

Gaming regulation structures in Europe

Summary

A study commissioned by the Netherlands Gaming Control Board

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Summary

Aim and structure of the study

In 2000 the Dutch government decided that a new body should be established to regulate the national gaming monopolies. The Minister of Justice has said that he wishes to maintain the supervision of the industry under his direct responsibility. The Netherlands Gaming Control Board (*College van toezicht op de kansspelen*), by contrast, is calling for the retention of an independent body to carry out the supervision. Against the background of this discussion, the Gaming Control Board wanted to learn more about the different systems adopted in Europe for the licensing, and in particular the regulation, of the gaming market. The Gaming Control Board also wanted to identify the pros and cons of each system. This study set out to provide that information.

The study consisted of a survey of regulatory organisations in all 22 member countries of the Gaming Regulators European Forum (GREF). The results of the survey were then fleshed out with desk research and interviews in six countries.

Organisation of the regulation of gaming in Europe

The study identified a number of different types of organisational structure into which the supervision of gaming can be grouped. They range from a totally independent regulator to the delegation of supervisory tasks within a ministry but without the creation of a separate department. The distinctions between the different types of organisation are not always sharply defined but broadly speaking the European regulators can all be placed in one of the models presented here. The classification is shown in the table below.

Table S1 How regulation is organised

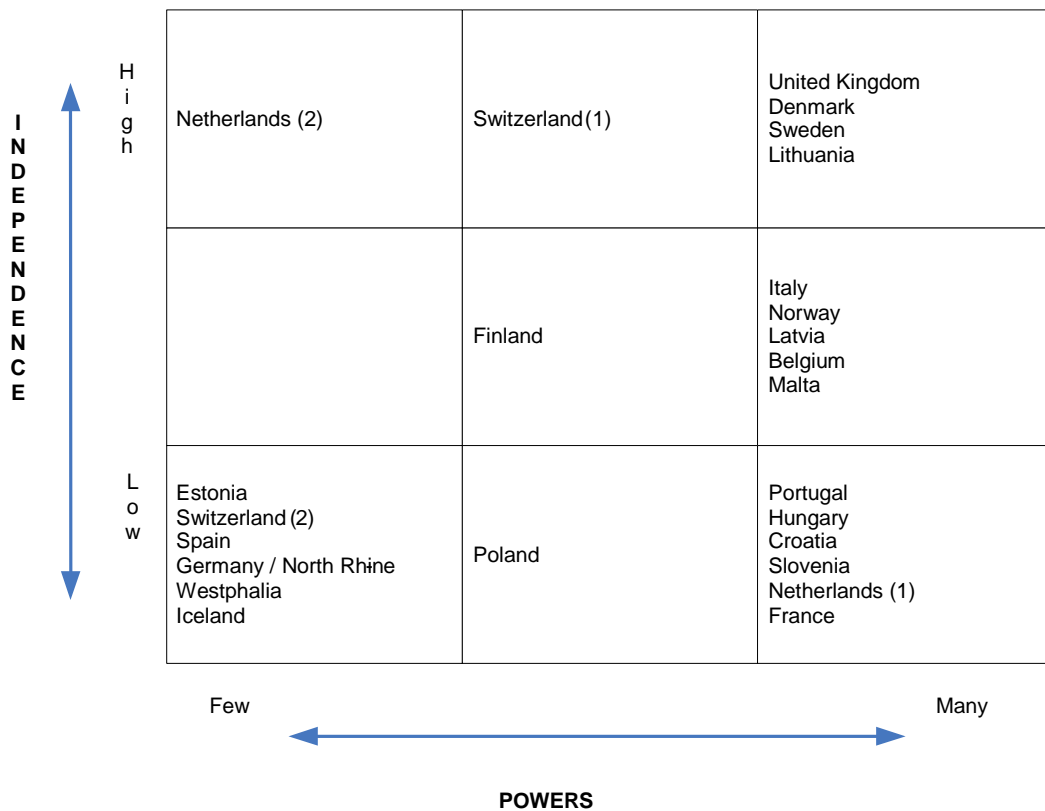
	Number	%
The regulatory tasks are carried out by a ministry. There is no separate office	9	31%
The regulatory tasks are carried out by a separate office within the ministry	7	24%
The regulatory tasks are carried out by a ministerial office located outside the ministry	1	3%
The regulatory tasks are carried out by an agency/inspectorate under ministerial control	4	14%
The regulatory tasks have been assigned to an independent regulatory body	6	21%
Other	2	7%
Total	29	100%

The table shows that the regulation of gaming is frequently carried out by a ministry. The existence of an agency/inspectorate or an independent regulator is slightly less common. The relatively small number of independent regulators can be explained in part by the fact that even in countries with an independent regulator some of the regulatory tasks are still retained by the ministry. These regulatory tasks are sometimes demarcated by market (in Switzerland the independent regulator is responsible for the casinos, the Ministry of Justice for the lotteries), while in other countries the separation of tasks is based on function. For example, the secondary regulation of local authorities is left with the ministry.

