

WORK AND WELFARE IN EUROPE

Gambling Policies in European Welfare States

Current Challenges and Future Prospects



Edited by Michael Egerer,
Virve Marionneau and Janne Nikkinen



Work and Welfare in Europe

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Janne Nikkinen
Editors

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ISBN 978-3-319-90619-5

ISBN 978-3-319-90620-1 (eBook)

<https://doi.org/10.1007/978-3-319-90620-1>

Library of Congress Control Number: 2018940760

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Printed on acid-free paper

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The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

Preface

Gambling revenues are an important source of public funds across Europe, and an important contributor to a range of welfare projects, which also involve different political and economic interests. Nevertheless, this interconnection between gambling and European welfare states has been widely overlooked in academia until now. This book builds on a University of Helsinki research project entitled ‘Gambling Policy in European Welfare Regimes’, funded by the Academy of Finland during 2014–2018 (Grant number: 277405). The editorial team has collaborated in this project, and our international project partners have also contributed individual chapters to the current volume. In addition to our project partners, the ‘All Bets are Off: Reflecting Critically on Gambling Regulation Within and Across Borders’—conference at the University of Kent/UK (June 2016) proved to be a particularly important platform for recruiting authors for this book.

As the connections between gambling and welfare states can be complex and varying, we did not want to impose a strict frame for chapters. Nor did we aim at providing a general overview of gambling-related issues in Europe. Instead, we wished for the individual chapters to

reflect the kind of societal and political debates surrounding gambling and the use of gambling-related funds in different European countries and in relation to different types of gambling games. The contributions in this book take differing approaches, and they also come from various academic backgrounds. The result is a patchwork of approaches to study the relationship between gambling and welfare states. While this was at times challenging to us, the editors, the effort was worthwhile as we believe this book provides a fresh and thought-provoking insight into the different forms of channelling gambling revenue to public use. This book would not have been possible without the support of many. We would particularly like to thank professor emeritus Pekka Sulkunen for the initial idea of the book, and his inspiring leadership in the 'Gambling Policy in European Welfare Regimes' project. We also wish to thank Sharla Plant from Palgrave/Macmillan for her assistance and positive attitude, and in particular for her patience assisting with the compilation of the present book from very beginning. Finally, we thank Emmi Kauppila for her valuable assistance in formatting the book manuscript.

Helsinki, Finland
January 2018

Michael Egerer
Virve Marionneau
Janne Nikkinen

Contents

- 1 Introduction: Gambling Regulations and the Use of Gambling Revenues in European Welfare States** 1
Janne Nikkinen, Michael Egerer and Virve Marionneau

Part I Gambling for State-Run Welfare

- 2 Gambling for the State: The Collection and Redistribution of Gambling Proceeds in France** 17
Virve Marionneau and Sébastien Berret
- 3 Italian Gambling Regulation: Justifications and Counter-Arguments** 37
Sara Rolando and Alice Scavarda
- 4 Gambling Policies and Law in Austria** 59
Daniela Bereiter and Stefan Storr

- 5 **Gambling Regulation in Spain** 83
Elisardo Becoña and Lucía Becoña

Part II Gambling for Designated Purposes

- 6 **Gambling and Doing Good? On the Relationship
Between Gambling Regulations and Welfare Services
in Germany** 101
Kathrin Loer

- 7 **Gambling Policies in Slovenia: Financing Tourism
Infrastructure, Sports and Designated
Non-Governmental Organisations** 119
Tamara Besednjak Valič and Mirna Macur

- 8 **State Lotteries in Europe: A Cross-National Comparison
of How Lotteries Are Controlled, Operated and Benefit
Government, Private Industry and Civil Society** 135
Lynn E. Gidluck

- 9 **The DNA of Bingo: Charity and Online Bingo** 153
Donal Casey

Part III Legislative Changes

- 10 **Why Restrict? Seven Explanations for the Electronic
Gambling Machines Monopoly in Norway** 175
Anita Borch

- 11 **The Future Swedish Gambling Market: Challenges
in Law and Public Policies** 197
Jenny Cisneros Örnberg and Jörgen Hettne

12	After the Storm: An Analysis of Gambling Legislation in Poland and Its Effects	217
	<i>Lukasz Wieczorek and Michal Bujalski</i>	
Part IV Theoretical Perspectives		
13	The Regulation of Gambling in Early Twenty-First Century Britain: Liberalisation and Its Consequences	241
	<i>Jim Orford</i>	
14	Conceptions of the Common Good	259
	<i>Johanna Järvinen-Tassopoulos and Risto Eräsaari</i>	
15	The Public Interest Approach to Gambling Policy and Research	275
	<i>Pekka Sulkunen</i>	
16	Conclusion: Contradictions in Promoting Gambling for Good Causes	297
	<i>Virve Marionneau, Janne Nikkinen and Michael Egerer</i>	
	Index	315

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List of Figures

Fig. 7.1	Gross Gambling Income by Type of Game (<i>Sources</i> Ministry of Finance of Slovenia 2016a, b)	121
Fig. 7.2	GGI as % of GDP (<i>Sources</i> Ministry of Finance of Slovenia 2016a, b)	122
Fig. 7.3	License fees for municipalities, FIHO and FŠO (<i>Sources</i> FIHO 2017a; FŠO 2017)	123
Fig. 12.1	Total budget revenue & revenues from taxes on gambling	231
Fig. 12.2	Total budget revenue and contribution of gambling tax revenues	232
Fig. 15.1	Loop one: public revenue and public cost	286
Fig. 15.2	Loop two: dependencies on the 'rent'	287
Fig. 16.1	The welfare cycle	307
Box 10.1	The Norwegian monopolisation process	176

List of Tables

Table 1.1	Beneficiaries and operators of gambling	4
Table 2.1	Key figures on the French gambling market	21
Table 3.1	Interviewees	40
Table 4.1	Overview of Austrian gambling regulation	64
Table 8.1	Rate of involvement or benefit to civil society organisations	139
Table 10.1	The sample	184
Table 10.2	The sample's explanations of monopolisation	186
Table 12.1	Definitions of particular gambling games	219
Table 15.1	Principles of justifying (gambling) regulation	280



1

Introduction: Gambling Regulations and the Use of Gambling Revenues in European Welfare States

Janne Nikkinen, Michael Egerer and Virve Marionneau

European welfare states (e.g., Kaelble 2004) are founded with similar goals concerning the protection of citizens against the economic risks of old age, illness, accidents and unemployment. Services are provided under various forms of welfare regime (e.g., Esping-Andersen 1990, 1999; Hall and Soskice 2001; Streeck 1999), and obviously need to be financed. The pecuniary premise has been based on efficient taxation of the population and of corporations operating within a territory. All this changed alongside the general liberalisation of the market economy during the 1980s and 1990s, when the proportion of corporate-tax revenue declined. The bulk of the tax-revenue burden is now on average

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earners or consumers, especially in the form of sales and excise taxes (Teeples 2000; Murphy and Christensen 2012; OECD 2016). The slower economic growth has further increased the financial burden on welfare states (e.g., Myles and Quadagno 2002), and in particular the effects of the financial crisis of 2008 (Cresby 2016) and the loss of manufacturing jobs (e.g., Chakraborty 2011), only partly recompensed by an economy of speculation (Sandel 2013). Ageing populations also require more investment in healthcare and pensions (Rogers and Philippe 2016). The message of the gambling industry is alluring: it has the potential to boost economic growth, generate jobs and deliver much-needed tax revenue to pay for public services.

Gambling has a long history as a supplementary funding source for social services. Nowadays, public revenue from gambling comprises, on average, one to two per cent of the value of national budgets, in many cases equalling the revenue from tobacco and alcohol products (Sulkunen et al. 2018). The perception of gambling as 'voluntary taxation' levied on discretionary spending has made it easier for governments to accept it as an ordinary leisure industry. Governmental-level promotion of gambling during the last few decades has persisted even in situations in which popular opinion about the activity has remained negative or, at best, ambivalent (Orford 2011). The rise of Internet gambling and the free movement of goods and services across the internal borders of European Union (EU) member states explain this to some extent, but the increase in gambling availability started before that, and it seems to have more to do with the influence of neoliberalism and with financial needs.

However, the economic returns may not be as high as they initially appear. The extent of gambling-related harm was poorly understood for a long time when wide-scale gambling was legalised across Europe during the 1980s and 1990s. Only in the 2000s have improved research methods and increased research funding allowed the pinpointing of these negative outcomes (e.g., Langham et al. 2016). Gambling incurs a number of social costs, ranging from problem gambling to increased criminal activity, family disruption, health issues and economic difficulties (see Sulkunen et al. 2018 for a summary). It has been estimated that there may be up to ten million problem gamblers in Europe (Jensen 2017). Gambling does create employment, but the jobs tend to be low

paid, and may not contribute to the overall wellbeing of the community (Grinols 2004). The taxation effects of gambling are regressive (see e.g., Barnes et al. 2011 on lotteries) or even exploitative (Young and Markham 2017), as Karl Marx noted already in ([1852] 1963) (cited by Garvia 2007). Studies from across jurisdictions have shown that up to 60% of gambling revenue derives from problem gamblers (Schüll 2012). People from lower socio-economic groups and ethnic minorities also tend to gamble more, particularly on lotteries (Beckert and Lutter 2013). Gambling-related revenue collection therefore disproportionately burdens those who can least afford to contribute (Henricks and Brockett 2014), but also raises questions concerning whose responsibility ‘responsible gambling’ is (e.g., Hancock and Smith 2017). The redistribution of gambling funds also creates systemic problems. Adams (2016) maintains that the consumption of gambling *profits* may be even more problematic than the consumption of gambling *products*, and evidence of the redistribution of gambling funds in Australia (Livingstone 2018) as well as the individual case studies of this volume supports this.¹

Proceeds from gambling may be used for public purposes based on a variety of institutional arrangements. The majority of gambling revenue goes to state treasuries via taxes, licence fees and state ownership. The use of the Treasury to fund the welfare state then follows the normal procedures of democratic decision-making in parliament concerning the state budget. In addition, gambling revenues are also used for designated purposes. In this case, proceeds tend to be earmarked for, and then channelled to non-profit actors, civil society organisations (CSOs) or local administrators. The idea is to provide funding for ‘good causes’ that may go beyond the original idea of welfare-state expenditure, introduced to gain trust in the government in times of distress (e.g., Schmidt 1998). Causes supported with gambling money include sports, youth work, culture, social work and research, which were taken under state control during the creation of nation states and the expansion of welfare states. This approach has become increasingly dominant as non-governmental actors and CSOs have taken a stronger role in welfare-service provision (e.g., Miller and Rose 2008; Rantala and Sulkunen 2006).

