

**PATRIOT GAMES: THE REGULATION OF ONLINE GAMBLING IN THE EUROPEAN
UNION**

ABSTRACT

The recent economic crisis has brought into focus how even open and highly interdependent economies in the European Union try to govern their economies according to territorially defined interests. The aim of this article is to examine an area, online gambling, with the technological and legal conditions that challenge approaches that favour economic patriotism. The article **compares** two cases, the UK and Italy that represent two different models of economic governance to argue that they are similar in which interests they seek to protect and at which level.

Keywords: Economic patriotism, European single market, online gambling

INTRODUCTION

The recent economic crisis in the European Union (EU) highlighted the extent to which different fiscal policies and macroeconomic regimes, including and especially in the Eurozone, persisted despite binding fiscal targets. While the structural features of the Euro and the EU contributed to the crisis, the different policy outputs and outcomes seemed to lend weight to the argument that open economies, such as those in the EU, left considerable room for states to adopt different policy responses and intervene in the economy. How and why states intervene in markets is an indicator of the role of politics, institutions and ideas in economic governance. While most attention has been paid to the relationship between how states intervene to regulate markets that are already present and legal, less attention has been given to states intervening in markets that have been illegal, or with an uncertain legal status, until very recently. This is especially the case with online gambling in the EU. What was once a mostly clandestine activity has become an important source of employment and government revenue in many states. The range of instruments available and the extent to which states can intervene with online gambling raises interesting questions about how and why states try to shape markets. Do states that have taken a lighter approach to gambling, providing for an open and widely accessible domestic market, intervene to protect domestic providers of services, to protect consumers or neither? Do states that have intervened more extensively and intensively behave differently?

The article's objectives are two-fold. First, it examines how the United Kingdom (UK), as a liberal market economy, and Italy (as a coordinated market economy), have sought to regulate online gambling within the rules of the EU's internal market. The two cases, which represent different ways of legalising and regulating online gambling as well as different varieties of capitalism, nonetheless lead to similar policy choices that aim to promote and protect domestic producers. We argue that despite a legal framework and technology that erodes, if not eliminates, national borders, economic interests are still territorially defined and drive policy choices. Second,

we explore whether economic patriotism is directed at protecting and promoting domestic producers, and the associated taxation revenues, rather than consumers.

ECONOMIC PATRIOTISM AND ONLINE GAMBLING

The UK is often cited as the quintessential model of a liberal market economy and economic governance in Europe (Gosta 1990; Hall and Soskice 2001). Its preference for market solutions to regulatory problems seemingly contrasts with Italy's, as an example of a form of coordinated capitalism, with a tendency to use a range of instruments to rein in markets and not just remedy their externalities (Della Sala 2004). The two have also, until the turn of the century, taken very different approaches to gambling, with the UK legalising a wide range of gambling activities in highly competitive markets and allowing access to overseas operators; while Italy had only a very limited form of provision with a monopoly position for a few licensees. Yet, by 2014, Italy had liberalised a wide range of gambling activities and had put in place a licensing regime that created a competitive market for online gambling, albeit with the requirement for an Italian license. Ironically, the UK in 2014 moved to a more regulated approach abandoning its 'free trade' philosophy, instead requiring a UK license. However, as we argue below, these developments are not simply another example of the limiting of policy options available to states but reflect strategies that different states use to protect and promote interests within their territories.

The conventional argument has been that states have limited policy options in open economies and must be attentive to the policy preferences of increasingly open and interdependent financial markets (Cerny 1997). Those who argued that governments have much more room to manoeuvre than is claimed, and do not hesitate to use it, point to the continued differences in policy choices that can be found in a whole range of areas (Berger and Dore 1996; Levy 2006b; Mosley 2003, 2005). They do not dismiss the economic imperative claims that states have few options but to abandon redistributive and demand management policies that characterised the first decades of the post-war era. Indeed, they claim that the new imperatives have led to creativity in finding policies to meet more complex and diffused demands, while not straying too much from the well-

worn path of policy legacies and path dependency (Weiss 2003). More often than not, this is because institutions matter and can be held as the explanatory variables that explain the persistence of national approaches to policy, especially the managing of the economy (Hall and Soskice 2001).

It is within this debate about the consequences of eroding national borders that we can place current discussions about economic patriotism. The notion that market economies are rooted within national boundaries has been associated with a range of economic models from mercantilism to autarky. In contemporary Europe, its roots rest with Friedrich List who countered arguments about free trade and open economies with the power of the state to protect domestic producers and interests. Forms of economic patriotism defined post-war industrial policies in member states, such as France (Hayward 1986; Levy 2006; Shonfield 1965), that looked to exert some degree of control over markets through industrial policy. On the surface, it would seem that economic liberalism and economic patriotism, with the policies they engender, would be polar opposites as guiding principles for policy-making, especially in open economies such as the EU. However, the two are not necessarily incompatible as **economic patriotism is a political strategy that can generate broad-based support for policy choices that protect and promote particular economic and social interests** (Helleiner and Pickel 2005; Pickel 2003; Rosamond 2012).

