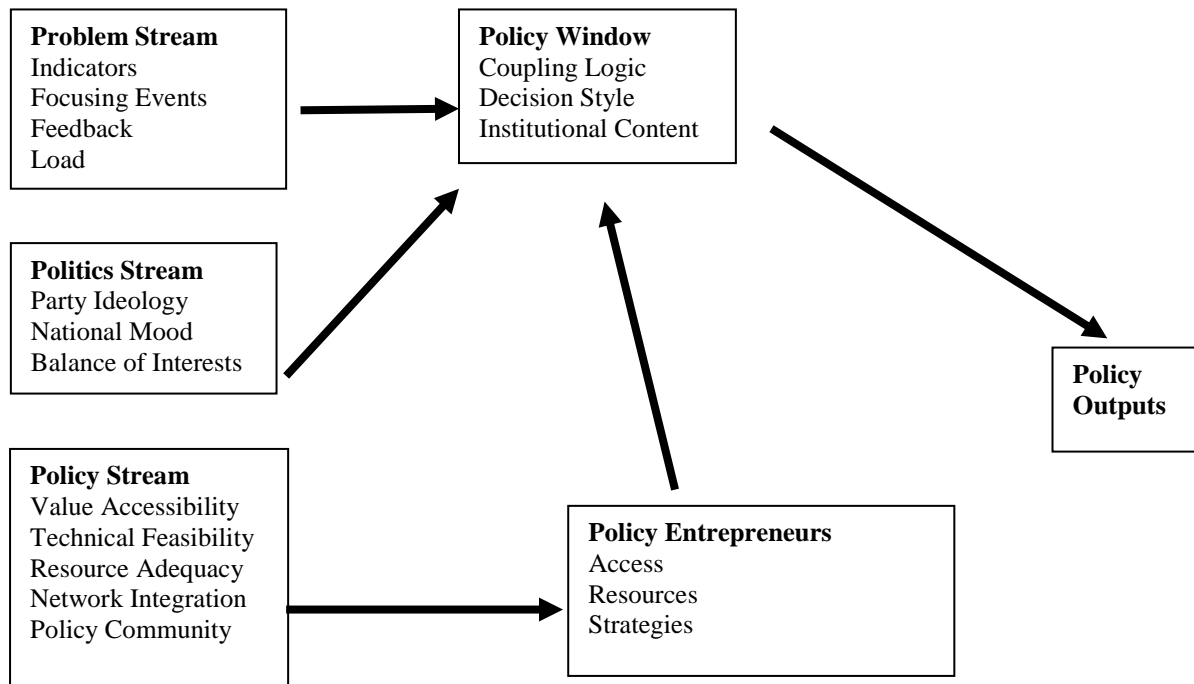
⁴² Cairney & Jones, *supra* note 13 at 40.

⁴³ Jones et al, *supra* note 311 at 16.

⁴⁴ Kingdon, *supra* note 12 165-166.

of compelling problems or changes in the politics stream.⁴⁵ As Kingdon puts it, “[p]olicy entrepreneurs play a major part in the coupling at the open policy window, attaching solutions to problems, overcoming the constraints by redrafting protocols, and taking advantage of politically propitious events.”⁴⁶ Policy entrepreneurs can be elected officials, civil servants, lobbyists, academics, or journalists.⁴⁷

Figure 1. Diagram of Multiple Streams Approach⁴⁸



III. THE POLICY CONTEXT OF ONLINE GAMBLING REGULATION

In order to understand external pressures operating on choices about the regulatory approach to gambling, this section first addresses the contexts established by EU law, unlicensed cross-border gambling as an embodiment of the implications of technology, and the harmful effects of gambling. From there, we then explore how Finland and the Netherlands have responded to these pressures.

A. COMPLYING WITH EU LAW

Whilst Member States have taken different regulatory approaches when organizing and regulating their gambling markets, the “vast majority of European countries have opted to legalize, regulate, and tax all forms of online gambling.”⁴⁹ Finland and the Netherlands fall within this majority. While free movement of gambling services means services originating in

⁴⁵ *Ibid* at 194.

⁴⁶ *Ibid* at 165-166.

⁴⁷ *Ibid* at 204.

⁴⁸ Jones et al, *supra* note 31 at 15.

⁴⁹ George Häberling, “Internet Gambling Policy in Europe” in Williams, Wood & Parke, *supra* note 3 at 284.

one EU Member state can cross borders to other customers in other EU Member states, Member states are also able to restrict the cross-border entry of services entering their territory, provided that they do so in a manner which is compliant with EU law.⁵⁰ Different forms of domestic regulation restricting cross-border offerings range from those with the greatest impact, such as an outright prohibition on online gambling or reserving such activities to a publicly owned state monopolist with a perpetual license, to the lighter regulation provided by a licensing regime without a cap on the number of licenses available.

The Court of Justice of the European Union (“CJEU”) has been particularly lenient towards Member States’s regulation of gambling, as long as national laws do not discriminate on the basis of nationality or place of establishment.⁵¹ Having recognised a “sufficient degree of latitude” enjoyed by Member States when regulating gambling,⁵² the relatively light-touch approach of the CJEU has provided considerable leeway to Member States. When assessing whether a restrictive measure is compatible with EU law, the CJEU must be satisfied that the regulation is necessarily restrictive for the public interest. Protecting consumers from gambling addiction and preventing gambling operators from inciting consumers to squander money on gambling have both been recognised by the CJEU as a basis to restrict the cross-border movement of gambling services.⁵³

In relation to online gambling, the CJEU recognised that “the characteristics specific to the offer of games of chance by the internet may prove to be a source of risks of a different kind and a greater order in the area of consumer protection, particularly in relation to young persons and those with a propensity for gambling or likely to develop such a propensity, in comparison with traditional markets for such games.”⁵⁴ Restrictive measures must also be “consistent and systematic” meaning the measure should not be applied in a way which contradicts its purpose.⁵⁵ Furthermore, the necessity of the measure must be considered in a dynamic, rather than a static way. The question may thus arise whether a particular measure, established with a view to preventing excessive gambling and addiction and seen as justified in 2007 remains justifiable a decade later, once new technological tools that could help secure the Member State’s regulatory objectives are considered.

Member States must also ensure that the entire regulatory regime is horizontally consistent, meaning that regulatory approaches for each market segment should be consistent with each other. For example, in the name of preventing gambling addiction, a Member State cannot subject a riskier form of gambling to a less stringent regulatory approach while another segment of the market with a lower risk profile is subject to a more burdensome regulatory

⁵⁰ See Paul Craig & Gráinne de Búrca, *EU Law: Text, Cases and Materials* (Oxford University Press, 2015).

⁵¹ See Wolf Sauter & Jurian Langer, “The Consistency Requirement in EU Internal Market Law: Last Refuge of the Unimaginative or Legal Standard for Rational Administration?” (Discussion Paper, Tilburg Law and Economics Center, 2016-2017); Dimitrios Doukas, “In a bet there is a fool and a state monopoly: Are the odds stacked against cross-border gambling?” (2011) 36:2 *European L Rev* 243; Alan Littler, *Member States versus the European Union: The Regulation of Gambling* (Leiden: Martinus Nijhoff Publishing, 2011); Alan Littler, “Internet Based Trade and the Court of Justice: Different Sector, Different Attitude” (2011) 1 *European J Risk Regulation* 78; Stefaan Van de Bogaert & Armin Cuyvers, “‘Money for nothing’: The case law of the EU Court of Justice on the regulation of gambling” (2011) 48:4 *Common Market L Rev* 1175; Julia Hörnle & Birgitte Zammit, *Cross-border Online Gambling Law & Policy* (Cheltenham & Northampton: Edward Elgar, 2010); Alan Littler, “Regulatory Perspectives on the Future of Interactive Gambling in the Internal Market” (2008) 33:2 *European L Rev* 211.

⁵² *Customs & Excise v Schindler*, C-175/92, [1994] ECR I-01039 at para 61.

⁵³ See *Liga Portuguesa v Departamento de Jogos*, C-42/07, [2009] ECR I-07633 at para 56.