The matrix on the next page gives a snapshot of the powers of regulatory authorities in Europe. In addition to their powers, the table also shows the degree of independence of the regulator in relation to the ministry. A high degree of independence means the organisation is an independent administrative organisation. In a country that is grouped among those with a low degree of independence the regulation is performed by a department of a ministry or an inspectorate. Intermediate forms are commissions that operate independently but whose policies can be influenced by the relevant ministries. The figure shows at a glance what the situation is in each country.

In the figure Switzerland and the Netherlands are mentioned twice. Given the major differences between the existing regulators in those countries a single mention was not enough.

Figure 1 Classification of regulators according to their positioning and powers



Relationship to the minister

The positioning of the organisation determines the nature of the relationship with the minister. As long as the regulation falls under the direct influence and responsibility of the minister the relationship is clear. The responsible minister takes charge and has full responsibility for all decisions made in the context of the regulation. The relationship between the minister and the regulatory authority is particularly important where the regulator operates at arm's length. An independent administrative organisation in particular is completely independent within the limits laid down by law. In the countries in the study the minister can only issue general directions to the independent administrative organisations. There are also several countries which have opted to give only limited or no licensing powers to the regulator.

The independence of practically every independent regulator is guaranteed by law. This independence is generally laid down in the gaming legislation, but sometimes also in the constitution. The fact that a regulator operates entirely independently does not mean that its own operations are not supervised. In the countries studied they are generally accountable to the minister and have to draw up an annual plan and an annual report. The regulators are also often subject to scrutiny by an equivalent of the Netherlands Court of Audit (*Algemene Rekenkamer*) and parliament, whose task is to monitor that the regulator is in fact operating within the statutory framework.

Size of the organisation

The size of the regulatory authorities (both in terms of full-time employees and budget) varies enormously. There are some regulatory authorities with more than 100 FTEs and a substantial budget. There are other countries that have no employees or budget specifically dedicated to gaming regulation. On average, the regulatory authorities have 32 FTEs devoted to supervising gaming. The average budget (there is not always a separate budget) is €4.2 million. The budget is often (in 55% of cases) paid from the funds of the responsible ministries.

The number of employees engaged in the regulation of gaming in the Netherlands is relatively small compared with the other countries in the study. There are 10 FTEs employed at the Ministry of Justice's Gaming Office (*Projectbureau kansspelen*) and 4 FTEs at the Gaming Control Board. Moreover, these employees are not all directly involved in carrying out the supervision. In the countries examined in the case studies the number of people involved in the actual supervision is significantly larger. This number is necessary because the expertise of specialists is required in various areas. In addition, regional regulation – especially in large countries – demands an adequate number of local inspectors. The relatively low number of employees involved in regulation in the Netherlands can be partly explained by the delegation of technical inspections to the private company Verispect. Verispect has 15 employees (14 inspectors and a manager) engaged in the inspection of slot machines. The Netherlands is in fact the only country in the study where all inspections are carried out by a private organisation.

Background to the regulatory structure

The choice of a particular model can depend on many factors. There are various context factors that could possibly explain the organisation of regulation: the administrative-institutional setting (the way in which regulation in general is organised and implemented in a country), the policy context (the political philosophy of the government towards the gaming market) and the gaming market (the size of the gaming market and the extent to which the government can influence its own revenues).

The results of the survey do not show any clear correlation between either the gaming policy or the gaming market and the way in which the regulation is organised. Nor do the size of the gaming market or the extent to which the government benefits from gaming revenues clearly lead to a particular type of regulation. The case studies show that the organisational structure is often explained by a mixture of historical developments, administrative-institutional factors and political compromises. In countries like Sweden and the United Kingdom the regulators are independent, which follows closely from the dominant administrative culture in those countries where regulation is almost always carried out at arm's length from the ministry. In Portugal, by contrast, it is unheard of for regulation to be delegated to a body outside the responsible ministry. Supervision is usually carried out by inspectorates with a close relationship with the minister.

Activities and instruments of regulators

In addition to supervision, the activities of the regulators can also include providing advice, issuing licences and providing information. This is the case with almost all the regulatory authorities in the study. The regulatory authorities have various instruments to enable them to carry out their activities. These can range from administrative controls to inspection of gaming equipment. Regulators generally have a range of instruments at their disposal.