Economic patriotism was the subject of a special issue of the *Journal of European Public Policy* in 2012. It was part of a renewed interest in economic nationalism and brought to light how economic patriotism is a strategy that states can use to gain control over markets so as to protect and promote territorially defined interests (Clift and Woll 2012; Helleiner and Pickel 2005). **While economic nationalism and patriotism are not necessarily synonymous**, they **do** share a concern with strategies used to make economic choices. Clift and Woll define economic patriotism as, “*economic choices that seek to discriminate in favour of particular social groups, firms or sectors understood by the decision-makers as insiders because of their territorial status. Economic patriotism entails a form of economic partiality: a desire to shape market outcomes to privilege the position of certain actors*” (Clift and Woll 2012: 308). Even in a borderless world, policy-makers may make choices to

promote certain territorially bound interests (Rosamond 2012:325). Moreover, economic patriotism leaves open the possibility that there can be a re-scaling of the unit where policy-makers try to shape markets to protect territorial interests, from the local to the supranational. Its emphasis on policy choices and the territorially defined interests they may promote allows us to explore the ways in which states that find themselves in governance structures operated across a number of territorial levels define interests and make choices on which to protect and promote.

Clift and Woll provide a useful outline of the different types of economic patriotism, defined along the two axes of the territorial unit and degree of liberalisation (Clift and Woll 2012:315). The result is a range of economic patriotism that goes from strategic regional integration that combines the supranational level with an emphasis on liberalization to conservative defence of local production. Moreover, they also point to the importance of policy content in assessing the response that policy-makers provide to external constraints. Policy choices are distinguished by policy targets (favouring of insiders versus resistance to outsiders) and ideological positioning with respect to liberalisation. This is a useful scheme to understand legalised online gambling within the confines of the single market in the EU as the pressure for liberalisation comes from both European policy and technology. These same pressures have forced policy-makers to re-assess which unit is most appropriate to define and promote “insider” interests.

The recent work on economic patriotism has provided a useful lens with which to understand how states respond to the pressures of eroding national borders and try to “re-invent” control of markets. By its very definition, online gambling is an activity that takes place in a virtual space, with relatively low thresholds for market entry and is easily carried out across borders. This is facilitated in the EU with its single market and, for the Eurozone, single currency. The technology and ease of access create all the pressures for a race to a lowest common denominator with respect to state intervention, with a corresponding pressure for European rules to both create and regulate a single market for gambling. The decisions to establish a legal framework for a traditionally illegal activity delivered with new technology can highlight whether or not territorially

defined interests are protected and promoted and by whom. More specifically, we argue, drawing from Clift and Woll, that member states practice forms of liberal economic patriotism, choosing to liberalise strategic sectors that favour their domestic producers in open economies. The cases of the United Kingdom and Italy allow us to explore whether policy content favours insiders by using the discourses of protecting consumers in different ways.

The recent work on economic patriotism has also highlighted the important role played by discourses in understanding the formulation of policy choices that try to balance the protection of specific territorial groups while opening up markets (Grant 2012). This is an especially important part of the online gambling story in the EU as the policy choices made by member states were framed between discourses of market creation and public health concerns. We examine court decisions, policy statements and documents to highlight the tension between the narratives of liberalisation and consumer choice, on the one hand, and those of wanting to protect consumers from the effects – such as public health and criminal activity - of an activity that was considered illegal until very recently. We select and analyse content that allows us to explore whether and how policy-makers in the two member states sought to protect the interests of territorially defined groups in an industry where territory matters less and less; and how the scale or the level where they sought to promote those interests changed.

THE EMERGENCE OF ONLINE GAMBLING

Gambling involves risking money on the outcome of an unknown event for financial gain. The industry covers a spectrum from games of pure chance (for example, lotteries) to betting activities that involve judgement (DCMS 2001). Historically, gambling has been either *illegal*, referred to by Kingma (2008) as the ‘prohibition’ model, or tightly regulated, as a result of its potential for addiction and association with organised crime. In a study using data from Germany and the Netherlands Euchner et al. (2013) find that gambling was framed using morality policies where the basic premise was that it was wrong.

As gambling is likely to occur anyway (citizens will visit jurisdictions which permit it, or will use illegal operators) and states will have to deal with its consequences, the pragmatic response of many governments has been to allow it under certain controlled conditions, which Kingma (2008) describes as the 'alibi' model and Euchner et al. (2013) as a move away from morality framing. In many European states the need to regulate the gambling industry has seen the emergence of state controlled gambling organisations or monopolies. Legalisation, of course, also provides a revenue stream to states but raises questions of competition and choice for the consumer along with public health concerns. For instance, the UK is considered to have emphasised commercial considerations (Littler 2007) and on achieving a balance between the benefits and problems of gambling in what could be termed a 'risk model' (Kingma 2008).

In recent years gambling has become much more widely available through the telephone, Web, interactive TV and now mobile devices (Della Sala, 2010). Regulatory choices are even more complex and challenging for states when it comes to online gambling (Kingma, 2008), with even highly regulated markets opened up to competition. Online gambling in the EU was valued at €9.3 billion in 2011, which represented about 11% of the industry total, and was estimated to reach €13 Billion by 2015 (European Commission 2013). It enabled the emergence of numerous start-ups who focused on international markets operating from locations such as the Caribbean and, in Europe, Malta, the British Crown dependencies of the Channel Islands and Isle of Man, and the British overseas territory of Gibraltar, who offer online gambling licenses and low corporation tax. Holding a European license provided added credibility and also enabled firms to use EU law to attempt to gain access to restricted markets (Zborowska et al. 2012). The jurisdictions noted above all stress the rigour of their regulatory regimes but this was questioned in a report by University of Sorbonne and the International Centre for Sports Security (2014).

The impact of these new entrants was considerable with the online only operators PokerStars, originally a Costa Rican firm now based in the Isle of Man, and Bwin.Party, a merger of Austrian and Dominican Republic start-ups now based in Gibraltar, identified as two of only

three gambling firms globally with online revenues in 2013 of over €500 million (yStats 2014).