⁵⁴ *Carmen Media v Schleswig-Holstein*, C-46/08, [2010] ECR I-08149 at para 103.

⁵⁵ *Admiral Casinos v Balmatic Handelsgesellschaft mbH*, C-464/15, [2016] ECR-General at para 33.

approach.⁵⁶ Whilst this principle may provide opportunities to challenge prevailing regulatory approaches, it can also pose difficulties when a Member State is considering change to only one segment of a national market.

The phased reform of the entire Dutch gambling market illustrates the problem of the horizontal consistency requirement. The Netherlands introduced a licensing regime for online gambling, liberalized and privatized the casino sector, and opened up — to a degree — the land-based lottery sector. The Council of State (a constitutional advisory body) observed that having different regulatory regimes within the overall national market could conflict with the requirement of horizontal consistency:

[It] is possible under European law to introduce a licensing system for remote games of chance as intended, but such regulation could have consequences for those market segments which are subject to stricter regulation ... In light of the European legal framework, the question arises as to whether the intended step of introducing a licensing system for remote games of chance will lead to (much) less restrictive policies being introduced for other market segments.⁵⁷

Given its role as guardian of the treaties, the European Commission has the power to commence infringement proceedings against Member States in relation to their gambling policies.. In 2006, such proceedings were started against a group of Member States including Finland and the Netherlands.⁵⁸ Ultimately, the proceedings against Finland were closed in November 2013 when the European Commission was satisfied that the Finnish regime complied with the requirements of EU law.⁵⁹ Proceedings against the Netherlands were closed in December 2017, as part of the European Commission's decision to close all such pending procedures in relation to gambling.⁶⁰

While the infringement proceedings were pending, the European Commission took a number of initiatives in the field. In 2011, it undertook a fact finding mission and published a Green Paper entitled 'On on-line gambling in the Internal Market'.⁶¹ This was followed by a Communication in October 2012 identifying five priority areas, one of which was "protecting consumers and citizens, minors and vulnerable groups."⁶² This resulted in first legislative measure to arise following the Green Paper, albeit a non-binding one: the Recommendation on

⁵⁶ See *Markus Stoss v Kulpa Automatenservice Asperg GmbH v Baden - Württemberg*, Joined Cases C-316/07, C-409/07 & C-410/07 [2010] ECR I-08069.

⁵⁷ Netherlands, Tweede Kamer, *Advies afdeling advisering Raad van State en nader rapport*, 33 996 no 4 (2013-2014) at 22 (translated from Dutch).

⁵⁸ EC, *Free movement of services: Commission inquiry into restrictions on sports betting services in Denmark, Finland, Germany, Hungary, Italy, the Netherlands and Sweden* [4 April 2006], IP/06/436.

⁵⁹ EC, *Commission requests Member States to comply with EU law when regulating gambling services* [20 November 2013], IP/13/1101.

⁶⁰ EC, *Commission closes infringement proceedings and complaints in the gambling sector* [7 December 2017], IP/17/5109.

⁶¹ [23 March 2011], COM (2011) 128.

⁶² EC, *Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, Towards a comprehensive framework for online gambling*, COM(2012) 596 at 5, online <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52012DC0596>.

Principles for the Protection of Consumers, in July 2014.⁶³ Although a Recommendation is not legally binding and does not confer rights upon individual gamblers, “national courts are bound to take [them] into consideration in order to decide disputes submitted to them.”⁶⁴ The Recommendation recognizes that “[a]ll citizens should enjoy a high level of common protection throughout the internal market” and aims to create a “high level of consumer protection”⁶⁵ However, despite references to a “high level of protection”, no definition or quantification is provided, leaving the standards open to interpretation. In addition to these moves by the European Commission, the European Parliament also issued a number of recommendations in 2009,⁶⁶ 2011,⁶⁷ and 2013.⁶⁸

When establishing a regulatory response to online gambling, Finland and the Netherlands are obligated to act within the space created by the application of EU law, and also the caselaw of the CJEU. This obligation applies to Member State’s efforts to protect consumers in accordance with national regulatory preferences and standards and to their attempts to respond to the challenges posed by technology.

B. UNLICENSED CROSS-BORDER GAMBLING

“Unlicensed cross-border gambling” refers to both online gambling that is unlicensed and unregulated, and to online gambling that is licensed in one jurisdiction and offered on a cross-border basis to another jurisdiction. The term does not refer to “illegal gambling operations” which is often a reference to organized crime.⁶⁹ *Locally* unlicensed cross-border gambling may very well be regulated in the country of origin. Depending on the jurisdiction, the online gambling provider will likely be subject to a variety of requirements in its own jurisdiction, with objectives similar to the ones Finland applies, and the ones Netherlands intends to apply. However, the standard of consumer protection, for instance, may differ between the originating jurisdiction and the jurisdiction in which the service is offered. The same observation holds true in terms of regulatory oversight of the licence holder. In this section, we consider how Finland and the Netherlands have responded to unlicensed cross-border gambling.

1. FINLAND

Online gambling became a political issue in Finland in the 1990s. The gambling company, Veikkaus, which offered lottery games, scratch cards, and betting, was the first of the three Finnish gambling companies to go online in 1997. At the same time, competition from foreign

⁶³ EC, *Commission Recommendation 2014/478/EU of 14 July 2014 on principles for the protection of consumers and players of online gambling services and for the prevention of minors from gambling online*, [2014] OJ, L 214/38.

⁶⁴ *Salvatore Grimaldi v Fonds des maladies professionnelles*, C-322/88, [1989] ECR I-04407 at para 18; see also Michael Auer, Alan Littler & Mark D. Griffiths, “Legal Aspects of Responsible Gaming Pre-Commitment and Personal Feedback Initiatives” (2015) 19:6 *Gaming L Rev & Economics* 444.

⁶⁵ Towards a Comprehensive Framework, *supra* note 62 at section 2.3.

⁶⁶ EC, *European Parliament Resolution 2008/2215(INI) of 10 March 2009 on the integrity of online gambling*, [2010] OJ, C 87/30.

⁶⁷ EC, *European Parliament Resolution 2011/2084(INI) of 15 November 2011 on online gambling in the Internal Market*, [2013] OJ, C 153/35.

⁶⁸ EC, *European Parliament Resolution 2012/2322(INI) of 10 September 2013 on online gambling in the internal market*, [2016] OJ, C 93/42.

⁶⁹ Jay S Albanese, “Illegal gambling businesses & organized crime: an analysis of federal convictions” (2018) 21 *Trends in Organized Crime* 262.

companies such as Centrebet, Expekt, Ladbrokes, and Unibet was increasing.⁷⁰ The detailed explanation of the government proposal (197/2001) to Parliament preceding the second *Lotteries Act*, stated that participation in foreign-based gambling would not be prohibited in the new regime.^[71] Thus, Finnish citizens were allowed to gamble online, but the state was still eager to prevent the operation and marketing of games provided by gambling operators based abroad. The second *Lotteries Act* applies to gambling operations abroad insofar as they are sold or transmitted in Finland, and to those operated in the Åland islands insofar as they are sold or transmitted in continental Finland.⁷²

Heikkilä, Laine, and Salo claim that the location of the operation and transmission of gambling depends on the identity of the concerned party.⁷³ From a foreign gambling company's perspective, the selling of games happens in their state of residence and thus it is not in breach of the law. On the other hand, a regulatory official's perspective may be different: the selling of games on the internet happens where the gambler is. If a foreign gambling company does not prevent gamblers in Finland from playing online, it has broken the law. Also, if the foreign gambling company has directed its offer towards Finland (e.g. by providing services in Finnish), this is a further justification that the sale happened in Finland.