States also differ in how gambling is operated. The state can offer gambling in the form of a state-owned monopoly. Another option is to allow non-profit actors to organise gambling and directly benefit from it—traditional raffles in churches and workers’ clubs are a

good example of such gambling operations (e.g., Bedford et al. 2016). Finally, private companies are in many countries allowed to offer at least some types of gambling, provided they obtain a licence or concession. Even when private companies are allowed to enter European markets, they come up against strong state regulation and fiscal control. Their gambling revenues contribute towards a country’s welfare by taxation and licence/concession fees, and they also sometimes support ‘good causes’ directly in the name of Corporate Social Responsibility (CSR) or legislative arrangements. Sometimes states are significant shareholders in private gambling operators, which blurs the line between different kinds of gambling operators and welfare contributions (Bereiter and Storr, this volume). Table 1.1 shows how the country cases of this volume fit into our suggested typology of operators and beneficiaries of gambling. Natural cases are never clear-cut and thus fit into several categories, but table serves as a representation of main types.

Cases where the state is the operator as well as a direct beneficiary of some, although not all, forms of gambling are France, Italy and Spain (Marionneau and Berret; Rolando and Scavarda; Becoña and Becoña, this volume). With the new gambling legislation of 2016 and increased involvement of the state monopoly, Poland is a recent addition to the category (see Wiczorek and Bujalski, this volume). Norway is another example of a country that is consolidating its state ownership and operation in the EGM (Electronic Gambling Machine) market, but in

Table 1.1 Beneficiaries and operators of gambling

Beneficiary → Operator ↓	State treasury (via taxes, state ownership and licence fees)	Earmarked for designated purposes
State (monopolies)	France, Italy, Poland, Spain	Germany, Norway
Non-profit actors (e.g., clubs, CSOs)		Iceland, Netherlands, Ireland, Spain, Sweden, Britain
Licensed (or concession) private companies	Austria, France, Germany	Slovenia, Britain ^a , France, Italy

^asee Orford’s chapter for why we use “Britain” instead of UK

this case a considerable part of the revenues are earmarked for certain designated purposes (see Borch, this volume). In Germany, state lottery revenues are designated for social services (Loer, this volume). In Austria and France, the state is also a shareholder in private gambling companies. The treasury therefore benefits not only through taxation and direct levies, but also in dividends based on company profits (Bereiter and Storr; Marionneau and Berret, this volume).

Slovenia, Britain, France and Italy are examples of countries in which part of the profits raised by private (licensed) operators are used by governments for designated purposes. The purposes and the recipients of these funds are diverse. In Slovenia and France, local municipalities receive funds from the casino industry to develop their tourism infrastructure (Besednjak Valič and Macur; Marionneau and Berret, this volume). The National Lottery in Britain (operated currently by the Canadian-owned private company Camelot) distributes its revenues, among other causes, to sports and culture via the Heritage fund (Orford, this volume). However, contributions to these 'good causes' are decreasing (UK Gambling Commission 2018) while private profits are increasing relative to each other (Neate 2017), possibly due to market cannibalisation (cf. Marionneau and Nikkinen 2018).² In Italy, licensed gambling operators are obliged to use part of their profits to support charitable organisations, but the choice of the cause is at their own discretion (Rolando and Scavarda, this volume). Direct involvement in gambling operation by non-profit actors and charity organisations is not common in Europe, but there are some examples. In Iceland, the University of Iceland Lottery raises revenue for this institution (Gidluck, this volume), while in Spain, the ONCE lottery raises funds for the blind (Becoña and Becoña, this volume). Bingo has traditionally been a way for small charitable organisations to collect funds for their activities (Casey, this volume). In Sweden, public interest non-profit organisations have also enjoyed a tax exemption for their gambling operation, but this might be a stumbling block in view of EU regulations (Cisneros and Hettne, this volume).

These different arrangements have their advantages and disadvantages. Direct industry contributions tend to serve as a marketing tool for the gambling business, and closely tie the beneficiaries to gambling providers (Adams 2016; Rolando and Scavarda, this volume).

Corporate power may also have a negative influence on public health and wellbeing if industries are not efficiently regulated (Freudenberg 2016; Orford, this volume), and corruption among public officials in relation to gambling has also been documented in countries such as the US (Walker and Calcagno 2013) and Poland (Wieczorek and Bujalski, this volume). Government-brokered contributions (Adams 2008) are meant to avoid such direct connections between the industry and its beneficiaries, but strong state involvement gives the state a problematic double role as both a regulator and a beneficiary (Marionneau and Berret, this volume; also Australian Productivity Commission 1999), while channelling gambling funds to CSOs through the state reduces the independence of these organisations (Egerer et al. forthcoming). Different types of beneficiaries therefore have strong financial and political interest in gambling revenue, or ‘addiction surplus’ (Adams and Livingstone 2015; Adams 2016), often at the expense of social and equality concerns (Nikkinen and Marionneau 2014). According to a study financed by the European Research Council (Cassidy et al. 2014), governments and funding bodies steer gambling research towards ‘safe’ channels as far as they and industry actors are concerned.

There is a clear need for studies focusing on these systems of redistribution, the part that gambling plays in funding welfare provision, how the systems are regulated, and the pros and cons of different ways of collecting public revenue from gambling and redirecting it back to welfare projects. The aim in this book is to narrow this research gap.

The focus in the first section of the book is on case studies in which the majority of gambling revenue is directed to state-run welfare. This means allocating funds to state treasuries or other administrative actors and stakeholders. This approach appears to be particularly popular in larger, highly centralised European countries such as France and Italy. In their contribution, Marionneau and Berret exemplify the actor network and the interests involved in the French system, in which the state is not only the main beneficiary of gambling but also actively consolidates its position at the expense of other beneficiaries. This situation raises questions not only about the multiple roles of the state as a provider, regulator and beneficiary of gambling, but also about the

democratic process of redistributing the proceeds (Adams 2008, 2016; Orford 2011). Rolando and Scavarda consider the consequences of the rapid expansion of the gambling offer and the scattered field of its regulation in Italy. Based on key-informant interviews with local gambling scholars and other stakeholders, they consider the positions of beneficiaries and industry actors. The Italian case exemplifies the problems associated with using gambling to generate public funds without adequate industry control. Bereiter and Storr discuss how funding State Treasury needs from gambling proceeds in Austria remains questionable in light of the decisions of the Court of Justice of the European Union (CJEU). The monopolistic Austrian providers follow an expansionist policy in which consumer-protection concerns seem to appear only on paper. Finally, Becona and Becona give an overview of the manifold ways in which gambling revenue is redirected to welfare expenditure in Spain. Spanish gambling provision is driven by arguments related to enhancing tourism, the aim being to collect revenue for the State Treasury while externalising possible harm. The wide range of gambling products across the country has nevertheless not delivered on these promises: gambling problems have also increased in the Spanish population, whereas the conflicting interest in gambling revenues has created tensions between central and regional governments.

The focus in the second section of the book is on cases in which gambling revenue is used to fund designated causes. In the German case, Loer gives an example of how charity beneficiaries become heavily involved in and dependent on gambling funds and operations to the point of blocking more effective gambling policies. The 'coalitional equilibrium' between actors in Germany has stabilised the offer of gambling between two poles: the privately run EGM market outside of casinos, and a state monopoly on lotteries, leaving little room for outside actors such as online providers to enter the market legally. Besednjak Valič and Marcur similarly show in the chapter describing the channelling of gambling revenue in Slovenia how municipalities have become dependent on casino profits, particularly in the region bordering Italy. In addition, and similarly to the German case, financial interest in channelling funds to earmarked causes, including sports and the disabled, has taken precedence over consumer-protection concerns.

Given the different ways of regulating gambling sectors, some specific game types appear more likely to contribute to earmarked causes than others. Although privately operated casino and EGM markets tend to contribute more to taxation, European lotteries are typically in state hands. As Gidluck's comparative overview of European lottery regulations and models of redistributing lottery funds shows, the main earmarked causes funded from lottery revenue include sport, charities, culture and science. However, earmarking funds creates dependence on this source of income, and good causes may also function as a smoke-screen or a PR tool for lottery providers. Bingo is an example of an institutional arrangement by means of which charities directly operate gambling. Casey's contribution focusing on the use of online bingo as a fundraising mechanism for charities in European markets shows how these charities create a 'halo effect' for what in practice resembles commercial gambling and a digital business enterprise.