These firms operate across all of the largest European markets (Italy, UK, Germany, France and Spain). Established bricks and mortar gambling organisations would also enter the market, with the UK firms William Hill, the third firm with online revenue in 2013 of over €500 million, Ladbrokes, and the Irish firm Paddy Power seen as other important players (yStats 2014).

Regulators were faced with the problem of Internet technology moving faster than the law, raising a series of questions including that of the issue of conflict of laws, given that ‘every nation can unilaterally regulate every Internet transaction’ (Goldsmith 2000: 135). Of particular importance were questions related to protecting consumers placing bets with offshore operators as well those that focussed on the possibility of compulsive gambling exacerbated by easy access (Cotte and Latour 2009). Security issues also arise as online gambling could be used as a way to launder money gained through illicit means (Williams et al, 2012). There were many reasons to intervene but the question was which set of interests to protect and at what level? European or domestic gambling providers, consumers, public health; and was this to be done at the European or national level?

Online gambling in the EU allows us to explore how member states adapt to two different pressures for liberalisation that would seem to provide obstacles to economic nationalism: access to online gambling and the requirements of the internal market. As member states have legalised more forms of gambling in the last two decades, they have increased the range of policy instruments used to regulate the activity (Littler and Fijnaut 2007). Important differences remain between states that have taken a lighter approach and those, such as Sweden, which have sought to impose strict limits on access for both producers and consumers (Caligiuri 2012). Clearly, there is a possible tension between the legal framework that seeks to promote the single market and digital economy, the public health concerns of European and domestic policy-makers and the interests of gambling operators, which remain largely the concern of national officials.

THE EU AND ONLINE GAMBLING

As Littler (2007) notes the situation is complex in the EU with regional levels of government having some powers over gambling regulation in some states, such as Germany and Spain. The Commission and the Courts have treated it as a single market issue, albeit with the acceptance that public policy objectives can justify restrictions. On the other hand, market fragmentation remains as states have retained important regulatory powers to protect what they define as domestic interests.

Interest in gambling at the European level emerged in the early 1990s. Following a report by the European Commission, the European Council decided in 1992 that, “*on the basis of the principle of subsidiarity*” (Littler 2007: p358), proposals for the harmonisation of gambling would not be implemented. However, from 1994 **the European Court of Justice (ECJ) would deal with several cases concerned with cross-border gambling.**

ECJ case law

The first case to deal with the issue of cross border gambling was Schindler (1994). In this case letters promoting the German lottery posted from the Netherlands were confiscated by HM Customs, under UK legislation controlling lotteries. This was claimed to be a breach of the free movement of goods under European law. The ruling of the ECJ on this case proved to be the foundation stone for a long line of jurisprudence on this subject. It established that lotteries would be governed by the Treaty provisions on the free provision of services, subject to limitations on the grounds of social policy. This meant that the UK government could restrict, or even prohibit, lotteries from other member states but would not, however, be entitled to do this in a discriminatory manner (Schindler 1994). In Zenatti (1999) the ECJ also emphasised that financial benefits accruing on a government as a result of such a limitations could not be sufficient justification for such a restriction.

Several other cases would come before the ECJ which confirmed these principles: that restrictive practices were in conflict with single market but could be justified by public health reasons which should be applied equally to domestic and foreign providers.

Supporters of liberalisation vs national regulation could point to differences of opinion within the ECJ judgements. The Advocate General in Gambelli (1999) called for mutual recognition of licenses although the Court did not follow this opinion. However, the Santa Casa (2009) and Dickinger and Omer (2011) cases, concerned with Portugal and Austria respectively, provided ammunition for those supporting national regulation. The **ruling in** Dickinger and Omer (2011) stated that a licence from another EU state, in this case Malta, was not enough to guarantee that consumers would be protected, and the ruling for Santa Casa (2009) asserted that fraud and match fixing were more likely through Internet gambling.

Secondary legislation

A Directive on Services in the Internal Market (European Commission 2006) would have been a natural forum in which to discuss the gambling issue, but at its first reading before the European Parliament gambling and lottery issues were specifically excluded from its scope (Euractive 2006). In 2008 the issue was once again up for discussion, this time by the European Parliament's Internal Market and Consumer Protection Committee, who approved a report by a Danish MEP, Christel Schaldemose, which was largely unfavourable towards gambling (European Parliament 2008). The report was followed by a European Parliament (2009) resolution which stated that member states had the right to regulate against the dangers of gambling and also to protect the funding source for social causes. Further resolutions in 2011 and 2013 (**European Parliament 2011; 2013b**), and a report (**European Parliament, 2013a**), confirmed this position.

The issue, however, continued to plague the European institutions. In 2011 the European Commission published a green paper to launch an extensive public consultation on all relevant public policy challenges and possible single market issues resulting from online gambling (European Commission 2011). This public consultation was launched with 'an open mind' and

received 249 responses. Unsurprisingly the offshore gambling jurisdictions submitted statements supporting a single market approach along with several offshore firms and the main lobby groups for the online gambling sector, the Remote Gambling Association (RGA) which includes all the large UK gambling firms and other firms, the European Betting and Gaming Association (EGBA), a smaller organisation with non-UK members, and the Gibraltar Betting and Gaming Association (GBGA). Many governments in contrast argued for national regulation as well as the trade associations for land based gambling such as European Lotteries and the European Casino Association.

In 2012 the Commission set out an action plan for online gambling (European Commission 2012). It did not propose EU wide legislation but rather “*a comprehensive set of actions and common principles on protection*”. An expert group was established to consider crucial issues such as the protection of children, addiction, hindering criminal activity and preventing match fixing. In 2014 the Commission then followed this with a series of non-binding recommendations and asked the member states to respond with the measures they had taken (European Commission 2014).