In 2016, it was estimated that Finns spent €170 million on games offered by foreign based gambling operators, including the operator PAF. This sum accounts for almost 9 percent of the Finnish gambling market.⁷⁴ Between 2006 and 2016, the amount spent gambling abroad has fluctuated. The opening of RAY's online casino in 2010 and the decline of the online poker boom around the same time are some of the reasons that can explain the fluctuation.⁷⁵ The casino in particular can be linked to the launch of online poker by the Swedish state-owned operator Svenska Spel in 2006, which led to a public discussion about a similar move in Finland, given the popularity of online poker among Finns. At first, RAY and the Finnish Ministry of Social Affairs and Health were opposed to the suggestion, arguing that online gambling would increase gambling problems. Yet in 2009, the idea was endorsed by a working group, created by the Finnish Ministry of the Interior to reform the Finnish gambling legislation. Soon after, RAY applied for a license to operate online. This policy decision involved responding to the loss of gambling proceeds to foreign firms, by entering a national firm in the competition for Finnish online customers.

Marketing of gambling services by unlicensed gambling providers is common in Finland. Advertising is online, in social media, and even in e-mails or text messages.⁷⁶ The Finnish National Police Board has the jurisdiction to prohibit marketing of unlicensed gambling services, but it is challenging to intervene in the case of online gambling. The government proposal argued that by developing Finnish legislation it would be possible to prevent foreign gambling offers as gambling services diversify, and to this end Finland has

⁷⁰ Jenny Cisneros Örnberg & Tuukka Tammi, "Gambling problems as a political framing: Safeguarding the monopolies in Finland and Sweden" (2011) 26 *J Gambling Issues* 110; Tuukka Tammi, Sari Castrén & Tomi Lintonen, "Gambling in Finland: Problem gambling in the context of a national monopoly in the European Union" (2015) 110:5 *Addiction* 746.

⁷¹ However, promotion of foreign-based gambling was prohibited, and the operation of unlicensed gambling in Finland was criminalized. *Lotteries Act (Finland)* (197/2001).

⁷² 1047/2001, 2 §. The Åland islands are an autonomous part of Finland with their own gambling operator, PAF.

⁷³ Jukka Heikkilä, Juha Laine & Jukka Salo, "Rajat ylittävien etärahapelien sääntely" [Regulation of cross-border remote gambling] (2002) 6 *Defensor Legis* 1018.

⁷⁴ See Mikko Cantell et al., "Gambling proceeds" in Järvinen-Tassopoulos, *supra* note 20, 71-72.

⁷⁵ *Ibid.*

⁷⁶ Jarkko Mikkola, "Marketing" in Järvinen-Tassopoulos, *supra* note 20, 19-48.

chosen to develop new gambling forms like fantasy sports and eSports.⁷⁷ Yet there are still a lot of online gambling sites that provide services in Finnish. These sites can offer more enticing bonuses than the state-owned Finnish gambling operator Veikkaus, which is bound to gambling rules set by the Finnish Ministry of the Interior.⁷⁸

2. THE NETHERLANDS

In contrast to Finland, online gambling is not legally offered in the Netherlands at this time. Various monopolies prevail in the land-based sphere, though some of their services, most notably sports betting and horserace betting, are available online through an e-commerce exception. In 2011, the Dutch government released a policy statement sent a strong signal that the government was prepared to move away from the approach of one operator per category of gambling, while still upholding the established policy objectives of national gambling law: the prevention of gambling addiction, the protection of consumers, and combatting criminality and illegality. However, discussions since 2011 have been marked by an absence, from a policy-making perspective, of attempts to p land-based monopolies into the remote sphere.

Despite this, there is still active participation in locally unlicensed online games of chance. Research conducted in 2004 found that while postal communications accounted for more than 50 percent of participation in foreign or remote gambling, the popularity of the internet had greatly increased compared to two years prior.⁷⁹ A 2009 report found that 9.6 percent of the population had participated in illegal games of chance and 5.1 percent had participated in games of chance via the internet.⁸⁰ The report also noted a shift from illegal casinos to illegal online gambling over the past decade.⁸¹ A further report concluded that the percentage of residents of the Netherlands who had participated in online gambling had risen from 1.4 percent in 2005 to 3.3 percent in 2011, reaching approximately 257,000 residents.⁸²

Locally unlicensed online gambling offers in the Netherlands have long been a point of contention. However, the first enforcement measures, in Huls' view "ironically", were actually civil cases initiated in 2002 by the holder of the sports betting monopoly, De Lotto, against operators accessing the Dutch market on the basis of licences awarded elsewhere in the EU.⁸³ There was no centralised response from government at that time.

Two preliminary references were made from Dutch courts to the CJEU. In the first reference, the issue was transparency in the licence allocation process for sports betting licences.⁸⁴ In the second reference, the operator argued that the betting monopoly itself was in breach of EU law.⁸⁵ Ultimately, following the CJEU's decision to refer the case back to the national courts, the Supreme Court of the Netherlands held in *Ladbroke's Better & Gaming Ltd*

⁷⁷ 132/2016.

⁷⁸ See Jani Selin et al, "Prevention of gambling harms" in Järvinen-Tassopoulos, *supra* note 20, 89-90.

⁷⁹ Motivaction, *Deelname aan buitenlandse kansspelen in Nederland 2004. Een kwantitatief onderzoek* (Amsterdam, september 2004) at 2.

⁸⁰ Regioplan, *Aarde en omvang van illegale kansspelen in Nederland. Eindrapport* (Amsterdam, juli 2009), at II.

⁸¹ *Ibid* at V.

⁸² Intraval, *Gokken in kaart. Tweede meting aard en omvang kansspelen in Nederland* (Groningen-Rotterdam, December 2011) at 24.

⁸³ Nick Huls, "Dutch Gambling Law and Policy: An Untenable Parochial Approach" in Alan Littler & Cyrille Fijnaut, eds, *The Regulation of Gambling: European and National Perspectives* (Leiden: Martinus Nijhoff Publishers, 2007) at 77.

⁸⁴ *Sporting Exchange Ltd v Minister van Justitie*, C-203/08, [2010] ECR I-04695.

⁸⁵ *Ladbroke's Betting & Gaming Ltd v Stichting de Nationale Sporttotalisator*, C-258/08, [2010] ECR I-04757.

v Stichting de Nationale Sporttotalisator (Ladbrokes) that the monopoly-based regime was compatible with EU law.⁸⁶ However, the Council of State in a follow-up March 2011 *Ladbrokes* decision held that the lack of a transparent licence allocation mechanism was unjustifiable and thus breached EU law.⁸⁷ This decision has resulted in many challenges to existing licensing regimes. Moreover, it opened the gateway for operators to challenge the very existence of the monopoly before national courts. Arguably, these challenges posed an existential threat to part of the established order of the national gambling market and ultimately resulted in the introduction of “prioritization criteria” by the Dutch Gaming Authority in June 2012. These criteria indicated that enforcement action would not be taken against online gambling operators as long as they avoided certain specific actions.

The Gaming Authority prioritized enforcement efforts against those providing games of chance via websites available in the Dutch language, and/or via websites which have a “.nl” URL extension, and/or engage in radio, television, or print-media advertising directed towards the Netherlands.⁸⁸ Compliance with the criteria did not render the underlying offer legitimate and the criteria paid no regard to whether an offer was regulated by another jurisdiction. This approach was seen as a means to manage the transitional period until the introduction of the new licensing regime, estimated at about twelve months, yet six years have elapsed at the time of writing. Various tweaks were made to the approach, such as the publication of the Gaming Authority’s “Enforcement Policy” in 2016, which expanded upon previous references to a risk-based approach to enforcement.⁸⁹ The policy states that several factors will be considered as to whether enforcement action should be taken, including whether there are large risks for players. Considerable changes to this approach were introduced on June 1, 2017, including a non-exhaustive list of elements which could be taken into consideration to show that an offer was targeting the Netherlands.⁹⁰ Significantly, and seemingly independently of whether any of the other factors were breached, accepting play from minors became a factor for triggering enforcement.

Whilst Finland has demonstrated clarity in terms of relying on its existing, and subsequently merged monopoly-based system to counter unlicensed offers, the Netherlands has opted to licence private online gambling operators and capture a proportion of the *de facto* market. However, by November 2018 the necessary legislative amendments to enable this had not been adopted, despite the fact that a Bill to that effect which was submitted to parliament in July 2014.