The third section of the book concerns regulatory changes. The CJEU ruled that the sole justification for acquiring funds for state-welfare or charitable causes via gambling cannot be to intervene in this market (di Verona 1999). Restrictions on national gambling markets must therefore be justified with reference to crime prevention, consumer protection or the prevention of problem gambling. The Court of Justice of the European Free Trade Association (EFTA) gives similar reasoning (Ladbrokes 2006). The CJEU is nevertheless also tolerant of justification on historical and moral grounds, often including a component of financial benefit for the public, as long as national regulators in Europe do not refer to their financial benefit directly (Haltern 2016). However, the importance of European institutions in moulding national gambling legislation should not be exaggerated (see also the concluding chapter of this book), given that similar arguments can be used to justify both liberalisation and restriction in the market (Marionneau 2015; Euchner et al. 2013). In any case, regulatory changes seem to stem from national needs rather than pressure from the European Commission or the CJEU. Furthermore, the European Commission announced in December 2017 that it would no longer initiate infringement procedures or deal with complaints in the area of gambling, leaving legal control to the discretion of national legislators (European Commission 2017).

In her case study on Norway, Borch discusses the justifications used in the monopolisation process of the Norwegian EGM market in 2007. Using key-informant interviews, she shows how the process was justified in terms of consumer protection, but also served the financial interests of the state and the charity associations that would benefit the most. Cisneros Örnberg and Hettne give an overview of current changes in Swedish gambling regulation, and of their compatibility with EU requirements. Sweden is in the process of opening its strong state-monopoly system of online gambling and sports betting to licensed markets, but the different statuses of the beneficiaries in both the new and the existing sectors may complicate the process of justifying the legislative change to the EU. Another case of legislative change is exemplified in Wieczorek and Bujalski's contribution from Poland, where a major political corruption scandal in 2009 put gambling in the spotlight and turned public opinion against EGMs in particular. This resulted in the imposition of several restrictions and, similarly to the case in Norway, the later monopolisation of the market, making the state rather than private operators the main beneficiary.

In the fourth and final section of the book, we introduce theoretical perspectives on whether gambling can be compatible with the idea of welfare. Orford uses the example of Britain to demonstrate how the liberalisation of the gambling market was driven by economical reasoning and marked by a lack of a public health perspective. Despite critical public attitudes, the state continues to support the privatisation of the gambling market, although fixed-odds betting terminals are increasingly under governmental scrutiny due to their negative impact on gamblers and communities in Britain. Orford asks whether the promotion of gambling is in line with the idea of a 'good society'. Järvinen-Tassopoulos and Eräsaari discuss the concept of the 'common good' and its use in making gambling policies more democratic and solidary. Unlike the fiscally motivated public good, understood as providing funding for public projects, the common good is understood as a moral concept that could be used to highlight social concerns over financial interests. Sulkunen advances a similar argument, claiming that gambling policies should be based not on a requirement for causal evidence, but on advancing the 'public interest'. The author shows how seemingly similar concepts, such as the common or public good, and the

common and public interest have very different connotations in reality. According to Sulkuinen, from a policy perspective, the public interest is the most appropriate conceptual tool for drawing up sustainable gambling policies that advance the wellbeing of populations rather than focusing on fiscal gain.

In the conclusion, we summarise the main findings of the chapters by discussing three contradictions regarding the relationship between gambling and European welfare states. First, justifications and motivations for gambling policies seem to differ. Although charitable causes and welfare projects funded by gambling cannot be offered to European institutions as justifications, they also do serve as smokescreens for public and private profit-making in local contexts. Beyond these legal and political discourses, the real motivators of gambling legislation or regulatory inaction often appear to be vested interests in gambling revenue. Second, gambling may be regulated in a number of different ways, as exemplified in the contributions to this book. However, more restrictive regulations are not necessarily always the best policy option in terms of preventing gambling harms, particularly if these harms are not understood in the wide sense that goes beyond problem gambling and also includes societal and systemic problems. More efficient regulation can only be accomplished by better defining the role governments should take between a provider, regulator and beneficiary of gambling. Third, the fact that financial interest tend to take precedence over harm prevention challenges the idea that gambling could be in line with the idea of welfare ethically or even financially, as gambling creates a cycle in which the same revenue is only circulated between the same stakeholders. Finally, we discuss the implications of these contradictions and the different institutional arrangements through which gambling and welfare provision have become intertwined across Europe.

Notes

1. In the state of Tasmania in Australia, the clubs obtain 0.9 per cent of the gambling machine revenue, whilst a Sydney-based family (which is the sole license holder in Tasmania for gambling machines) keeps 47.8 per cent. This is 53 times more than Tasmanian clubs obtain (Livingstone 2018, see also Boyce 2017).

2. Total contributions to ‘good causes’ were approx. 1.5 billion GBP in the UK between April 2016 and March 2017 via the National Lottery, a decrease of 16.9% compared to the previous fiscal year (Gambling Commission 2018). The profits of one British gambling company alone, Bet365, were 514 million GBP in the same period, with a rise of 15 per cent compared to the previous fiscal year. The CEO of the company paid herself 217 million GBP as a salary and dividend payments, being the highest-paid CEO in the UK. The amount is 22 times to what the whole gambling industry contributes annually to treatment in Britain (Neate 2017).

Declaration of Conflicts of Interest Michael Egerer, Virve Marionneau, and Janne Nikkinen are researchers in the Academy of Finland funded project ‘Gambling in European Welfare Regimes’ (grant no. 277405). All three have previously received funding from the Finnish Foundation for Alcohol Studies based on §52 of the Lotteries Act; Marionneau and Nikkinen (travel grant) also from the Finnish Foundation for Gaming Research. Egerer is funded by the Finnish Ministry of Social Affairs and Health within the objectives of §52 of the Lotteries Act. The funds based on §52 stem from the gambling monopoly. The monopoly has no influence on how the money is distributed. There are no restrictions on publication.

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Part I

Gambling for State-Run Welfare



2

Gambling for the State: The Collection and Redistribution of Gambling Proceeds in France

Virve Marionneau and Sébastien Berret

Introduction

Gambling is an important source of public funds in France. In 2015, the Gross Gambling Revenue (GGR, profit after return to players) of the French gambling sector was 9.6 billion euros, from which the French state levied 5.4 billion euros in taxes and other contributions, in addition to the proceeds from the indirect taxation of employment and economic activity in the sector (Cour des Comptes 2016). Besides the state budget, gambling also benefits several smaller stakeholders in France, including municipalities, shareholders and sports organisations. There is currently no unified gambling policy in the country, although such a project has been recently proposed by the authorities (Cour des

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Comptes 2016). The redistribution of gambling proceeds in France is the focus of this chapter.

The legal organisation of the French gambling sector builds on a historical interplay between prohibitions to protect public order and exceptions to these prohibitions in order to fulfil financial needs (Jahn 2014). The first lottery was introduced in Paris in 1539 to raise funds for church and hospital-building projects at a time when wars with Spain had exhausted state coffers (Reith 1999; Willman 1999). In 1776, Louis XVI monopolised lotteries in the hands of the state to balance the budget deficit (Willman 1999; Jahn 2014). The French revolution precipitated a short-lived ban on gambling in 1793. Particularly the state-operated lottery was seen as a remnant of the *old regime*, but, due to the need for additional public funds, it was soon reinstated in 1797 in a financial law (Descotils and Guilbert 1993). The lottery prospered under Napoleon and subsidiaries of French lotteries were established in the countries he conquered. However, revenue from these lotteries began to fall as Napoleon's military losses increased, and in the wake of other moralist legislation, a general ban on '*lotteries of all type*' (Article 1, Law of May 21st 1836) was instituted in 1836.

A similar fluctuation between prohibitions and financially motivated deregulation is visible in the long history of the French casino industry. During the seventeenth and eighteenth centuries, the palace of Versailles and the galleries of the Palais-Royal in Paris were the gambling dens of Europe (Reith 1999; Durand 2008). The revolution of 1789 brought a tentative ban on casinos, but they were re-authorised in 1806 in Paris and seaside and thermal spa resorts (*villes d'eau*) (Parvulesco 2008). The burgeoning casino industry was closed down along with the general ban on lotteries in 1836. However, the ban did not impact the aristocracy, who continued to gamble in the resort towns of Southern France with little disruption (Jahn 2014). The importance of casinos to local budgets caused the mayors of these resort towns to exploit the ambiguity of the law by stating that casinos were private locations (Neurisse 1991).

The 1836 ban described gambling as an immoral tax levied on ignorance and deprivation (Jahn 2014). Aside from its moralist undertones, the legislation also coincided with a stabilisation of the state budget and a lessening of financial pressure (Coutant 2008; Willman 1999).

Moralism, although often evoked when discussing historical developments in gambling legislation, is therefore rather a combination of financial realities and the desire to maintain public order and protect individuals from market exploitation (see also Skeel and Stunz 2009). At least in France, gambling taxation has never been a punitive tax aimed at discouraging people from participating in games of chance; rather, it has been a practical means of raising public revenue (Markus 2016).

By the end of the nineteenth century, exceptions to the general ban began to appear. An 1891 law authorised pari-mutuel betting on horse racing to improve horse breeding (Article 2, Law of June 2nd 1891), and in 1931 betting was permitted outside hippodromes to redirect the proceeds of the flourishing illegal betting market to state coffers (Jahn 2014). The casino sector was also deregulated. In 1907, the operation of casinos in seaside and thermal spa locations was reauthorised to help develop tourism (see Bégin 2001). The geography of contemporary French casinos is still based on this principle: casinos are small but numerous due to the contradictory efforts of the Ministry of the Interior to limit gambling and local mayors to solve the financial problems of their municipalities (Bégin 2001). The number of casino establishments has risen significantly since Electronic Gambling Machines (EGMs) were authorised in 1987 and geographical limitations were relaxed in 1988 to boost the sector (Trucy 2002). The lottery also reappeared in 1931 by the name of *La Dette* (the debt) to collect funds for disabled veterans of the First World War. Two years later, *La Dette* was transformed into the National Lottery. The National Lottery was originally intended to last for just one year, but it was reinstated, at the advent of the Second World War, when lottery proceeds were required for national relief operations (Descotils and Guilbert 1993). The lottery grew in popularity, with additional draws and games introduced regularly, including the *Loto* in 1975 and the sports lottery *Loto Sportif* in 1984.