ONLINE GAMBLING IN THE UK

The key focus of UK government policy on gambling has been on national competitiveness for economic and tax benefits. An independent review of the gambling sector in 2001 recommended, as part of a general modernisation of the industry, that online gambling be legalised under the control of the Gambling Commission (DCMS 2001)ⁱ. The UK government’s response to this review (DCMS 2003a) took forward most of the recommendations into the Gambling Act (2005). The UK government was aiming to be a gambling exporter **and to reap the benefits in terms of increased revenues to UK gambling firms with the associated employment and tax gains:** in the words of the government report “*there is potentially a vast international market for which gambling operators based in this country will be encouraged to compete*” (DCMS 2003a). In addition to this a **government** position paper which followed (DCMS 2003b) **argued against** cross-border restrictions on gambling stating “*the [UK] Government favours a much more free market*

approach. This is the preferred option as it is the one that most closely matches the Government's vision of a global market where a well regulated British based industry is able to establish itself as a world leader". The UK government thus moved to introduce UK online gambling licenses **in the 2005 Act**, required only by firms with servers in the UK, and was also content for UK citizens to place bets with overseas operators as long as online gambling was legal in the jurisdiction of the operator. The UK view was that gambling took place in the location of the operator rather than the consumer, in contrast to most other governments. Whilst the Gambling Act had a [reserve] clause that it was an offence to supply gambling services to prohibited territories, no territories were defined as such. Lord McIntosh of Haringey, Parliamentary Under-Secretary of State, DCMS, made it clear this was not planned to be used in evidence to a Joint Committee on the draft Gambling Act. When discussing a hypothetical case regarding a state where all gambling was illegal he stated *"Unless we were lent on very heavily....I think we would be very reluctant to declare them to be a prohibited territory. It is their problem, not ours"* (UK Parliament 2004: 151).

The 2005 Act also widened provision and increased the range of gambling activities that could be advertised on television. This liberal approach made the UK gambling industry highly lucrative, fuelling growth of over 23% from 2009 to 2013 (Gambling Commission 2014) and in 2013 the sector employed over 104,000 people. However, the deregulation of the Gambling Act, despite measures introduced to help problem gamblers, **led to unease about social problems due to the increasing ease of access.** Research in 2013 showed that the number of 'hardcore addicts' in the UK had nearly doubled in the previous six years, which is a major cause for concern (Gallagher 2013).

Under the Gambling Act (2005) online gambling could be licensed within the UK at a tax rate of 15%. However, **this rate was far above those payable in the main offshore locations which led to online start-ups targeting the UK online market. In response the main UK gambling firms relocated their online activities offshore, which meant that whilst these firms still benefitted from online gambling the UK lost the associated employment and tax revenues.** George Osborne, the

Chancellor, made this clear in his Budget speech in March 2012 stating “90% of online gambling consumed by our citizens is now supplied from outside the UK, and the remaining UK operations are under pressure to leave. This is clearly not fair—and not a sensible way to support jobs in Britain” (HM Treasury 2012). This was also costing the UK £300 million per year in lost taxation revenues (HM Treasury 2013).

This failure of the UK’s online gambling policy and moves across Europe to national regulation (DCMS 2010) led to legislation, the Gambling (Licensing and Advertising) Act 2014 which required operators offering or advertising online gambling services to obtain UK licences and pay, the existing, 15% tax. In a House of Commons debate on the legislation Helen Grant, Parliamentary Under-Secretary of State, DCMS, argued that this would lead to “robust and consistent regulation, increasing protection for UK consumers, supporting action against illegal activity and establishing fairer competition for British-based operators” (UK Parliament, 2013). The Minister claimed change was required to protect consumers, with which would be acceptable under EU law, rather than for financial reasons stating “this is about consumer protection, which is an important feature of the legislation. Taxation matters are ones for the Chancellor of the Exchequer” (UK Parliament 2013). The legislation was, importantly, a reversal of the UK position that online gambling took place at the location of the website and also recognition that established economies simply could not compete with offshore locations on gambling tax rates.

In summary, the UK tried to gain the economic benefits from a ‘free market’ approach but when this failed moved to secure its place as a provider of online gambling. It justified its policy change by the need for a ‘level playing field’, which included greater regulation, (UK Parliament 2013) although the economic gains seemed to have more weight than social concerns.

ONLINE GAMBLING IN ITALY

In the space of little more than two decades, gambling in Italy has been transformed from a mostly illegal activity to the largest gambling market in the EU. It is an €80 billion industry, representing about 5% of Italian GDP, and supporting over 140,000 jobs (Sistema Gioco Italia 2014), with

online gambling constituting a small (but growing rapidly) percentage of this with €1.2 billion wagered online in 2012 (Agenzie delle Dogane e delle Monopoli 2014:94). Italy has had a number of established and important gambling operators, such as Lottomatica and SISAL, which have had a protected bricks and mortar market for a long time.

The regulation of online gambling in Italy has garnered significant attention amongst other regulators and industry operators, partly because it represents one of the most important markets in the EU but also because it has been subject to numerous ECJ decisions and close European Commission scrutiny. Italian policy-makers have been active since the start of the new century, introducing numerous measures that have sought to comply with EU law but also ensure that the industry remains firmly rooted within Italy. Unlike other member states such as Greece, there has not been a state-owned gambling operator so that the gradual legalisation of gambling has been done through the concession of licences for a range of gambling activities from lotteries to sports betting. The legalisation and increasing regulatory presence of the state has been partly responsible for growing revenues for the Treasury from gambling, from €3.5 billion in 2003 to €8 billion in 2011. Government revenues, however, have declined as a percentage of the amount wagered from 29% in 2004 to 11% in 2011 (Camera dei Deputati 2012:16). This was partly due to a decrease in the tax rate for some forms of gambling revenue but also because increased competition has meant that operators have had to offer better **payouts** to punters.