C. PROTECTING AGAINST HARMFUL EFFECTS

⁸⁶ Hoge Raad [Supreme Court], The Hague, 24 February 2012, *Ladbrokes Betting & Gaming Ltd v Stichting de Nationale Sporttotalisator* (2012) (Netherlands). See also Alan Littler, “Noot HvJ 3 juni 2010, zaak C-258/08,” (2010) 5 *Tijdschrift voor Consumentenrecht en handelspraktijken* 227-230.

⁸⁷ Raad van State [Council of State], The Hague, 23 March 2011, *Sporting Exchange Ltd v Minister van Justitie*, (2011) (Netherlands).

⁸⁸ See *e.g.*, Netherlands Gaming Authority, Annual Report 2013 Safeguarding & Anticipating: Regulating the current gambling market and preparing for new legislation (2013) online https://kansspelautoriteit.nl/publish/pages/5163/annual_report_gaming_authority_2013.pdf at 7.

⁸⁹ Kansspelautoriteit, *Handhavingsbeleid Kansspelautoriteit*, oktober 2016, online: <kansspelautoriteit.nl/publish/library/6/handhavingsbeleid_kansspelautoriteit.pdf>.

⁹⁰ Kansspelautoriteit, *Kansspelautoriteit zet nieuwe stap in bestrijden van kansspelen op afstand*, 27 mei 2017.

As Hörnle puts it, “[t]he activity of online gambling presents potentially serious risks for individuals and for society as large.”⁹¹ The most serious risks are gambling addiction, underage gambling, and crime (*e.g.* fraud, money laundering). Age restrictions protect minors from the risks of gambling, but these limitations must be monitored and enforced. Gambling limitations protect other customers from gambling harms and addiction, and regulations also apply limit the marketing of gambling offers in order to limit harmful effects.

1. FINLAND

Prevention of gambling harms is a key objective of the Finnish gambling policy. Gambling became a problem or a “significant social issue” in the beginning of the 2000s.⁹² At the same time, the profile of Finnish gambling research changed, as the Finnish Ministry of Social Affairs and Health commissioned an investigation on Finnish gambling and problem gambling.⁹³ A prevalence study has been conducted every four years since 2003. Questions on gambling were also included in other surveys, such as the European School Survey Project on Alcohol and Other Drugs⁹⁴ and the School Health Promotion Survey.

The pressure to produce information on Finnish gambling and problem gambling is substantial. Monitoring and research are statutorily mandated and updated results are continuously needed in political decision-making.⁹⁵ The Finnish state depends on the results of the prevalence studies to justify the gambling monopoly system to the European Commission. The results may also play a major role in the regulation of gambling, in policy and gambling operations, as well as in the development of responsible gambling operations.⁹⁶

Salonen and Raisamo estimated that 124 000 Finns (3.3 percent of the population) have a gambling problem and 49 000 Finns (1.3 percent of the population) suffer from gambling addiction.⁹⁷ According to the results of the Finnish gambling survey of 2015, those respondents who played online poker, online casino games, and instant lotteries on Finnish and foreign operators’ sites had the most gambling problems.⁹⁸ In 2016, the results of the Finnish Gambling Harm Survey showed that gambling addiction, problem gambling, and at-risk gambling were more common among Finns who played both online and land-based games than those who had played either online or land-based games.⁹⁹ The clients of the Finnish Gambling

⁹¹ Julia Hörnle, “Social policy and regulatory models” in Julia Hörnle & Brigitte Zammit, *Cross-border Online Gambling Law and Policy* (Cheltenham & Northampton: Edward Elgar, 2010) 10 at 11.

⁹² Tammi, *supra* note 17 at 77.

⁹³ Johanna Järvinen-Tassopoulos, “The prevalence of gambling and problem gambling in Finland” in Raento, *supra* note 17 at 86.

⁹⁴ A question on slot machine gambling has been included in the core questions since 1995, when the first survey was conducted. Other questions on gambling have been added later. See Johanna Järvinen-Tassopoulos & Leena Metso, “Pojat ovat pelimiehiä, tytöt rahapelien harrastajia: vuoden 2007 ESPAD-koululaiskyselyn tulosten tarkastelua” [Boys are players, girls are dilettantes: Reviewing the results of the ESPAD school survey 2007] (2009) 74:5 *Yhteiskuntapolitiikka* 523.

⁹⁵ Järvinen-Tassopoulos, *supra* note 933.

⁹⁶ *Ibid.*

⁹⁷ See Anne Salonen & Susanna Raisamo, “Suomalaisten rahapelaaminen 2015: Rahapelaaminen, rahapeliongelmat ja rahapelaamiseen liittyvät asenteet ja mielipiteet 15–74-vuotiailla” [Finnish gambling 2015: Gambling, gambling problems, and attitudes and opinions on gambling among those aged 15–74] (Helsinki: Department of Health and Welfare, 2015).

⁹⁸ *Ibid.*

⁹⁹ See Anne Salonen et al., “Rahapelikysely 2016: Rahapelaaminen, rahapelihaitat ja rahapelien markkinointiin liittyvät mielipiteet Uudellamaalla, Pirkanmaalla ja Kymenlaaksossa” (Helsinki: Department of Health and Welfare, 2017).

Clinic, who had played both online and land-based games, suffered from numerous gambling-related harms in comparison to those who had played either online or land-based games.¹⁰⁰

Since December 2017, new limits have been established on the site of the Finnish operator, Veikkaus, in order to prevent increased online gambling problems. These limits have been stipulated by decree (2017/1424) by the Finnish Ministry of the Interior.¹⁰¹ Gamblers must create daily and monthly limits relating to the transfers between their bank account and their gaming account. Gamblers can exclude themselves from online gambling completely, from a specific online game or from a game group. No money transfer is possible between midnight and 6 a.m. A “panic button” prevents gambling for 24 hours. Gamblers must create limits to instant games: at most €1000 daily and €2000 monthly. The total deposit on the gaming account is €20 000. Once an hour, the gambler is notified of the time spent gambling online.¹⁰²

All online and offline games are prohibited to minors. Online gambling is possible only after registration and the operator must verify each customer’s age from their social security number. Nevertheless, previous studies on youth gambling have indicated that underage gambling has not completely disappeared in Finland.¹⁰³ To tackle this issue, there is a new protective age limit of 23 years, which means staff in gambling venues (e.g. casino and arcades) and other business premises offering gambling (e.g. supermarkets, kiosks and petrol stations) must ask every young-looking person for identification showing their age ID. Veikkaus will install an identification feature on slot machines in the near future.

2. THE NETHERLANDS

Various reports in the Netherlands have addressed the prevalence of negative consequences associated with participation in games of chance. A study dating from 2011 found that 64 percent of all respondents were recreational players, 0.68 percent of the population were at risk of addiction¹⁰⁴ and 0.15 percent were problem gamblers.¹⁰⁵ In 2016, the Gaming Authority stated that there were approximately 20,300 problem gamblers and 92,000 at risk gamblers in the Netherlands, which put the Netherlands on par with or below other European countries.¹⁰⁶ The explanatory memorandum to the Bill amending the Betting and Gaming Act and the Betting and Gaming Tax Act, which will introduce a licensing regime for online games of chance, notes that a licensing system is required as to prevent those at risk of addiction from developing into problem gamblers.¹⁰⁷

The Gaming Authority notes that the expected increase in those participating in online gambling does not automatically mean that the number of at risk and problem gamblers will increase. This is attributed to the fact that future licensees will have to comply with strict

¹⁰⁰ Anne Salonen et al., *Rahapelikysely 2016: Rahapelaaminen, rahapelihaitat ja rahapeliin liittyvät mielipiteet rahapeliongelmaan apua hakevien Peliklinikan asiakkaiden näkökulmasta*. (Helsinki: Department of Health and Welfare, 2017) 57 at 58.

¹⁰¹ See Selin et al., *supra* note 78 at 89.

¹⁰² *Ibid* at 90.

¹⁰³ See Sari Castrén et al., “At-risk and problem gambling among adolescents: a convenience sample of first-year junior high school students in Finland” (2015) 10:9 *Substance Abuse Treatment, Prevention & Policy*.

¹⁰⁴ See Intraval, “Gokken in kaart: Tweede meting aard en omvang kansspelen in Nederland” (Groningen-Rotterdam, 2011) at 14.