Today, four separate sectors provide gambling in France. The National Lottery Company, *La Française des Jeux (FDJ)*, holds a monopoly on lottery games and sports betting offline. The FDJ is a joint-stock company, of which 72% is owned by the French state.

Pari Mutuel Urbain (PMU) is the largest horse betting provider in Europe. It operates under the close control of the French state and enjoys a monopoly on horse race betting offline. The third sector consists of casinos. Casinos have the exclusive right to operate EGM and table gambling in France. France has the highest number of casinos of any European country (201 in 2017). Unlike the FDJ and PMU, the casino sector is privately owned, but it is strictly regulated and highly taxed by the state. The fourth sector is French online betting on sports and horses, and online poker markets, which, as of May 2010, have been opened to outside providers under a license regime regulated by a state body, *ARJEL*. This controlled opening was the result of infringement proceedings initiated by the European Commission after France was unable to provide an acceptable justification for maintaining a state monopoly over this area. Currently, 16 providers are active in this sector, including the FDJ and PMU (Marionneau and Järvinen-Tassopoulos 2017).

Next, we will introduce the beneficiaries of the four gambling sectors in France, provide a more detailed discussion of the allocation of funds based on key informant interviews conducted with gambling providers and beneficiaries, and finally focus on how the key informants experience the role of the French state as a beneficiary. We conclude that, as is the case in many other European jurisdictions, the French state has adopted multiple roles in regard to gambling, functioning simultaneously as a provider, a beneficiary and a regulator of games. Moreover, the role of the state as a beneficiary also seems to be growing, and we discuss the implications of this centralisation.

Beneficiaries of Gambling in France

Table 2.1 lists some of the key figures regarding the fiscal burden on the four gambling sectors. Levies across all gambling operators amount to 56% of GGR. The state budget is not the sole beneficiary; instead, there is a patchwork of other beneficiaries, reflecting the general lack of a centralised gambling policy. According to a report from the Cour des Comptes (2016), in 2015 gambling proceeds were divided as follows:

Table 2.1 Key figures on the French gambling market

Gambling sector	Market share in 2015, total wagers (%)	Market share in 2015, GGR (%)	GGR in 2015, Billion Euros	Total amount of levies on GGR (%)
FDJ	29	48	4.656	68
PMU	20	25	2.413	38
Casinos	3	22	2.114	55
Other online gambling	13	5	0.463	42
Total	100	100	9.646	56

Source Based on information provided by the Cour des Comptes (2016)

1. State budget (3.5 billion euros, 73.4% of the total): 0.8% of government revenues
2. Social security payments (0.72 billion euros, 14.97% of the total): 0.1% of social security revenues
3. Municipalities (0.27 billion euros, 5.63% of the total): 0.5% of all local revenues, including municipalities with and without gambling
4. Others: National Health Institute (*Institut national de prévention et d'éducation pour la santé, INPES*), National Centre for Sports Development (*Centre national pour le développement du sport, CNDS*), National Monuments Centre (*Centre des monuments nationaux*), horse racing associations (0.29 billion euros, 5.96% of the total).

Next, we will examine the beneficiaries of each gambling sector in more detail. In 2015, the FDJ had a GGR of 4.656 billion euros. The French state was the main beneficiary, and direct taxes to the state represented approximately 2.5 billion Euros. This means that the FDJ alone accounts for almost half of all state gambling revenue (Cour des Comptes 2016). In addition to the state budget, the FDJ contributes to social security (1.8% of bets), the CNDS (2.1% of lottery bets and 1.8% of sports bets) and to the national health institute, INPES (5% of sports bets) (Cour des Comptes 2016). As a joint-stock company, the FDJ also pays dividends to its shareholders according to its financial results. Shareholders include the state (72% of capital), FDJ employees (5% of capital), redistributors (3% of capital) and historical

shareholders (20% of capital). These historical shareholders consist of the original creators of the lottery: soldiers' associations, the tobacco-union, other redistributors and the health insurance of the National Treasury (FDJ 2015). Finally, the FDJ also directly sponsors sports to the sum of 3.6 million euros per annum through a foundation called *Fondation FDJ* (Fondation FDJ 2016). Unlike the other gambling sectors, the FDJ does not pay contributions to municipalities.

PMU is a non-profit company tasked with collecting funds for its parent organisations, France Galop and Le Trot. In 2016, PMU collected 2.444 billion euros in GGR, of which 796 million euros were directed to the two parent organisations (PMU 2017), which organise horse races and finance the horse industry. Both organisations receive 50% of the benefit (Juanico and Myard 2017). In addition to horse racing, the main beneficiaries of PMU are the French state budget through taxation (38% of GGR), the social security budget (1.8% of the value of all bets) and also municipalities with a race track (up to 735,224 euros per annum per municipality) and INPES (5% of online bets) (Cour des Comptes 2016).

The taxation of casinos was recently simplified in an amended financial law in 2015, which replaced several separate levies with simplified progressive taxation. Tax levels range from 6 to 83.5% based on the GGR of the casino (Decree 2015-669). Besides streamlining casino taxation, the law also lessened the tax burden on the struggling French casino sector (Juanico and Myard 2017). In addition to this progressive state tax, casinos pay tax to the municipality in which the establishment is located. The level of this local tax is negotiated between the casino operator and the municipality, and cannot exceed 15% of the GGR. Casinos also pay social security payments (3% on table game GGR and 9.5% on EGM GGR) and are subject to other company taxes that are not gambling specific. In 2015, the total amount of taxes and levies on casinos represented on average 55% of GGR (Cour des Comptes 2016), of which 60% went to the state budget, 22% to municipalities and 28% to social security (Casinos de France 2016).

Online gambling is taxed differently depending on the game. In 2015, the GGR of online sports betting was 270 million euros, of which 49.6% was paid in taxes. The beneficiaries of these funds were

the state budget (61% of taxes), social security (18%), CNDS (15%) and INPES (1%). As for online horse race betting, the total GGR of the sector in 2015 was 254 million Euros, of which 52% was paid in taxes. These payments were directed to the organising associations, Le Trot and France Galop (46% of all levies), paid in taxes to the state budget (34%) and hippodrome municipalities (6%), and used for social security payments (13%) and a payment to INPES (0.7%). Finally, online poker generated a GGR of 232 million euros in 2015, of which 32% was taxed. The beneficiaries were the state budget (63%), casino municipalities (13.5%), the National Monuments Centre (13.5%) as well as social security (9.5%) and INPES (0.5%) (ARJEL 2016).

The data presented in this section show that overall, and across sectors, the state budget is the most significant beneficiary of gambling in France. However, there is no information available on what the state uses these funds for. With the exception of funds directed to national centres such as INPES, the CNDS or the National Monuments Centre, state revenue from the taxation of gambling does not appear to be earmarked for any specific purposes in the general budget. In addition to these centralised state actors, however, gambling also benefits municipal actors and some private shareholders. The remainder of this paper will focus more closely on how different beneficiaries use these funds and examine their position vis-à-vis the French state.

Methods and Data

We conducted key informant interviews between 2016 and 2017 with beneficiaries, providers and regulators of gambling in France. The interviews were conducted face to face or over the telephone, and in one case by email. The data consist of 17 interviews. The participants were chosen on the basis of opportunity: out of 250 attempts to contact different beneficiaries and operators across France, only 17 resulted in an interview. These difficulties may be indicative of how sensitive the topic of benefitting from gambling can be. However, despite these setbacks, the data represent the field relatively comprehensively and consist of interviews with four representatives of municipalities with a casino (one of

which also had a hippodrome), three representatives of municipalities with a hippodrome, four historical FDJ shareholders (two representatives of the Tobacconist Union and two former soldiers' associations), two central sports associations funded by the national sports centre CNDS, three gambling operators (one monopolistic operator, one union representing casinos and one online operator) and an email communication with the regulating authority of online gambling, ARJEL.

The interviews were semi-structured: the questions followed a similar structure, but allowed for space for the interviewer to elaborate on certain topics. The final data cover a variety of topics, including the bureaucracy related to gambling proceeds, their use, the effectiveness of the system, the ethics of financially benefitting from gambling and the relationship of beneficiaries or providers to the state. In this chapter, we focused on discourses related to (1) use of gambling funds by the beneficiaries and (2) the informants' views on the role of the state as a beneficiary.

We coded the interviews using the qualitative data analysis software Atlas.ti. One coded quote consists of an uninterrupted statement. If the same topic was raised again later in the interview, this was coded separately. The coded material used in this paper includes the use of funds (67 codes), relationship to state (45 codes) and perceptions of the state as a beneficiary (66 codes). The data were then analysed qualitatively and anonymised. Anonymisation was necessary, since not all the participants wished to appear in the study under their real names. We therefore refer to them using coded identifiers based on their positions in the field: providers and ARJEL (PROV-1-4); casino municipalities (CASINOC-1-4), hippodrome municipalities (HIPPODC-1-4), representatives of tobacconists (TOB-1-2), soldiers' associations (SOLDA-1-2) and sports associations (SPORTSA-1-2).

Use of Funds

While the state budget does not earmark revenue from the taxation of gambling, our interview material provides other examples of the concrete purposes for which gambling funds are used in French society.

In the case of the FDJ, we conducted four interviews with company shareholders: two representatives of the Tobacconist Union and two representatives of soldiers' associations. Both organisations played an integral part in the creation of the French lottery in 1931. Tobacconists worked as resellers, and the money from the FDJ continues to support the network of tobacco shops. Tobacco shops have a dense network of sales outlets across France and a historical monopoly on tobacco sales. However, with the decline in tobacco revenue following tax rises and declining smoking rates, the importance of FDJ revenue has grown, and it now represents about 30% of tobacco-shop income, making 'tobacco shops cherish [the FDJ] as if it were the apple of their eye' (TOB-2), as one tobacconist told us. Tobacco shops also receive a commission from sales of PMU games, but in comparison to dividends and commissions from the FDJ, these sums are less significant and may not even be 'financially acceptable' (TOB-1) as in some cases they are not profitable.