There were two important legislative initiatives, in 2006 and 2009, which have structured the online gaming market. They had two principal objectives: to regulate service providers and to provide a wider choice of gambling activities to consumers. The original Italian position on online gambling was to limit it to sites associated with the Italian Olympic Committee (CONI) and the horse racing association. Access was widened in an attempt to thwart illegal operators capturing the market. However, the European Commission began infringement proceedings against Italy as the list of banned betting sites contravened reporting requirements as well as the free movement of services. Italian policy-makers sought to comply with EU law so a major reform was introduced in

2009, establishing a licensing regime accessible to domestic and European operators but under strict conditions. There are technical and financial requirements that all licensees must meet, including having a turnover of over €1.5 million, being located in the EU and depositing €350,000 with the gaming regulator, the AAMS. Taxes, which vary according to the product, are paid to the Italian government. The regulator also closely controls the range of products offered, intervening to the point of establishing odds for sporting events. It ensures that only Italians have access to licensed sites, making it easier for the state to ensure that revenues are collected. By 2013, there were 144 licences granted to operators to take wagers over the Internet from users who connected with an Italian Internet service provider. This has included the largest online gambling firms, such as Bwin.Party and William Hill, which generated 9% and 7% of their 2013 revenue respectively from Italian online gambling (Bwin.Party 2014; William Hill 2014), as well as many other foreign firms. The government regulator, the AAMS, blocked access to 418 non-authorized sites through IP blocking by Internet Service Providers (Agenzie delle Dogane e delle Monopoli 2014:114).

The Italian model is seen as a successful example of state intervention, especially by the gambling industry, in that it is seen to leave room for foreign operators, gives consumers greater choice of providers as well as products and provides regulatory clarity (MAG 2010). The Italian regulatory approach was also seen as pragmatic with the Director of AAMS stating in 2013 that “*a reasonable level of taxation*” was required to maintain the competitiveness of Italian licensed firms compared to non-licensed operators (Amsel 2013). Proponents of the regulatory regime argue that it protects consumers by placing limits on the amounts that can be wagered and the fact that the AAMS monitors every single transaction. Yet, public health officials point to the increasing levels of compulsive gambling and the fact that the level of annual per capita average wager continues to grow, increasing by over one-third to €1,200 in the decade prior to 2011.

Clearly, Italian policy-makers were driven by fiscal and employment considerations throughout the legalisation process (Camera dei Deputati 2012:14). These coincided with the aim of trying to protect and promote domestic gambling firms, including those that provided the

infrastructure for online gambling. European firms, especially British, were at an advantage with the attempt to create a single market in gambling **as they had the legal and technological capacity to expand rapidly**. Italy's limited number of operators sought protection in the form of an outright ban on any firm not formally licensed and operating on Italian territory. This did not withstand the scrutiny of EU institutions and rules, leading policy-makers to seek solutions that favoured foreign operators seeking out domestic partners. At the same time, Italian firms, such as GTech, are at the forefront of technology for commercial gaming, including online gambling and have sought to ensure that the single market for gambling would be extended into Italy.

While policy-makers sought to ensure that domestic producers of gambling services would not be penalised by opening up the market, they paid less attention to the same public health concerns they raised when they tried to limit foreign operators. Members of Parliament, responding to public pressure, held a series of committee meetings to explore the social consequences of the expansion in gambling services. They concluded that governments were limited in what they could do to limit access to gambling services, especially those online, and that the industry had become an important source of employment and government revenue (Camera dei Deputati 2012). They did not see any contradiction in government policy that claimed to want to protect consumers from outside operators while looking to expand the industry's domestic operators. Faced with ECJ rulings that pointed out this contradiction, Italian policy-makers chose to find ways to open up markets while promoting domestic firms rather than looking to scale back gambling to protect consumers and limit the social consequences of gambling.

The legislative and regulatory changes were brought about with a broad-based consensus amongst the major parties of the centre-right and centre-left, either in government or opposition (Liuzzi 2013). In its three-year fiscal plan for 2007-2009, the centre-left government of Romano Prodi sought to consolidate the gambling industry by “widening the network of services through remote forms of gambling” (As reported in: Iori 2013). Members of the centre-right government of Silvio Berlusconi, as well as the Prime Minister himself, repeatedly called for widening the

availability of gambling to fund responses to a range of issues from earthquake reconstruction to tourism. The broad consensus in favour of widening market access, even if it meant more competition, was also reflected in intensive lobbying by interests associated with gambling providers (with European partners) as well as producers of gambling hardware and software (Florio 2013).

In sum, change in the Italian online gambling market has been influenced more by the need to comply with European law in ways that protected domestic producers than by a genuine concern with public health and consumer interests. The strategy of regulating the industry and achieving growth, whilst keeping domestic providers strong, has been seen as successful.