¹⁰⁵ *Ibid* at 16.

¹⁰⁶ See Kansspelautoriteit, “Verslavingspreventie: Strategie van de Kansspelautoriteit” (28 april 2016) at 10.

¹⁰⁷ *Supra* note 27 at 5.

regulatory requirements designed to prevent problem gambling. Furthermore, technological solutions, such as a central database of excluded players, will also mitigate the potential for increased problem gambling.¹⁰⁸ Nevertheless, the Gaming Authority also notes that it is difficult to predict future developments on this front because the market is already fairly mature and thus the impact of the arrival of legalised offers and advertising could have relatively less impact than would otherwise be the case.

Nevertheless, as the legislative process remains sluggish, the lack of a regulatory regime can hurt consumers. This is demonstrated by a case where a player sought to rely upon the illegality of an online gambling offer in the Netherlands in order to reclaim his losses of €178,088 from an operator licensed in Malta. The operator was providing services in the Netherlands in breach of the prohibition on unlicensed games of chance. Ultimately, the Court of Appeal held that over time the prohibition on unlicensed games of chance has lost the effect of rendering contracts for such games void or voidable. The erosion of this effect was attributed to various factors, including: the numerous opportunities to participate in such offers, the lack of consistent enforcement measures on the part of the government, the lack of a demonstrable intent to take measures against operators compliant with the prioritisation criteria, and the passage of the Bill amending the Betting and Gaming Act by the House of Representatives in July 2016 which would perpetuate the activity in question. All in all, such an offer could not be considered as socially undesirable, illegal, or criminal given that the Gaming Authority had previously recognised the operator's compliance with the prioritisation criteria.¹⁰⁹

While the Bill amending the Betting and Gaming Act is designed to protect consumers, they are left in something of a no-man's land pending regulation. Resistance to licensing online operators pits the protection of consumers through local licencing and regulation against other stakeholders who wish to prevent international operators from obtaining licences at the local level

In conclusion, both Finland and the Netherlands have decided to restrict cross-border movement of gambling services, with Finland opting for a monopoly-based system and the Netherlands is heading towards a licensing system. As online gambling is seen as a potentially harmful activity, consumer protection regulations are mandatory for every operator providing online gambling services in the two EU Member States. Gamblers in both jurisdictions gamble on foreign sites that are considered illegal in accordance with domestic law. Nevertheless, gambling abroad is not forbidden for Finns, whereas in the Netherlands knowingly participating in unlicensed games of chance is prohibited. While the Netherlands is still preparing the licensing system and developing the robust measures to successfully protect consumers, Finland is already focused on maintaining the monopoly system by channeling the demand towards national providers of online gambling with responsibility tools, limits, and the possibility of self-exclusion.

IV. MULTIPLE STREAMS ANALYSIS

We apply the Multiple Streams Approach to our analysis of the Finnish and Dutch cases. In the Dutch case, the analysis starts from the end of 2000s, when plans to regulate online gambling started to take shape. In the Finnish case, we start our analysis from the 2010s, when

¹⁰⁸ *Ibid* at 12.

¹⁰⁹ See Alan Littler, "Noot X/Unibet International Limited, Rb. Amsterdam 18 maart 2015" (2015) 6 *Tijdschrift voor Consumententrecht en handelspraktijken*, 331-334.

RAY started its online casino and the three national operators' monopolies were given legal status.

1. FINLAND

Finland may be the last fortress of gambling monopolies in Northern Europe.¹¹⁰ Denmark opened its gambling market to online gambling companies in 2012; there are no limits on the number of licenses to be granted, but the companies must fulfill certain conditions stipulated in the Danish *Gambling Act*.¹¹¹ Norway and Iceland are not EU Member States, but their position on online gambling is an interesting contrast to Finland's. Norway prohibited banks and other financial institutions from funding foreign gambling companies in 2010. These companies could also be charged if they accepted bets from Norwegians.¹¹² In Iceland, the *Law on Lotteries* states that a license to operate lottery or tombola can be granted to a company established in the European Economic Area, and for the purpose of obtaining money for public benefit in Iceland.¹¹³

Figure 2 focuses on the 2010s, when the national gambling companies, Veikkaus, RAY, and Fintoto, saw their gambling monopolies legalized by amendment of the *Lotteries Act*.¹¹⁴ It was an important step in the consolidation of the monopoly system. Finnish prevalence studies from 2011 and 2015 indicate that most Finns believe a gambling system based on monopoly is the best way to reduce gambling harms.¹¹⁵ But in 2011, those respondents who had gambled online, especially those who had gambled on foreign unlicensed sites, did not share the argument of the monopoly being the best option in reducing gambling harms.¹¹⁶

¹¹⁰ Järvinen-Tassopoulos, *supra* note 18.

¹¹¹ Janne Nikkinen, "The Global Regulation of Gambling: A General Overview" (2014) University of Helsinki Department of Social Research Working Paper No 3 at 19 [<http://hdl.handle.net/10138/44792>].

¹¹² *Ibid.*

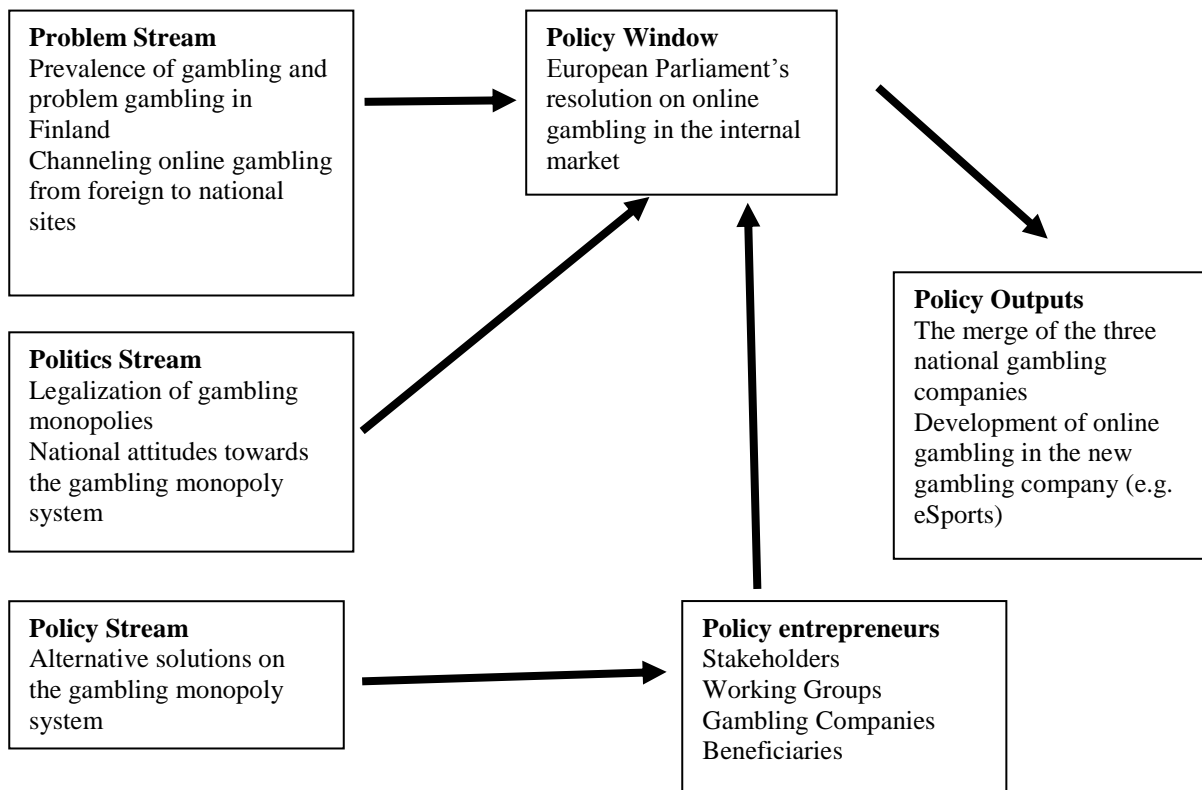
¹¹³ 38/2005. Daniel Thor Olsson & Sigurdur J Gretarsson, "Iceland" in Gerhard Meyer, Tobias Hayer & Mark Griffiths, eds, *Problem Gambling in Europe: Challenges, Prevention, and Interventions* (New York: Springer, 2009) 137 at 138.