Soldiers' associations, on the other hand, are historical beneficiaries that helped create the lottery to 'take care of ... the consequences of having served at war for former soldiers' (SOLDA-1), including medical aid and pensions. However, with the decline in the number of former soldiers, the associations have adopted other responsibilities beyond their core activity. These include retirement homes and vacation centres for former soldiers, aid to hospitals and also school trips to war memorials and significant subsidies for medical research. One of the associations reported having 'supported 400 [research] projects with 13 million euros' (SOLDA-2).

We also conducted two interviews with local-level beneficiaries of the national sports centre, the CNDS, which receives funding from the FDJ and online gambling operators. These local-level sports divisions do not fund professional sports but rather support local sport associations and the acquisition of equipment. The divisions are relatively free in their allocation of funds, but some areas are prioritised, including employment in sports, women's sports in poor neighbourhoods, swimming classes and sports-related health. The general rule is also to fund larger associations. However, the representative of one locality noted that since it has many poor neighbourhoods, he tries to increase social cohesion and avoid the escalation of problems by also funding

smaller associations ‘even though the CNDS tends to say we should only finance big ones’ (SPORTSA-1). Furthermore, although gambling money is important for financing local sports, the beneficiaries informed us that the subsidies they receive are insufficient, representing only ‘between 10 and 15 percent of the total sports budget in the locality, which is not much’ (SPORTSA-1).

Municipalities receive direct payments from hosting casinos or horse race tracks. In the case of PMU, the legislation mandating such payments is recent, and hippodrome municipalities have only directly benefited from the races they organise since 2014 (Amendment 153). The above-mentioned amendment does not specify the allocation of funds. Some of the hippodrome municipalities we interviewed had earmarked the money, while others had not. Areas earmarked for funding included cultural events, horse-related associations and ‘investment in a new racing track’ (HIPPODC-1). In other cases, the money was absorbed into the general budget. The representative of one hippodrome municipality noted that ‘we could earmark the money ... but we already have enough of an administrative burden’ (HIPPODC-3).

The importance of casino proceeds to the budgets of casino municipalities varies, but with the decline of state subsidies, gambling revenue has become increasingly significant. In this sense, gambling revenue fails to provide much of a net additionality to most municipalities; rather, it substitutes for the shortfall in state funding (Gordon 2004). In larger municipalities, gambling money accounts for only a few percent of the budget, while in smaller places the share can be one fourth, in which case gambling can also provide a net increase in funds. As with hippodrome municipalities, there is no legal requirement to allocate the funds to specific areas. In municipalities where the money functions as a substitute for state funding, gambling revenue ‘goes into the general budget’ (CASINOC-4). One municipality had used casino proceeds to pay off debt. By contrast, if gambling revenue brings a net increase to the municipal budget, it is often earmarked. These municipalities have allocated casino money to ‘a range of sports and cultural activities’ (CASINOC-1), including funding local associations and cultural festivals, and investment in tourist facilities. In France, being classified as a tourist municipality also means being ‘obliged to invest heavily

and strongly to maintain the quality of [the municipality's] services' (CASINOC-3). Thus, in some municipalities, the money was used to make it even more attractive to tourists, by, for example, building a congress centre. Others refused to engage in such 'prestigious projects' and instead opted for 'supporting local associations' (CASINOC-2).

The State as a Beneficiary

Although our study does not include an interview with a representative of the French Treasury, the role of the French state as a beneficiary was apparent in other interviews. Overall, the state was seen to be implicated in gambling on several levels: '[the state] pumps casinos, it pumps the PMU, and it creates its own gambling company that is the leader in the [revenue] collection' (CASINOC-1). Later in the interview, the same key informant continues by stating, 'the taxes that the state takes from the FDJ are incredible. When you put one euro in any FDJ game, they already take 50 cents from you ... it's a real money-making machine for the state' (CASINOC-1). Similarly, the representative of one of the soldiers' associations—also one of the original creators of the French lottery system—noted that the state had soon taken control of the lottery precisely because of its revenue potential: 'the state took over. And it controls it with determination and with closed taps, because it's an important source of finances for it' (SOLDA-1).

What becomes of this money in the state budget was as unclear to the key informants as it is in official documentation: 'the state pockets 750 million euros, but we don't know where it goes... . It falls into the bottomless pit of state funds' (PROV-2).

Some of our respondents regarded this way of collecting funds for the state in a relatively positive light, observing that '[t]he state takes whatever it can' (HIPPODC-3) and that '[t]he state needs money. Anyway, it's money that will be redistributed. That will also benefit local communities. It can help fill the Social Security deficit, or provide for associations. It goes to the wellbeing of society' (TOB-1). One respondent noted that '[gambling] is not the kind of activity you can prevent, so you might as well benefit from it. And it is systematically the state that

benefits' (CASINOC-2). Gambling was described as a voluntary tax in several interviews: 'if we didn't have it, we would pay more tax ... it's a voluntary tax' (CASINOC-4). It was also considered a relatively painless tax for consumers: '[gambling] is like tobacco or alcohol; [the state] can raise taxes on it because public opinion is not against it as much as in the case of other consumer products' (PROV-1).

Others were less understanding and felt that the state should share its wealth. A representative of a local-level sports administration that receives funding from the CNDS argued that they had insufficient money to maintain all the sports facilities in the area: 'the state should take a little less tax on the lottery, and demand that the lottery fund [sports] facilities more' (SPORTSA-1). One of the tobacconists argued along similar lines: 'maybe [the state] could reduce its claims in order to support and to revive the network [of tobacconists]' (TOB-1). The interviewed providers also hoped that the state could reduce its taxation levels to boost competitiveness: 'it's at the same time a very small amount of money for France, but it's important for us as a company' (PROV-3). However, the companies seemed to acknowledge that the state was too dependent on gambling money for this to happen: 'at one moment we were hoping for changes in taxation ... [but] today the state is not ready to give up any of its proceeds; it's really not a priority for the state' (PROV-1).

In some interviews, the state was described as having conflicts of interest related to its heavy involvement in gambling, not only as a beneficiary, but also as a provider and regulator. One discussion between the respondent and the interviewer illustrates this well:

Respondent: Do you know what the largest casino in France is?

Interviewer: In all of France? It's Enghien? [a casino located in Enghien-les-Bains, a northern suburb of Paris]

Respondent: It's the state. It's the state! Every eight days it invents a new game! (CASINOC-3)

The private operators functioning in the French gambling market connected this conflict of interest to unfair competition. One key informant observed that while gambling operators were heavily controlled by

the state, they had little influence, particularly regarding taxation levels. Similarly, an online operator highlighted that when France opened its online markets to competition in 2010, the government opposed overly rigorous competition with state-controlled operators, and they considered high taxation the appropriate strategy to hinder this competition:

[T]he state wanted 3-5 operators per product, and they succeeded... . Also because they probably thought that online gambling would compete with FDJ or PMU. So when it comes to [...] other operators, I think [taxation] is too high from an economic and marketing perspective. But ARJEL succeeded in hindering competition with FDJ and PMU. (PROV-3)

By contrast, beneficiaries linked this state conflict of interest with further consolidation of gambling profits in state hands at the expense of other beneficiaries. The soldiers' associations had already experienced a state takeover when the state took control of the original National Lottery in 1935. The same occurred again in 1975 with the Loto:

Jacque Chirac [the prime minister at the time] signed the decree [authorising the Loto], but with the condition that 'you bring the money, if it doesn't work, it's on you'. In two years' time, it had worked so well that the state said 'Stop, we'll create a semi-public company and you'll be a minority shareholder'. (SOLDA-2)

Besides these takeovers, FDJ shareholders have also seen other reductions in their part of the profits. Until 2008, shareholders received a 0.4% share of all bets, whereas since 2008 they have only received income from the FDJ through dividends: 'it was very advantageous for us. And it stopped in 2008... . In 2008, our revenue stream began to slow and, in addition, in the following year, FDJ dividends became taxable' (SOLDA-1). This representative of one of the soldiers' associations feared that the system might change again, and perhaps remove other shareholders than the state altogether: 'there have been attempts to get rid of the historical shareholders in the FDJ' (SOLDA-1). However, the representative of the second soldiers' association thought this was an

unlikely prospect, as they were still protected by ‘the rule of law; the state can’t just decide to eliminate shareholders’ (SOLDA-2). Moreover, although their role as an FDJ shareholder was tenuous, ‘it’s a fragile and temporary situation that has lasted a long time’ (SOLDA-2).

Beneficiaries of other gambling sectors expressed similar fears of further redirection of their profits to the state. Representatives of hippodrome municipalities observed that the present revenue they received from hosting a hippodrome in their area was ‘a fragile source of income. It can go away as fast as it came’ (HIPPODC-3). The state was also seen to give an unfair advantage to the FDJ, even at the expense of other sectors and perhaps even contrary to its own interests: ‘[The state] privileges what pays the best, without considering the economic sectors. What brings in the most money is the Française des Jeux, but the FDJ is not based on any economic sector, any! While ... casinos [support] the whole tourism sector, horse racing [supports] the whole horse sector’ (CASINOC-1).

Discussion and Conclusions

In this chapter, we discussed the beneficiaries of gambling in France. In so doing, we considered the amounts of money involved and different beneficiaries, how funds from gambling are used and the role of the French state. We found that these significant amounts of money not only satisfy specific economic needs, including supporting tourism, horse racing and sports, but also account for almost one percent of the budget of the French state. The allocation of gambling revenue in the French state budget is unclear. Our inability to interview a representative of the French Treasury, due to their reluctance to participate, is also the main shortcoming of the present study. Based on documentation and key informant interviews with other beneficiaries, it appears that there are no designated purposes for gambling-related proceeds in France. Instead, this money falls into the general budget, fulfilling a variety of budget needs. The interview material also revealed that the state seems to be further concentrating gambling profits in its own coffers, to the dislike of the other beneficiaries.