DISCUSSION AND CONCLUSION

Gambling has moved from a mostly illegal activity to one that is now sanctioned by **many jurisdictions** throughout the global economy. It is an important source of jobs and revenues for governments at a time when many, if not most, are looking for new ways to fund their activities. It is not surprising, then, that they **aim for policy solutions providing the most protection** for their industries in the face of pressure from foreign competition. This is especially the case with online gambling, where the technology makes it possible for punters to choose from an increasingly large number of global providers. In terms of Kingma's gambling models (2008) online gambling undermines the economic arguments which support the alibi and risk models, as the benefits may not be captured by the jurisdiction the activity takes place in, and instead flow to locations which offer the lowest tax rates. From such a perspective the national regulation approaches that have been adopted by Italy, Spain, France, Germany and are now emerging in the UK and the Netherlands in 2015, are a logical development. **These approaches allow online gambling with local licenses and the payment of taxes, however, there is variation in the type of gambling allowed, the number of licenses granted and the process by which licenses are awarded. As a simple example the Spanish and French regulators list 53 and 17 approved online gambling operators respectively on their websites (Arjel, 2015; Dirección General De Ordenación Del Juego, 2015). Regulation will always face the threat of** unlicensed offshore sites, which have a financial advantage from avoiding the costs of complying with the various regulatory regimes. This has made IP blocking of unlicensed sites an important issue and one raised in the Green Paper (European Commission 2011), implemented in Italy and France (Haberling 2012) and is the subject of discussion by European regulators (Gambling Commission 2013).

The cases of Britain and Italy suggest that **liberal or coordinated** models of economic governance might not be a useful indicator of the approach that a state will take to gambling liberalisation. Rather, in both cases, states sought to protect and promote the interests of gambling operators and to ensure that revenues from gambling would continue to help the public finances.

The “patrie” where they sought to protect those interests were not fixed and changed as policy-makers faced legal constraints, market pressures and technological change. In the Italian case, European law pushed them to open up the market while the British position was initially to push for liberalisation as it was the home to many large gambling operators that could potentially profit from access to important markets such as Italy and to then change position when the policy did not work.

The legalisation and liberalisation of online gambling did not take place without reference to territorially defined interests. States looked to find ways to promote the interests of gambling operators **and secure the economic benefits** in different ways and, **when it suited their case**, used arguments about public health and illegal activity to justify the territorial limitations. The tension between the competing discourses of market liberalisation and public health concerns was more apparent than real as it was the former that seemed to drive the policy choices and content in our two cases. ECJ decisions consistently put pressure on member states to demonstrate that their concern for the social consequences of gambling were genuine. **States had to choose between limiting gambling services for all providers and truly protecting consumers; or opening up markets but ensuring that conditions were favourable to protect consumers. Economic patriotism was re-scaled and was a strategy used to promote the interests of the gambling industry in both our cases.** This patriotism leads them to choose to give priority to **financial considerations** and perhaps a back seat to consumers and public health concerns.

REFERENCES

- Agenzie delle Dogane e dei Monopoli. (2014) *Organizzazione, Attività e Statistica – Anno 2013*.
Rome.
- Amsel, P. (2013) 'Italian gambling regulator vows 'No New Taxes' on online gambling', <
<http://calvinayre.com/2013/04/14/business/italian-gambling-regulator-vows-no-new-taxes-on-online-gambling/>> (accessed 12 July 2015).
- Arjel. (2015) 'Liste des opérateurs agréés', <
<http://www.arjel.fr/-Liste-des-operateurs-agrees-.html>> (accessed 12 July 2015).
- Berger, S. and R. Dore. (1996) *National Diversity and Global Capitalism*, Ithaca, N.Y: Cornell University Press.
- Bwin.Party. (2014) 'Bwin.Party Annual Report 2013',
<<http://www.bwinparty.com/Investors/FinancialReports.aspx>> (accessed 12 July 2015).
- Caligiuri, P. (2012) 'Uncle Sven Knows Best: The ECJ, Swedish Gambling Restrictions, and Outmoded Proportionality Analysis'. *Boston College International & Comparative Law Review* 35:575-587.
- Camera dei Deputati. (2012) 'Indagine Conoscitiva Sugli Aspetti Sociali e Sanitari del Gioco D'Azzardo'. edited by C.X.A. Sociali.
- Cerny, P.G. (1997) 'International Finance and the Erosion of Capitalist Diversity' in C. Crouch and W. Streeck (eds) *Political Economy of Modern Capitalism: Mapping Convergence and Diversity*, London: Sage.
- Clift, B. and Woll, C. (2012) 'Economic Patriotism: Reinventing control over open markets', *Journal of European Public Policy* 19(3): 307-323.
- Cotte, J.and Latour, K.A. (2009) 'Blackjack in the kitchen: Understanding online versus casino gambling', *Journal of Consumer Research* 35(5): 742-758.
- DCMS. (2001) 'Gambling Review Report',
<http://www.hblb.org.uk/documents/92_GamblingReview.pdf> (accessed 12 July 2015).

DCMS. (2003a) 'A safe bet for success - modernising Britain's gambling laws', <

http://www.hblb.org.uk/documents/92_WhitePaper_A_Safe_Bet_For_Success.pdf>

(accessed 12 July 2015).

DCMS. (2003b) 'The Future regulation of Remote Gambling: A DCMS position paper', <

<http://www.gamblinglicenses.com/PDF/Regulation%20of%20Remote%20Gambling.pdf>>

(accessed 12 July 2015).

DCMS. (2010) 'A Consultation on the Regulatory Future of Remote Gambling in Great Britain',

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/72860/remotegambling_consultation.pdf> (accessed 12 July 2015).

Della Sala, V. (2004) 'The Italian model of capitalism: on the road between globalization and Europeanization?' *Journal of European Public Policy* 11(6):1041-1057.