¹¹⁴ 575/2011.

¹¹⁵ See Tuomo Turja et al, "Suomalaisten rahapelaaminen 2011, Raportti 14/2012" (Helsinki: Department of Health and Welfare, 2012); Salonen & Raisamo, *supra* note 97 at 49.

¹¹⁶ Turja et al, *supra* note 115 at 71.

Figure 2. The case of Finland in relation to online gambling



Finland seems to suffer from a “cultural lag” as it is unable to develop a regulatory framework that would enable it to respond to the new challenges and risks posed by the complex and ever-shifting marketplace.¹¹⁷ For several years now, Finnish gambling policy has focused on channeling demand towards domestic online sites, Veikkaus, RAY, and Fintoto, which have been represented as more secure than foreign online sites. These online sites merged into one in spring 2018.

According to the Finnish prevalence study of 2015, a smaller proportion of the population gambled online through foreign-based sites than national sites.¹¹⁸ Nevertheless, foreign-based operators reach the Finnish population through various media channels like foreign TV channels, radio, internet, and the social media. The presence of the foreign-based gambling operators is a political issue and until recently there has not been any legislative means available to tackle the issue. Yet there has been a need to address online gambling marketing on the radio as that was in breach of the *Lotteries Act*. A new government proposal (82/2017) states that the Finnish Communications Regulatory Authority cannot take into account a former breach against the *Lotteries Act* of a licensee applying for a renewal of short broadcasting license or a radio license.¹¹⁹

¹¹⁷ James Banks, *Gambling, Crime and Society* (London: Palgrave Macmillan, 2017) at 185.

¹¹⁸ Salonen & Raisamo, *supra* note 97.

¹¹⁹ Hallituksen esitys eduskunnalle laiksi tietoyhteiskunta- ja viestintäviraston toimintasta 82/2017.

The 2013 Resolution of the European Parliament on online gambling played a major role in how Finland saw the future of its gambling monopoly, but also how online gambling should be operated in the country. The future of the gambling monopoly system had been discussed on the parliamentary level. The Finnish Ministry of the Interior assigned a committee to consider alternative systems that could replace the current one. The European Parliament recognized that “online gambling may involve a greater risk of addiction than traditional offline gambling, owing, *inter alia*, to the increased ease of access and the absence of social control” and added:

on these grounds, certain internal market rules—including the freedom of establishment, the freedom to provide services and the principle of mutual recognition—do not preclude Member states from determining their own additional measures for the protection of players.¹²⁰

The resolution of the European Parliament created a “policy window” that started an important process in Finland. The merger of the three national gambling companies is a “policy output”, which has consolidated Finland’s monopoly-based gambling policy. The two different alternative models of the gambling system were: first, the merger of Veikkaus (as the former Finnish Lotteries’ company) and RAY (the Slot Machine Association) leaving Fintoto (the horse betting company) as an independent gambling company or second, the merger of all three national gambling companies. The latter model prevailed and the new state-owned gambling company started operations under the name Veikkaus on January 1, 2017. This policy output emphasizes the fact that Finland makes political decisions within the EU context respecting EU legislation, but unlike some other European countries, Finland prioritizes the maintenance of the gambling monopoly system.

Before the merger of the three national companies could happen, the Prime Minister’s Office assigned a company, NAG Oy, to conduct an independent economic analysis of the two models. The Ownership Steering Department of the Prime Minister’s Office concluded that the economic benefits provided by the merger of the three gambling companies would be substantial, but the benefits from the development of online gambling operations by the new gambling company would be even more important. The Ownership Steering Department also stated that this merger would result in the best operational development, efficient control of gambling operation, efficient steering of the new company, coordination of the gambling proceeds, and success in online gambling markets.

The policy entrepreneurs, who have contributed to the “policy outputs”, are Finnish and European stakeholders (*e.g.* officials, members of the Finnish and the European Parliament), working groups assigned by the Finnish Ministry of the Interior, and the representatives of the three national gambling companies and their beneficiaries.

2. THE NETHERLANDS

Concrete plans to regulate online gambling were first made in 2008. It was proposed that the land-based casino monopolist, Holland Casino, would obtain a three-year online monopoly.¹²¹ Although the House of Representatives approved the necessary legislative changes, the Senate

¹²⁰ EC, *supra* note 68.

¹²¹ Amendment to the Betting and Gaming Tax Act in connection with games of chance via the internet 2005-2006, 30 362, nr.2.

rejected them. Opposition arose to the idea of the state becoming directly involved in offering online gambling while other members of the Senate opposed the lack of competition inherent in the proposed approach. EU law considerations also arose, with one member of the Senate stating that they would not support the bill because “although [it was] perhaps not the most important issue [the bill] would probably generate more problems than the current law” as a general prohibition could more easily be justified under EU law than a monopoly-based system.¹²²

Following the defeat of such plans, a Report was commissioned and completed in August 2010.¹²³ In the context of a traditionally restrictive approach to the provision of gambling, the report suggested that any legalization of online gambling should be limited to channelling existing demand into the regulated offer, like poker. Subsequent plans to reform Dutch gambling were introduced in March 2011, whereby the relevant Secretary of State informed Parliament of his intention to introduce a regulatory regime for online gambling and ensure that the entire regulatory regime, including the licensing regime for land-based offers, complied with EU law. In doing so, the Secretary of State recognized that a substantial *de facto* market already prevailed in the Netherlands without regulatory oversight at the national level.

The current online gambling bill was formally submitted to the House of Representatives in July 2014, and the accompanying explanatory memorandum estimates the size of the *de facto* market as between 257,000 and 565,000 players.¹²⁴ The bill seeks to provide an appropriate and attractive offer on the basis of an approach led by demand, whereby 80 percent of the overall market will be provided by locally licensed operators. Various factors are offered to illustrate the need for regulation: the borderless character of the internet, resident demand, rapid technological developments, and that enforcement alone will not suffice. It recognises that the threat posed by gambling addiction cannot be countered without a licensing regime, which can also protect consumers, combat fraud and collect gambling tax revenues as players would be obligated to declare their winnings.

The bill also clearly establishes that responsibility for avoiding the negative consequences associated with gambling are spread across various actors. Operators and players are expected to take responsibility for being aware that games of chance carry specific risks. Moreover, operators will be subject to an extensive duty of care and accompanying requirements designed to protect consumers against risks associated with excessive participation. The government considers its role to be providing a regulatory framework which considers the specific risks associated with gambling and, in particular, regarding those who are more vulnerable to these risks.

Under the bill, licenced operators must require players to set limits to their play, provide players with information about gambling addiction each time a player logs on, as well as post links to addiction treatment options in the Netherlands. Under the aforementioned extensive duty of care, the operator will be required to contact players that exceed their limits, for example, via online chat. The bill also intends to create a central database of excluded players, against which licenced online gambling operators, land-based casinos, and slot