However, beneficiaries are individual actors with separate concerns, and they have not jointly organised to protect their interests in the face of state dominance. Instead, and perhaps to their own disadvantage, these beneficiaries attempt to safeguard their individual positions from the competing interests of stronger actors, including not only the state but also providers. Adams (2016) has described the creation of uncertainty among beneficiaries as a strategy that provides considerable leverage to the funder. The French situation seems to support this. In many of the interviews, the beneficiaries voiced discontent about the situation, fearing state or operator interference in their profits, but felt powerless to influence the process. A development in which profits are gradually directed away from these small beneficiaries may also mean a decrease in the amount of gambling revenue that is earmarked for use in France, and even less transparency as to where the money actually goes.

At the same time, designated ‘good causes’ also serve to justify state involvement in gambling (Markus 2016; Adams 2016). In the case of FDJ shareholders, the money directly benefits the wellbeing of former soldiers and the network of tobacco shops, while the gambling-funded CNDS is the main funder of sports in France. Horse racing directly benefits not only the equestrian sector, by creating employment and economic opportunities, but also hippodrome municipalities, which can use the money to improve their facilities. Casino companies both support employment in the casino gambling sector and also bolster local finances at a time when the state is reducing direct subsidies. This money can therefore function both as an addition to other sources of revenue and also as a substitute for them (Gordon 2004).

The question that remains is whether directing the benefits of gambling directly to the state is a better system than directing them straight to earmarked beneficiaries. The interview material used in this paper suggests the latter, but it is important to remember that the key informants were speaking from their own perspective. It is more likely that neither system is objectively better or worse than the other. Both the state and other beneficiaries can engage in negative or positive practices related to the use of gambling funds. Nevertheless,

directing gambling profits to the state budget with no designated purposes for that money raises transparency issues that earmarked beneficiaries can help overcome. Previous research (Pöysti 2014) has shown that the attitudes of French gamblers towards their gambling system are more negative than those of gamblers in contexts where gambling is justified in terms of collecting funds for specific charitable causes. However, those benefitting from earmarked gambling money may also face conflicts of interest, particularly if they aim to promote welfare while accepting money from a source that causes suffering to some (Adams 2016).

The number of studies on the beneficiaries of gambling is very limited, and we would welcome any new research on this topic, also in other country contexts. Regarding the French case, further studies should examine, in particular, the ethical dilemma, or as Adams (2016) terms it the ‘moral jeopardy’, faced by in accepting gambling money. Gambling is a controversial source of revenue, as it can also cause social harm. Nevertheless, a recent analysis of the costs and benefits of gambling in France (Massin 2016), financed by FDJ, was inconclusive regarding the total impact of gambling on French society, highlighting the difficulties of determining the actual financial and social costs of gambling. Despite these issues, this chapter has demonstrated the importance of gambling to the finances of the French state, often at the expense of other beneficiaries. In France, it is not the house that always wins; it is the state.

Declaration of Conflicts of Interest Virve Marionneau is a researcher and Sébastien Berret has been a research assistant in an Academy of Finland funded project ‘Gambling in European Welfare Regimes’ (grant no. 277405). Virve Marionneau has previously received funding from the Finnish Foundation of Alcohol Studies and the Finnish Foundation for Gaming Research based on §52 of the Finnish Lotteries Act. Sébastien Berret is currently receiving a grant from the Finnish Foundation of Alcohol Studies. The money stems from Finnish gambling operations but the gambling monopoly has no influence on how the money is distributed and imposes no restrictions on publications.

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3

Italian Gambling Regulation: Justifications and Counter-Arguments

Sara Rolando and Alice Scavarda

Introduction

The present chapter summarises the findings of a case study carried out as part of the project entitled ‘Gambling Policy in European Welfare Regimes. A European Research Project on the Profitability of Gambling’¹ which compared gambling regulations and how they are justified in different countries.

Italy ranks sixth in the world in per-person gambling losses, and fourth place in total countrywide losses, which totalled around 20 billion euros in 2013.² According to the Italian Customs and Monopolies Agency (AAMS), the amount of money spent by Italians for gambling has grown constantly over the last ten years. By 2016, it had reached about 96 billion euros³ (AAMS 2016), or about 2.3% of Italian GDP,

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while after-tax net revenue for the sector was 8.9 billion euros (AAMS 2017). The electronic gambling machine (EGM) market collects the largest amount of money, with slot machines taking 27% and VLTs⁴ taking 23% (AAMS 2017). According to the Italian gambling industry association,⁵ the sector includes 6000 enterprises and 150,000 employees. However, the economist Pelligra (2017) criticises these data and states that only 30,000 people are directly employed by the gambling industry, while other kinds of job deal only partially with gambling.

To have a complete picture of the extent of Italian gambling, the figures for illicit gambling should be added to these numbers. Many official documents based on law enforcement investigations and judicial inquiries report on the presence of organised crime on the Italian gambling scene, both legal and illegal (Anti-Mafia Commission and Social Affairs Committee 2016). According to some estimates (Fiasco 2014b), the ‘black’ component in the electronic gambling machine⁶ (EGM) sector was 8.6 billion euros in 2012, which is almost the same as the total State revenue from all gambling in that year.

Despite these numbers, population surveys on gambling have only been conducted since the end of the 90s and no comprehensive statistical data on gambling disorders have yet been produced, as a national surveillance project was only recently introduced as an experiment (Department for Antidrug Policies 2016). In any case, the estimated percentages of ‘at risk’ gamblers vary between 1.3 and 3.8%, while the estimate for ‘problem’ gamblers is between 0.5 and 2.2% of the general population (Department for Antidrug Policies 2015).

As regards the regulatory system, the Italian model is unique in Europe for three main reasons. First, in the absence of a national framework law, it is based on fragmented and inconsistent legislation (Zenaro 2006; Fiasco 2011), resulting from a long and complicated series of riders to finance and budgetary acts (Bonfiglioli 2014). Second, the state monopoly operates through ‘concessions’, a regulatory tool that differs from the more common ‘licenses’. Concessionaires operate in a market without competition; they are private enterprises that—through a public tender—receive a concession from AAMS to manage the operators’ network by collecting taxes and sharing revenues. Operators in turn are authorised to distribute and install gambling machines and manage collections. At the end of the chain are the point-of-sale retailers to whom the operators contract out the machines.

The regulatory system is even more complicated, as each specific gambling sector has its own actors and different rules. For instance, sport bets can be placed with several concessionaires, while instant and traditional lotteries are handled by only one concessionaire. In such a complicated system, responsibilities are also less than straightforward. The most important aspect is that, since they are performing a public function, concessionaires are not held accountable for the possible harm caused by gambling (Fiasco 2014c), which makes class actions almost impossible. In 2016, there were 559 concessions, though the lion's share of revenues—from EGMs, i.e., slots and VLTs—is split among only 12 concessionaires (AAMS 2017). Furthermore, the gambling market is dominated by a few well-established national companies—namely Lottomatica, Snai and Sisal—even though they have now merged with international companies (e.g., Snai with Cogetech, Lottomatica with GTECH S.p.a.) and most concessionaires are financial holding companies with headquarters abroad. It is worth noting that the EU has repeatedly ruled on the inadmissibility of the Italian monopoly system, as being skewed in the interests of the concessionaires.

The third peculiar characteristic of Italian gambling regulation is that the use of gambling revenues is neither transparent nor linked to specific purposes; the public is not informed about how collected money is spent, even though the government—in parliament debates and through the mass media—sometimes presents specific arguments to justify the introduction of regulatory changes. For instance, Law 39/2009, the so-called 'Abruzzo Decree', introduced several innovative measures ostensibly to raise money to help earthquake victims, though how much was collected through this measure and how it was spent remained unknown.

In the following paragraphs, we will summarise the main phases that led to the current regulatory system, analysing the main justifications used by the legislature and exploring beneficiaries' attitudes towards the gambling industry. Counter-arguments will then be discussed.

Methods

Data are based on documentary analysis—including secondary sources, reports, white papers and grey literature—and open-ended interviews. Furthermore, a systematic review of Italian laws and legislative

proceedings dealing with gambling since 1980 was performed in order to understand how the liberalisation of gambling has been implemented and justified in Italy. Lastly, six key informants were interviewed in individual, in-depth interviews conducted either face-to-face

Table 3.1 Interviewees

Name	Description
Scholars	
SCH. 1	A philosopher and journalist. He teaches at the University of Pavia and collaborates with many journals and publishers. He is the author of various books and articles on gambling. Since 2008, he has been the editorial consultant of the 'Vita' publishing group and is part of the related movement called 'No-slot', aimed at raising awareness of the issue among mayors, suppliers and the public
SCH. 2	A sociologist. Researcher in the Sociology of Culture at the eCampus University Faculty of Psychology. He was the principal investigator in a large study on the cultural aspects of gambling for the Università Cattolica di Milano and for a private foundation funded (indirectly) by the gambling industry
SCH. 3	A sociologist. He is the author of several studies on gambling, focusing especially on regulation and illegal gambling. Between 1990 and 2001, he was a consultant for the Parliamentary Anti-Mafia Commission and for the National Anti-Usury Council, a non-profit association founded on Catholic principles
Beneficiaries	
BEN. 1	In charge of the gambling sector at FederSerd—an Italian association of professionals working in public and private addiction services. Since 2009, Lottomatica, Sisal and other concessionaires have funded GiocaResponsabile.it , a website related to a national helpline and a chat service
BEN. 2	Director of Moige, a movement of Italian parents founded in 1997 and committed to various social issues, including gambling. Since 2010, Moige has run an annual social campaign together with (and funded by) Lottomatica to prevent underage gambling
BEN. 3	A priest, president of a Catholic not-for-profit organisation that manages drop-in centres and therapeutic communities for young people and adults, including those with addiction problems. There is also a specific community for adult problem gamblers

or by telephone/Skype in 2015. Interviewees included scholars and beneficiaries. In the first case, selecting interviewees was fairly simple, as there are very few sociologists who engage in gambling studies in Italy. Beneficiaries were chosen from among representatives of large organisations that have received funds from the gambling industry and at the same time are involved in gambling prevention actions or services (see Table 3.1).