Della Sala, V. (2010) 'Stakes and states: gambling and the single market', *Journal of European Public Policy* 17(7): 1024-1038.

Dickinger and Omer. (2011) 'Case C-347/09, Reference for a preliminary ruling under Article 234

EC from the Bezirksgericht Linz (Austria), made by decision of 10 April 2009, received at the Court on 31 August 2009, in the criminal proceedings against Jochen Dickinger, Franz Ömer', 31 August 2009, *European Court Reports*.

Dirección General De Ordenación Del Juego. (2015) 'Listado de URLs de operadores con licencia', < <https://www.ordenacionjuego.es/es/url-operadores>> (accessed 12 July 2015).

Euchner, E.M., Heichel, S., Nebel, K. and Raschzok, A. (2013) 'From 'morality' policy to 'normal' policy: framing of drug consumption and gambling in Germany and the Netherlands and their regulatory consequences', *Journal of European Public Policy*, 20(3): 372-389.

Euractiv. (2006) 'Absence of EU rules on gambling generates national court cases', 27 February,

<<http://www.euractiv.com/en/sports/absence-eu-rules-gambling-generates-national-court-cases/article-152901>> (accessed 12 July 2015).

- European Commission. (2006) 'Report from the Commission to the Council and the European Parliament on the State of the Internal Market For Services', Presented under the First Stage of the Internal Market Strategy for Services.
- European Commission. (2011) 'Green Paper on on-line gambling in the Internal Market', 24 March, <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0128&from=EN>> (accessed 12 July 2015).
- European Commission. (2012) 'Commission sets out an action plan for online gambling', 23 October, <http://europa.eu/rapid/press-release_IP-12-1135_en.htm> (accessed 12 July 2015).
- European Commission. (2013) 'The EU Single Market – Gambling', 8 November, http://ec.europa.eu/growth/sectors/gambling/index_en.htm (accessed 12 July 2015).
- European Commission. (2014) 'Online gambling: Commission recommends principles to ensure effective protection of consumers', 14 July, <http://europa.eu/rapid/press-release_IP-14-828_en.htm> (accessed July 12 2015).
- European Parliament. (2008) 'Draft report on the integrity of online gambling (2008/2215(INI))', Committee on the Internal Market and Consumer Protection, *European Parliament*, 17 October 2008, <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-414.363+01+DOC+PDF+V0//EN&language=EN>> (accessed 12 July 2015).
- European Parliament. (2009) 'European Parliament resolution of 10 March 2009 on the integrity of online gambling (2008/2215(INI))', 10 March 2009, <<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2009-97>> (accessed 12 July 2015).
- European Parliament. (2011) 'European Parliament resolution of 15 November 2011 on online gambling in the Internal Market',

<<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0492+0+DOC+XML+V0//EN>> (accessed 12 July 2015).

European Parliament. (2013a) 'Report 11 June 2013 on online gambling in the internal market',

<<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0218+0+DOC+XML+V0//EN>> (accessed 12 July 2015).

European Parliament. (2013b) 'European Parliament resolution of 10 September 2013 on online gambling in the internal market ',

<<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0348+0+DOC+XML+V0//EN>> (accessed 12 July 2015).

Florio, G. (2013). ' Camera, la lobby politica che appoggia le slot machine.' *Lettera 43*,

<http://www.lettera43.it/politica/camera-la-lobby-politica-che-appoggia-le-slot-machine_4367596288.htm> (accessed 12 July 2015).

Gallagher, P. (2013) 'Addiction soars as online gambling hits £2bn mark', *The Independent*, 27 January.

Gambelli. (2003) 'Opinion of Advocate General Alber: Case C-243/01 Criminal proceedings against Piergiorgio Gambelli and Others, Reference for a preliminary ruling from the Tribunale di Ascoli Piceno', 13 March 2003, *European Court Reports*, I-13031.

Gambling Act. (2005) 'Gambling Act', *United Kingdom Parliament*, <

<http://www.legislation.gov.uk/ukpga/2005/19/contents>> (accessed 12 July 2015).

Gambling Commission. (2013) 'Report from the Chief Executive', 18 July, <

<http://www.gamblingcommission.gov.uk/pdf/board-minutes-and-papers/gcp%2813%2931%20july%20ceo.pdf>> (accessed 12 July 2015).

Gambling Commission. (2014) 'Annual report and accounts 2013', 10 July,

<<http://www.gamblingcommission.gov.uk>> (accessed 12 July 2015).

- Gambling (Licensing and Advertising) Act. (2014) 'Gambling (Licensing and Advertising) Act', *United Kingdom Parliament*, <
<http://www.legislation.gov.uk/ukpga/2014/17/contents/enacted> > (available 12 July 2015).
- Goldsmith, J. (2000) 'Unilateral Regulation of the Internet: A Modest Defence', *European Journal of International Law* 11(1): 135-148.
- Grant, Wyn. (2012). 'Economic Patriotism in European Agriculture', *Journal of European Public Policy* 19 (3): 420-434.
- Haberling, G. (2012) 'Internet gambling policy in Europe'. In R.J. Williams, R. Wood, & J. Parke (eds.), *Routledge International Handbook of Internet Gambling*. Routledge: UK.
- Hall, P. and Soskice, D. (2001) *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*, Oxford: Oxford University Press.
- Hayward, J. 1986. *The State and the Market Economy: Industrial Patriotism and Economic Intervention in France*. Hemel Hempstead: Wheatsheaf Books.
- Helleiner, E. and A. Pickel. (2005) *Economic Nationalism in a Globalizing World*, Ithaca, NY: Cornell University Press.
- HM Treasury. (2012) 'Budget 2012 statement by the Chancellor of the Exchequer, the Rt Hon George Osborne MP', 21 March 2012,
 <http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/budget2012_statement.htm> (accessed 12 July 2015).
- HM Treasury. (2013) 'Gambling tax: new rules and sanctions to prevent avoidance by gambling companies', 16 August <<https://www.gov.uk/government/news/gambling-tax-new-rules-and-sanctions-to-prevent-avoidance-by-gambling-companies>> (accessed 12 July 2015).
- Iori, M. (2013) 'Politica e gioco d'azzardo: poche luci e molte ombre.' Report presented at the Italian Senate, 11 February, <<http://www.respopuli.it/?p=827>> (accessed 12 July 2015).
- Kingma, S.F. (2008) 'The liberalisation and (re)regulation of Dutch gambling markets: National consequences of the changing European context', *Regulation & Governance*, 2(4): 445-458.