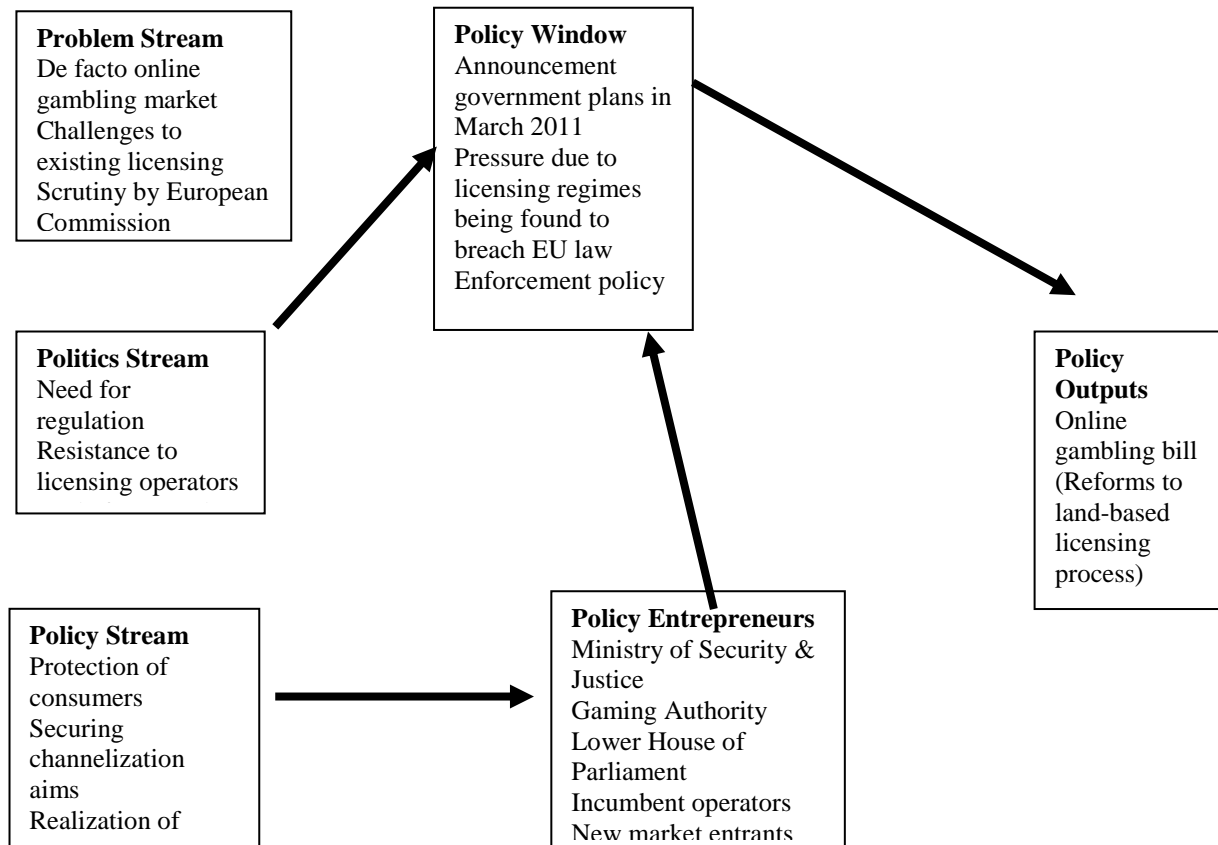
¹²² Handeling EK 2007/2008, nr. 25, p. 104 (Stemming over het wetsvoorstel Wijziging van de Wet op de kansspelen houdende tijdelijke bepalingen met betrekking tot kansspelen via internet (30362)).

¹²³ See Eindrapport van de Adviescommissie Kansspelen via internet, “Legalisatie van kansspelen via internet”, augustus 2010.

¹²⁴ Amendment of the Betting and Gaming Act in connection with the modernization of the gaming casino regime: Explanatory Memorandum, *supra* note 26 at 3.

machine operators will have to cross-check their players. Secondary legislation will require that operators inform individual players who meet criteria suggesting possible problems about the possibility of voluntarily entering the self-exclusion database. However, should an operator have grounds to consider that an individual's behaviour is likely to cause harm to the player or his/her family, then the Gaming Authority must be alerted. The regulator can then decide whether an individual should be entered into the central database of excluded players.

Figure 3. The case of the Netherlands in relation to online gambling



The European Commission has played a significant role in focusing attention on the potential infringement of EU law by the Dutch regulatory regime. The Commission first sent an official request for information to the Netherlands in April 2006, regarding land-based sports betting (whereby the regulatory regime permits the incumbent operator to offer its services via the internet, whilst not qualifying it as internet or remote gambling). This was followed by the next stage of the infringement procedure, a letter of formal notice, in February 2008.¹²⁵ The Commission stated that “the current Dutch gambling policy is expansive and the licence holder (De Lotto) is involved in encouraging citizens to participate, via new penetrating and aggressive distribution channels, in new gambling – with at least an equal risk of addiction to more traditional games of chance.”¹²⁶ This demonstrates that the restriction in question does not contribute to limiting gambling activities in a “consistent and systematic manner.” Indicative

¹²⁵ Europese Commissie, Met redenen omkleed advies, Inbreuk nr. 2002/5443, Brussels 28/02/2008, p. (available at <https://zoek.officielebekendmakingen.nl/blg-14772.pdf>), para. 78.

¹²⁶ *Ibid.*

of the blurred division between online and land-based gambling in parliamentary discourse, during a hearing in the House of Representatives on the bill in May 2015 a representative of the European Commission noted that Brussels was losing patience with the sluggish progress, and threatened to restart infringement proceedings if changes did not materialize.¹²⁷ Whilst the infringement proceeding against the Netherlands was closed in 2017, along with those against many other Member States, the decision to do so was unrelated to the question of whether the various national regulatory regimes were EU law compliant. Instead, the Commission decided that domestic courts provided a more efficient means to handle complaints in this sector. This does not mean that Member States have been freed from the need to comply with EU law when regulating their gambling markets. Yet pressure will no longer be placed on the domestic legislative process due to probing from the European Commission.

The bill is the key policy output to date, yet by spring 2018 it still had not been tabled for debate in the Senate. Secondary legislation, which will provide more practical details on the regulatory regime, will be published for consultation, providing another opportunity for policy entrepreneurs to provide input and views to the Ministry. Thus, the key output, a complete and comprehensive regulatory regime for online gambling, has yet to be achieved and the locally licensed market may not open until 2020. Even then, this policy output will not be final; reviews of the performance of the regulatory regime have been built into the design of the policy regime. It would be unwise to anticipate that the design of the regulatory regime will remain static. Extensions and alterations are expected as policy entrepreneurs respond to the new regulatory regime.

The Ministry of Justice and Security plays a key role as a “policy entrepreneur” as they are able to establish Dutch gambling policy. This role is shared with the Ministry of Finance in the sense that Finance sets the rate of taxation, but taxation should not undermine the achievement of gambling policy’s core regulatory objectives. Given the division of competencies, the Gaming Authority has perhaps had to take something of a backseat. Nevertheless, its past and current policies on enforcement against online gambling operators without a licence, and the consequences thereof, have shaped parliamentary discourse on the bill.¹²⁸ Once the regulatory foundations are laid, the most significant policy outputs can be expected, building upon the work of the Ministry by regulating the allocation of licences and the effective supervision of the new licence holders. Parliament continues to formulate its regulation regime by making amendments and motions to the bill.¹²⁹ There is considerable resistance to the possibility that operators who have been on the market without a local licence (that is, illegally) will be able to receive one under the new regime.¹³⁰

¹²⁷ Netherlands, Tweede Kamer, *Vaste commissie voor Veiligheid en Justitie, Hoorzitting, Wetsvoorstel kansspelen op afstand* [Permanent committee for Security and Justice, Hearing: Bill for remote games of chance], 21 mei 2015, Kamerstuk 33 996, online < <https://www.tweedekamer.nl/kamerstukken/detail?id=2015D17636&did=2015D17636>>. One of the authors was present at this meeting. .

¹²⁸ Netherlands, Tweede Kamer, *Wijziging van de Wet op de kansspelen, de Wet op de kansspelbelasting en enkele andere wette in verband met het organiseren van kansspelen op afstand; Nader verslag* [Amendment to the Betting and Gaming Act, the Betting and Gaming Tax Act and some other law relating to the organization of remote games of chance; Further report] 33 996 no 8 (2013-2015).

¹²⁹ See Eerste Kamer, *Organiseren van kansspelen op afstand*, at https://www.eerstekamer.nl/wetsvoorstel/33996/organiseren_van_kansspelen?start_docList=0#p3 for a full list of amendments made in July 2016.