All the people who were invited to participate agreed to be interviewed, except for one person who played a role in the legislative process and whose organisation received a grant from the gambling industry. Interviews were recorded and transcribed verbatim by a researcher who also led/observed the interviews. Texts were then analysed using Atlas.ti adopting an ‘abductive approach’ (Timmermans and Tavory 2012), i.e., based on theory as well as actual data and thus capable of generating new knowledge. Since one beneficiary did not agree to be cited, interviewees’ names are not indicated and recognisable identifiers are only used for those who gave us written permission.

The History of Italian Gambling Legislation

The history of the legislative process is an example of progressive liberalisation in a country where gambling is forbidden by the Constitution: the legislature circumvented this obstacle simply by introducing the term ‘legal gaming’. Our review substantially confirmed Fiasco’s analysis (2010), which divides the history of the Italian legislation into four periods. During the first period, from 1889 to 1992, gambling included a few types of games and was limited to specific places, while EGMs were prohibited in public places. The first signs of liberalisation dated back to 1987, when Law 123 (Law of 16 March 1987) authorised the Lotto game in more than 400,000 tobacco shops, which replaced the ‘policy shops’ administered by the State.

However, the real legalisation process started at the beginning of the 90s. According to Fiasco (2010), the second phase began in 1992 and lasted until 2002, during a period marked by institutional and economic crisis and the consequent urgent need for tax revenues in

order to meet Maastricht criteria. Since then, gambling has become an important source of income for the State, which increased the number and the types of games and places where gambling is allowed (Pedroni 2014). Instant lotteries were introduced in 1994, followed a year later by the authorisation of slot machines in public places (Law of 6 October 1995), while Superenalotto—a type of lottery that became very popular—was launched in 1997. The legalisation process culminated in 2001, when the Budget Act devolved the power to authorise betting shops to local administrations (planned since 1997). In the same period, a process of outsourcing also began, by introducing specific measures regarding the granting and the management of gambling through concessionaires.

In the third phase, from 2003 to 2010, legislation seemed to aim more at encouraging investments in the gambling industry than at increasing government revenues (Fiasco 2010). This was confirmed by a study led by two economists who investigated the taxation system in order to explain the paradox of decreasing state revenues between 2009 and 2012, despite steadily growing expenditures on gambling (Gandolfo and De Bonis 2013). The authors argued that the decrease was due to the different tax treatment applied to traditional and new games—the latter being subject to lower rates—combined with a change in gamblers' preferences in favour of the latter. They also concluded that the taxation system failed to maximise revenue for the State while bringing 'significant economic gains for the [gambling] operators' (Gandolfo and De Bonis 2013, p. 19, our translation).

Furthermore, the State continued to divest itself of control functions in this period. The Independent State Monopolies Administration—which merged with the Customs Agency in 2012 to form the new Customs and Monopolies Agency—was granted considerable independence in the regulation and fiscal control of the market, and was put in charge of several functions, including management, regulation, planning and marketing strategy (Fiasco 2014b). According to Pedroni (2014), by refusing to exert a strong role in the gambling market, the State has definitely lost its 'symbolic capital', i.e., its credibility in the public eye. One of the most important laws of this period is the so-called 'Bersani Decree' (Law of 4 August 2006), which authorised

online gambling and opened the market to foreign dealers. This last measure was in line with several European Court of Justice rulings, specifically Gambelli (2003) and Placanica (2007), which established that the Italian legislation on concessions was contrary to Articles 43 and 49 EC (now the TFEU—Treaty on the Functioning of the European Union) concerning the freedom of establishment and the freedom to provide services. At the same time, however, the decree took care not to damage the interests of concessionaires. This was later noticed by the European Court of Justice, which in its ruling on Costa and Cifone (2012) stated that Italian legislation was inconsistent with the principles of equal treatment and effectiveness. In the same vein, the 2007 Budget Act introduced new online lotteries, and Law 149/2008 (Law of 25 September 2008) authorised VLTs. Video lotteries were officially introduced by the Abruzzo Decree (Decree-Law of 28 April 2009) which, exploiting a national tragedy, also allowed tobacco shops to stay open on holidays and made online gambling—poker, roulette and casinos—legal. On the other hand, in 2010 the legislature referred to the addiction problem for the first time, and introduced the term ‘ludopatia’, literally ‘gambling disease’ (Law of 13 December 2010).

The fourth phase, according to Fiasco (2010), started with Decree 98/2011 (Decree-Law of 6 July 2011). He states that the opportunity the degree provided to gamble anywhere, thanks to mobile devices such as cellular phones and tablets, had the effect of a ‘hydrogen bomb’ on the phenomenon, from a legal, ethical, political and criminological perspective (Fiasco 2010). Another turning point—and partly in the opposite direction—in the history of Italy’s gambling legislation (Pedroni 2014), came in 2012, with the so-called ‘Balduzzi Decree’ (Decree-Law of 13 September 2012) that included pathological gambling among the conditions contemplated by the National Health Service’s Essential Levels of Care and forced gambling operators to post information about risks and treatment services in gambling venues. Furthermore, the law introduced some limitations on marketing and installing slot machines, mainly to protect minors. However, most of our interviewees believe this law had no real impact. Be that as it may, the Decree undoubtedly had a strong impact on the media, which increased people’s awareness and ‘galvanises social movements against gambling’ (SCH. 2), such as

the ‘No Slot Movement’, which includes lay and Catholic non-profit organisations and individual citizens. In the same period, municipalities—responding to pressure and protests from citizens and social organisations who voiced concerns about the heavy economic and social costs of gambling—started to introduce local regulations that reduced gambling opportunities, mainly by lowering the number of slot machines and VLTs and limiting the times and places where gambling is authorised. Initially, the government overturned all municipal regulations, citing State supremacy over policies concerning public order and the Directive 123/2006 CE, so-called Bolkestein Directive. However, there was an important shift in 2011, when the Constitutional Court ruled that local authorities have the right to limit gambling for public health reasons (Jarre 2016). Since then, a steadily increasing number of municipalities have introduced local regulations, mainly focusing on ‘timing’ and ‘zoning’ measures that reduce the hours and places where gambling is allowed (Jarre 2016). Urged by municipalities, the Regions started to introduce regional regulations as well. To arrive at a nationwide agreement, the matter was assigned to the Permanent Conference on the Relationships between Central Government, the Regions and the Self-Governing Provinces of Trento and Bolzano. After lengthy negotiations, an agreement was reached in September 2017, whereby the number of gambling venues (those specifically dedicated to gambling as well as bars and tobacco shops) will be halved in three years, passing from the present 98,600 to about 48,000 at the end of 2019. Furthermore, EGMs will be reduced by 35%, from 400,000 to 265,000. Even though this is the first time that the State has introduced a measure aimed at reducing supply, the conflict between local and the national governments continues. In fact, the local regulations might be even more restrictive in their effects than the State measures and, for this reason, are still being challenged by the government. This is the case, for instance, of the Piedmont Regional Law (09/2016), in place since November 2017, which the government regards as ‘prohibitionist’ (see e.g., La Stampa for December 7, 2017), as it establishes that slot machines cannot be placed less than 500 meters away from what are defined as ‘sensitive places’, including schools, places of worship, shops that buy gold, therapeutic communities and cash machines. The

minimum distance is less in towns with fewer than 5000 inhabitants. The purpose is obviously that of confining gambling to specific places, thereby countering the rise in problem gambling. The Ministry of the Economy, however, has stated that this measure will create a major loss in terms in State revenues, and has thus threatened local governments with having to make up for this shortfall. The government has also taken the position that putting excessive limits on legal gambling would provide a boost to the illicit market.

The conflict is clearly an outcome of the disordered and stratified legislative process whereby gambling in Italy has been liberalised over the last twenty years, in the absence of a framework law. Furthermore, it highlights how the different degrees of economic interest associated with gambling gravitate to different political positions.

The Gambling Industry's Corporate Social Responsibility and the Beneficiaries' Attitude

As Pedroni notes (2014, p. 83), 'in the field of gambling production, concessionaires compete to accumulate reputational capital'. To this end, well-established concessionaires defend their stronger position against new concessionaires (e.g., foreign and online gambling providers) through the so-called corporate social responsibility (CSR) activities, a form of corporate self-regulation which is actually a kind of marketing (Fiasco 2014a; Cai et al. 2012), and scholars recommend that more interventionist policies be adopted on this issue (Yani-de-Soriano et al. 2012; Hancock et al. 2008).

CSR activities are described in the so-called 'Social' or 'Sustainability' Reports, official documents that show how enterprises allocate their resources and emphasise their good performance, including the number of jobs created and the attention devoted to human resources and the environment. For example, IGT (formed from the merger between GTECH and Lottomatica) transferred 6.4 billion euros to local communities around the world in 2014. Social commitment is expressed by promoting education, sports, music, culture and social inclusion. Thus, IGT Italy financed a programme entitled 'Vincere da Grandi' sponsored

by *Il Gioco del Lotto* which offered sports and music initiatives to disadvantaged families through cooperation with local social welfare networks, municipalities, schools and social services. As the group's Sustainability Report states, 'IGT's Lottomatica has an established relationship with the country at the local level and with public institutions at the national level' (IGT 2015, p. 59). Beneficiaries also include the Community of Sant'Egidio, whose founder took a public position against gambling and contributed to the approval of the Balduzzi Decree when working as a government minister.