- Levy, J.D. (2006a) *The State after Statism: New State Activities in the Age of Liberalisation*, Cambridge, MA: Harvard University Press.
- (2006b) 'The State Also Rises: The Roots of Contemporary State Activism' in J.D. Levy (ed) *The State after Statism: New State Activities in the Age of Liberalisation*, Cambridge, MA: Harvard University Press.
- Littler, A. (2007) 'The regulation of gambling at European level. The balance to be found'. *ERA Forum* 8: 357–71.
- Littler, A. and Fijnaut, C. (2007) 'The Regulation of Gambling: European and National Perspectives.' Leiden: Martinus Nijhoff Publishers.
- Liuzzi, E. (2013) 'Gioco d'azzardo, il governo punta a intascare 140 milioni di euro.' *Il Fatto Quotidiano*, 13 December.
- MAG. (2010) 'Overview of the Italian Regulatory Framework for Online Gaming Evolution of the Italian Online Gaming Regulation 2002-2009'. Rome: March.
- Mosley, L. (2003) *Global Capital and National Governments*, Cambridge: Cambridge University Press.
- (2005) 'Globalisation and the state: Still room to move?', *New Political Economy* 10(3): 355-362.
- Pickel, A. (2003) 'Explaining, and explaining with, economic nationalism', *Nations and nationalism* 9(1): 105-127.
- Rosamond, B. (2012) 'Supranational governance as economic patriotism? The European Union, legitimacy and the reconstruction of state space'. *Journal of European Public Policy* 19(3):324-341.
- Santa Casa. (2009) 'C-42/07 Liga Portuguesa de Futebol Profissional, Bwin International Ltd, formerly Baw International Ltd, v Departamento de Jogos da Santa Casa da Misericórdia de Lisboa, 8 September 2009, *European Court Reports*.

Schindler. (1994) 'C-275/92 Her Majesty's Customs and Excise v Gerhart Schindler and Jörg Schindler, Reference for a preliminary ruling: High Court of Justice, Queen's Bench Division', 24 March 1994, *European Court Reports*.

Shonfield, A. (1965) *Modern capitalism: the changing balance of public and private power*. Oxford: Oxford University Press.

Sistema Gioco Italia (2014). "Dati", <<http://sistemagiocoitalia.it>> (accessed 12 July 2015).

UK Government. (2014) 'Remote Gambling Bill receives Royal Assent', 15 May 2014, <<https://www.gov.uk/government/news/remote-gambling-bill-receives-royal-assent>> (accessed 12 July 2015).

UK Parliament. (2004) 'Joint Committee on the Draft Gambling Bill', 7 April 2004, <<http://www.publications.parliament.uk/pa/jt200304/jtselect/jtgamb/63/63.pdf>> (accessed 12 July 2015).

UK Parliament. (2013). 'Commons Debates', 5 November 2013, <<http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131105/debtext/131105-0001.htm>> (accessed 12 July 2015).

University of Sorbonne and the International Centre for Sports Security. (2014) 'Protecting the Integrity of Sport Competition The Last Bet for Modern Sport An executive summary of the Sorbonne-ICSS Integrity Report Sport Integrity Research Programme', 2012-14, <http://www.theicss.org/wp-content/themes/icss-corp/pdf/SIF14/Sorbonne-ICSS%20Report%20Executive%20Summary_WEB.pdf> (accessed 12 July 2015).

Weiss, L. (2003) *States in the Global Economy: Bringing Domestic Institutions Back In*, Cambridge: Cambridge University Press.

William Hill (2014). 'William Hill Annual Report 2013', <http://files.williamhillplc.com/media/1202/ar_2013.pdf> (accessed 12 July 2015).

Williams, R.J., Wood, R.T., and Parke, J. (2012) 'Policy options for Internet gambling'. In R.J.

Williams, R. T. Wood, & J. Parke (eds.), *Routledge International Handbook of Internet Gambling*. Routledge: UK.

yStats. (2014) Global Online Gambling & Betting Market 2014, <

<https://www.ystats.com/product/global-online-gambling-betting-market-2014/>> (accessed 12 July 2015).

Zborowska, N., Kingma, S.F., and Brear, P. (2012). 'Regulation and reputation: The Gibraltar approach'. In R.J. Williams, R. T. Wood, & J. Parke (eds.), *Routledge International Handbook of Internet Gambling*. Routledge: UK.

Zenatti. (1999) 'C-67/98: Questore di Verona v Diego Zenatti, Reference for a preliminary ruling: Consiglio di Stato', Italy, 21 October, *European Court Reports*, pp.I-7289.

ⁱ Online betting was already viewed as legal in the UK as it was seen as a form of telephone betting which was legal.