Table S2 Instruments available to regulatory authorities

	Number	%
Administrative controls	24	86%
On-site inspections	19	68%
Financial controls	18	64%
Technical inspections	14	50%
On-line monitoring	9	32%
Other	10	36%
Total	28	100%

Multiple answers possible

Market segments covered by regulation

In the countries in the study the legislator has generally made a distinction between different forms of gaming. The distinction between the “harder” forms of gaming, such as casino games and slot machines, on the one hand, and lotteries and betting on the other is particularly common. In many countries this is reflected in separate legislation for gaming (which in those cases covers casinos and often also slot machines) and for lotteries. The statutory framework for the two types of gaming differs mainly in the form of regulation, and often in the form of supervision.

The toughest conditions and the most intensive supervision apply for casino games. The conditions for slot machines are generally less strict, although this market is felt to be a problem in many countries because they represent a low-threshold form of gambling and because their wide distribution over many venues makes strict supervision more difficult. Some of the countries in the study recently amended the licensing rules for slot machines. In Sweden the licensing was switched from local authorities to the Gaming Board. Several years ago Belgium introduced a strict new regime of licensing requirements for the slot machine sector. In Norway the commercial exploitation of slot machines will be banned from 1 January 2006. The least strict requirements apply for lotteries. This is connected not only with the fact that lotteries are less addictive, but also that the lottery market is far more transparent. There is usually just a single supplier or only a small number of suppliers of lottery games. Moreover, they are often (privatised) state-owned companies.

Sanctions

The regulators in the study in principle concentrate on the legal supply of forms of gaming. When it discovers a violation by a licence holder, the regulator can impose sanctions under the statutory framework to compel compliance with the legislation. In most of the countries studied, the sanctions are the temporary or permanent withdrawal of the licence. The decision to withdraw the licence is preceded by a warning. Withdrawing a licence is a heavy sanction which is used very sparingly in most countries. Belgium has an intermediate step in the form of a temporary ban on operating some machines.

Besides revoking a licence, in some countries the regulator also has the option of imposing administrative fines. In both Sweden and Switzerland the regulator can impose fines. In Switzerland, for example, the maximum fine is three times the proceeds earned from the offence or – if that cannot be determined – 20% of the gross gaming revenues. Criminal prosecution is currently a task for the police and public prosecution department in the countries in the study, although the new Gambling Commission in the United Kingdom is able to institute criminal proceedings itself.

Pros and cons of the different regulatory models

When mentioning the pros and cons of the different organisational models the respondents found only one fundamental difference to be relevant: the degree of independence from the ministry. This is the distinctive criterion. The opinions of the respondents therefore focused on two models. The first model is an independent regulator, the other a regulator which is part of the ministry (regardless of whether it is an inspectorate, agency or department). On the basis of this distinction the respondents described what in their eyes were the main benefits and drawbacks of these models.

The major advantage of an independent regulator, according to the respondents, is that there is a clear distinction within the government between its financial interest in earning revenue and the supervision of the market. With this model the government cannot directly steer the supervision in order to influence its own revenues. This separation makes it clear who is responsible for the policy and who is responsible for the supervision. It prevents any semblance of a conflict of interests and the system is very transparent. Apart from this point of principle, the respondents mentioned several other advantages: the organisation operates in a stable context since there is no political influence; politicians cannot be blamed for failings in the supervision in a politically sensitive market; and an independent regulator has greater possibilities to build a high-quality organisation.

The most important advantage of supervision falling directly under the control of the ministry is, according to the respondents, the greater flexibility. It is possible to intervene quickly in response to politically undesirable developments. The desired emphases can then be made directly. Another advantage that was mentioned is the fact that the minister actually possesses instruments to exert influence in the policy area for which he is also politically responsible.

The drawbacks of the different models are not specifically mentioned. The advantage of one model is simultaneously the drawback of the other.

Choice of independent supervision or positioning in ministry

Irrespective of the type of organisation that is actually chosen, the respondents mentioned a number of specific requirements that must be considered in designing the regulatory regime. First, a well equipped regulator with sufficient staff, funds and instruments is a basic condition for effective regulation. Regulation of a complex and innovative market like gaming requires sufficient manpower and expertise in various fields. Several regulators also felt that the supervision of the various gaming markets should be concentrated as far as possible in a single body. This will avoid a situation where different regulatory regimes apply to competing gaming markets. Lastly, it is important that there are adequate coercive measures. This refers above all to the possibility of imposing administrative fines and close cooperation with organisations in the criminal justice system.

In principle, these conditions can be met by different organisational forms. If the conditions are met, the choice of a regulator falling under the ministry or an independent organisation depends above all on the dominant administrative culture and political preference. In countries with an independent regulator regulation has traditionally been organised in that way. The same applies to countries where inspectorates are generally used for regulation. There are also countries (including the Netherlands) where different forms of organisation are common. In those countries the choice will be determined by the political importance that is attached to the pros and cons mentioned above.

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