¹³⁰ Netherlands, Eerste Kamer, *Wijziging va de Wet op de kansspelen, de Wet op de kansspelbelasting en enkele andere wetten in verband met het organiseren van kansspelen op afstand. Nader voorlopig verslag van de vaste commissie voor Veiligheid en Justitie* [Amendment of the Betting and Gaming Act, the Betting and Gaming Tax

V. SIMILARITIES AND DISCREPANCIES

At first glance, the Finnish and the Dutch cases seem to have very little in common. The Dutch Gambling Act of 1964 had three main objectives: channeling the domestic demand for gambling towards legal opportunities, protection of customers, and prevention of gambling addiction.¹³¹ On the other hand, the Finnish Lotteries Act of 1965 established that “raising revenues by taking advantage of people’s desire to gamble is allowed only in limited volume and exclusively to raise funds for charity or to support non-profit activity.”¹³² Yet similarities can be found. Prior to emergence of the internet, the regulation of gambling in both jurisdictions was largely characterised by monopoly-based supply, with the difference being the number of market segments.

Finland and the Netherlands diverge in how they are responding to securing national objectives with the arrival of online gambling. Finland elected to maintain its monopoly-based supply, extending it to the online sphere and subsequently consolidating its various offline monopolies into a single overarching state-owned monopolist in anticipation of operational benefits from a single provider. Monopoly-based supply was considered to be the most appropriate way to counter gambling harms, yet this does not mean the Finnish market is impervious to cross-border offers (for instance, there are indications that some consumers prefer offers originating out of the state). Attention was focused on channeling demand to domestic sites, and in this regard Finland and the Netherlands share a point in common.

However, with the pending bill, the Netherlands seeks to channel 80 percent of demand to locally licensed online operators. Despite the state lottery’s takeover of a private non-profit operator, the trend in regulation reform is one of less government involvement in games of chance, like the decision to privatize the casino sector. Moreover, the Netherlands has not sought to extend their offline approach to the online market. The offline market is more fragmented compared to Finland and a market-oriented approach has been chosen. However, given lengthy turmoil and delay related to the bill, a substantial *de facto* market prevails in the absence of legal means to extend local regulatory objectives and standards to the online gambling market.

Whilst these EU Member States have taken different regulatory paths, these paths crossed when the regimes came under the scrutiny of the European Commission in 2006.¹³³ Both regulatory regimes triggered preliminary references to the Court of Justice of the European Union (“CJEU”). These references did not directly challenge the absence of an online regime but did question the offline regime’s compliance with EU law. EU law certainly acted as a catalyst for debate and provided a platform for foreign stakeholders to place pressure upon domestic regulatory regimes. From the perspective of private operators, this has had greater purchase in the Netherlands than Finland.

To a degree, the protection which the two regimes will offer against the potential excesses of gambling will depend upon whether it is possible to channel consumer demand to the locally licensed supply. The Netherlands chose a licensing regime, capturing the supply

Act and some other laws relating to the organization of remote games of chance. Further provisional report from the standing committee for Security and Justice] 33 996 D (2016-2017).

¹³¹ See Anna E Goudriaan, “Gambling and problem gambling in the Netherlands” (2014) 109:7 *Addiction* 1066.

¹³² Hallituksen esitys Eduskunnalle arpajaislaiksi ja eräiksi siihen liittyviksi laeiksi 197/1999.

¹³³ EC, *supra* note 60; Tapio Jaakkola, “Finland” in Meyer, Hayer & Griffiths, *supra* note 114 at 55.

side while imposing regulatory preferences on gambling suppliers. This approach seemed preferable to the gargantuan task of enforcement. Finland elected to consolidate its monopoly structure, relying upon enforcement of the rules, but also recognising that an attractive offer is a necessary part of the regulatory mix. To capture demand, both regimes will need to enable offers which reflects consumer preferences and rely upon enforcement. The magnifying glass of EU law will require that the new regulatory regime for online gambling in the Netherlands does not introduce any incompatible restrictions, while Finland cannot afford to contradict the objectives on which the state monopoly is founded. Compliance with EU law is an ongoing process, requiring horizontal consistency as well. The pressure from unlawful gambling, the harms of gambling and EU law will be ever present factors requiring continuous assessment.

VI. CONCLUDING REMARKS

In this paper, our main goal has been to find answers to our research question: why did Finland and the Netherlands decide to take different political and legislative paths regarding regulation of online gambling? Ultimately, both EU Member States seek the same objectives: to protect consumers from the excesses of gambling in part through reducing the presence of unlicensed operators on their respective national markets. Finland has responded to the pressures of EU law by swimming against the tide and sticking with a monopoly system, while the Netherlands has opted to permit private parties into the market under strict licensing conditions.

These plans reflect the Netherlands' earlier departure from the alibi model of regulation. Current regulatory proposals emphasize the ability of a licensing regime to capture existing demand ("channelization") and thus avoid illegal markets, but otherwise there is little reflection of the other tenets of the alibi model. Indeed, there will be no specific restrictions on the generation of private profit and the ensuing taxation revenues will be destined for state coffers. In line with the risk model, the planned regulatory reforms concentrate on tackling the risks of gambling related addiction by developing and extending national regulatory preferences and standards in this area. Given long-standing opposition to the law and apparent political indecisiveness, the significant delays in passing the bill arguably undermines the achievement of its public policy objectives. One cannot help but wonder whether the lack of political progress means those who would receive protections under the proposed legislation are left unduly out in the cold.

Kingma's theorization of gambling regulation in the Netherlands has inspired other researchers, who have modified the regulatory models to fit the Finnish case. With the Foucauldian concept of the "dispositif", Matilainen tries to depict social changes in a historical continuum.¹³⁴ Instead of differentiating models, Matilainen analyzes changes in gambling regulation within dispositifs and has added the concepts of gender, class, and gambling space in her analysis. According to Matilainen, there are three dispositifs: the "prohibition dispositive", the "common good dispositive" and the "risk dispositive." These social changes are also related to gambling through discourses and practices.¹³⁵ Within the Finnish context, the commercialization of gambling has intensified due to the introduction of online

¹³⁴ Foucault himself described the meaning of this term as follows: *a thoroughly heterogeneous ensemble consisting of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral and philanthropic propositions—in short, the said as much as the unsaid.* M Foucault. 'Le jeu de Michel Foucault', in M Foucault (ed.) *Dits et écrits III* (Paris: Gallimard, 1977) 298 at 299.

¹³⁵ See Riitta Matilainen, *Production and Consumption of Recreational Gambling in Twentieth-Century Finland* (Doctoral Thesis, University of Helsinki Faculty of Social Sciences, 2017) at 35.

gambling.¹³⁶ The internet has changed the temporal and the spatial organization of gambling and this has had an impact on gambling routines, gambling spaces, and sociality of gambling.¹³⁷ Matilainen claims that addiction is a by-product of the risk dispositif.¹³⁸ Given the historical mix of state-backed, private non-profit making, and profit making operators in the Netherlands, it will be interesting to see whether similar temporal and spatial shifts arise following the licensing of online gambling in the Netherlands; more space for commercial enterprise will coincide with the application of national standards and preferences to an existing online gambling market.

Finland and the Netherlands have different political priorities and corresponding strategies in relation to online gambling, despite a shared ambition to channel demand towards domestic gambling providers. They represent different regulatory models and their policy windows differ. It remains to be seen which providers are interested in the Dutch market once it becomes clear how the regulatory landscape will lie, and conversely, how Dutch gamblers take to new locally licensed offers, such as short odds bingo.¹³⁹ Finland, on the other hand, not ready to change its regulatory system, chose to compete against unlicensed gambling operations with a brand new national gambling company. Finland's approach serves to protect gamblers from developing gambling problems, with mandatory limits and responsible gambling tools, and to protect local online gambling operations from unlicensed competition over the proceeds of gambling.

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¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ Donal Casey, "The DNA of Bingo: Charity and Online Bingo" in Egerer, Marionneau & Nikkinen, *supra* note 9 at 167.

the Ministry of Social Affairs and Health (*Lotteries Act 52§*), STAKES National Research and Development Centre for Welfare and Health (23.6.-31.12.2008). Since 2009, she has been a Senior researcher (gambling research funded by the Ministry of Social Affairs and Health (*Lotteries Act 52§*)) at the National Institute for Health and Welfare.