According to the latest Sisal Sustainability Report (2016), the company transferred 5.2 billion euros to local communities in 2015: 2.8 billion euros in local taxes and duties, 194 million euros to charity and 2.2 billion euros for sponsorship. The programme covers five main areas (sports, innovation, culture, the social sector and scientific research, mainly consisting of medical research on serious illnesses). Several foundations and associations are beneficiaries of the gambling industry, including well-known international organisations and other national or local associations and foundations, including those dealing with several kinds of addiction.

According to interviewed scholars (SCH. 2), there is increasing competition for resources among potential beneficiaries who '*having realised that the legislative context is problematic, try to squeeze what they can out of the concessionaires*' (SCH. 2:82). However, '*many associations are asking for money under the table, and some priests do not want to appear so as not to lose face*' (SCH. 1:59).

Both Lottomatica and Sisal, together with other concessionaires and the Customs and Monopolies Agency, fund a national gambling prevention project, consisting in a website linked to a helpline. The service is called '*Gioca Responsabile*' (literally: *play responsibly*) and is run by Federserd, the most important Italian scientific federation of professionals working in public and private addiction services. The website provides information about gambling-related risks and regional public and private treatment services, self-evaluation instruments and an anonymous chat service for psychological and legal support. Recently, online behavioural therapy has also been provided, preceded by a diagnostic procedure aimed at identifying the gambler's profile.

The CSR professionals' rhetorical strategy is to confine problems to very small numbers of people and frame them within a narrative of personal responsibility (Baumberg et al. 2014). As Zavattiero (2010) noted, the use of advertising messages such as 'play with moderation' are strategies to warn gamblers, who are then held responsible for becoming addicted. In this way, *'the causes [of gambling addiction] instead of being seen as arising from certain features of the supply, are attributed to some characteristics of the single player, and the stigma is shifted from the gaming system to the individual personality'* (SCH. 3:16).

None of our interviewed beneficiaries adopted this kind of justification—they seem quite aware that gambling problems affect different populations—not only addicts or the so-called vulnerable groups, such as young people. Nevertheless, they focus on their institutional commitments and limit their responsibility to their own target, minors, for instance (BEN. 2:9). Furthermore, rather than criticising the industry, all beneficiaries emphasise the State's negligence, confirming Pedroni's (2014) thesis that the State has lost its symbolic capital to 'responsible' enterprises: *'Dealers do nothing but perform a function that the government determines, that is, to handle gambling in order, first, to eliminate illegal gambling, and second, to recover resources for the public treasury'* (BEN. 2:7). Interestingly, while they all criticised the weakness and the ambiguity of the State (BEN. 1:6), they acquiesced in its rhetoric, which stresses the need to increase government revenues and to combat illegal gambling (SCH. 3:28).

Furthermore, to justify their relationship with the gambling industry, beneficiaries adopt a pragmatic attitude, primarily by putting 'facts' before 'ideologies', i.e., focusing on the good results that might not have been achieved without the money received from concessionaires. This is the case, for instance, of the 'GiocaReponsabile' helpline service mentioned above. The fact that the service is funded by the gambling industry has sparked much criticism both inside and outside the treatment addiction sector. However, according to one interviewee, *'those who prefer to think in ideological terms, should consider (...) the fact that the [web] service has already dealt with 10,000 problematic situations in five years, more than double that of all other Italian [local] services put together'* (BEN. 1:7). This pragmatic stance is also supported by our other

interviewees, who maintain that concessionaires have not attempted to exert a significant influence over the projects or services they funded. According to the interviewees' accounts, the negotiation process generally includes an agreement that leaves the beneficiaries free to develop the project or service as they wish. For instance, the funders originally proposed 'GiocaResponsabile' as an online orientation and counselling service, but it was modified by the beneficiaries to include online therapy, which *'required a rather long and in-depth negotiation process with the concessionaire, because this was not part of their idea of intervention'* (BEN. 1:5). The need to dialogue with the gambling industry is also stated in a Federserd official policy document (2015) declaring that concessionaires should be involved in the political negotiations surrounding the reform of the Italian gambling regulatory system.

It is worth noting that not all our interviewees assumed a pragmatic stance towards receiving money from the industry, as one—a priest leading a not-for-profit association—recognised that they *'have probably been inconsistent in accepting funds'* and that *'to be fairly rigorous, we should just refuse this type of financing'* (BEN. 3:5).

Discussion

Since the 90s, Italian governments of all political stamps have gradually expanded the gambling market, in some cases exploiting exceptional events that call for solidarity, such as earthquakes. They justified the liberalisation process with two main arguments, often combined: the first being the need to increase tax revenues, the second the goal of limiting the spread of illegal gambling.

The first declared aim could be questioned simply by wondering why a taxation system that according to some economists (Gandolfo and De Bonis 2013) maximised the industry's income rather than the State's has been adopted for many years.⁷ This has been called the Italian gambling system paradox (Gandolfo and De Bonis 2013; Fiasco 2010; Dotti 2013).

Scholars have rebutted the first justification by arguing that gambling has a negative multiplier effect in the economy, setting up a vicious

circle (Dotti 2013; Fiasco 2009). According to this stance, gambling does not create profits, nor encourage activities related to research, production and marketing. Indeed, gamblers usually ‘reinvest’ their winnings in further gambling. As a consequence, the gambling sector is growing in proportion to the crisis in trade, industry and services, hampering investment and misallocating resources, and thus creates a real diseconomy (Dotti 2013). Furthermore, gambling contributes to impoverishing Italian families by undermining people’s ability to manage their household budget (Fiasco 2009) and spreading the false belief that they can make money through gambling rather than work (Zavattiero 2010).

Moreover, gambling is a form of ‘voluntary’ and regressive taxation (Sarti and Triventi 2012; Beckert and Lutter 2009) that increases socio-economic inequalities. It has been demonstrated that lower-income families spend more, in percentage terms, on gambling than higher-income families (Grun and Mckeigue 2000; Beckert and Lutter 2009; Williams et al. 2011; Sarti and Triventi 2012); in Italy, this spending is estimated at around 3 and 1% of the families’ total income, respectively (Dotti 2013). This thesis is confirmed by the territorial inequalities between Southern and Northern Italy, which indicate that the propensity to gamble is higher in poorer regions (Croce et al. 2009; Zavattiero 2010; Fiasco 2014b). Taking a geographical perspective also shows that the propensity to gamble is inversely proportional to the level of education: the lower the level of education, the higher the probability of gambling (Sarti and Triventi 2012). In any case, availability plays a role; interestingly, EGMs (slot machines and VLTs) are concentrated mainly in southern regions, specifically in Sardegna, Abruzzo, Campania and Calabria (Anti-Mafia Commission 2016).

The second argument used by the legislature to justify the progressive liberalisation of gambling, i.e., the goal of limiting the illegal gambling market, has been confuted by the report of the parliamentary Anti-Mafia Commission and Social Affairs Committee (2016), unanimously approved by the Chamber of Deputies. The report, based on law enforcement investigations and judicial documents, confirms that the expansion of legal gambling has paved the way to and strengthened illegal gambling (Fiasco 2014b), primarily by increasing demand. It is argued that

the steady expansion of legal gambling forms has increased the number of gamblers, and that some 'legal gamblers' are subsequently attracted by similar and apparently more appealing illegal offerings. Furthermore, despite constant changes designed to make the system more secure, organised crime always finds new ways to tamper with it, partly because there are no adequate sanctions for this crime (Fiasco 2014b). According to the Report of the Anti-Mafia Commission to Parliament (2016), from 2013 to 2015 the Financial Police seized 1.3 billion euros from illegal gambling dealers. Many court cases relating to illegal gambling are cited, for instance the proceedings against the Lampada-Valle clan who cloned slot machine cards in order to elude tax payment.

The Anti-Mafia Commission (2016) emphasises that the boundaries between legal and illegal markets are blurred, and that organised crime has a major interest in all forms of gambling: legal, semi-legal and illegal. First, the legal gambling market provides organised crime with a major opportunity for recycling and reinvesting money obtained through traditional criminal activities, for instance by purchasing winning lottery tickets at a premium. Furthermore, illegal organisations penetrate the gambling market in different ways, which, based on the police investigation, include: extorting concessionaires and gambling venues; obliging bars and cafés to install video poker machines; infiltrating the legal market either through dummy companies or shareholding; and running unauthorised betting websites located in foreign countries.

It is clear, then, that not only do the legal and illegal gambling markets coexist, but the latter has grown significantly over the last twenty years, despite the parallel expansion of the legal market (Fiasco 2014b). We must also remember that gamblers—especially those living in poorer areas—are likely to end up in the hands of usurers affiliated with organised crime.

Conclusions

The study highlights several aspects which are interesting from both a national and an international perspective, because Italy is among the countries with the highest gambling expenditure and because of its

peculiar regulatory system. The history of Italy's gambling legislation displays all the contradictions and ambiguities of a regulatory system that is not based on systematic and uniform legislation, but on a stratification of secondary measures aimed at increasing the gambling market in a country where gambling is forbidden by the Constitution. Furthermore, as gambling is one of the areas of interest to organised crime, institutions that combat the Mafia have conducted interesting investigations in Italy, which cast doubt on the 'channelling' thesis many European countries use as an argument for legalised gambling (Planzer 2014).

Thus, although gambling in Italy has been underinvestigated, the few studies that have been carried out are sufficient to refute the main justifications used by the legislature to support the liberalisation process, i.e., the need to increase State revenues and to limit the illegal gambling market. First, for at least a decade, the taxation system maximised the gambling industry's income rather than the State's (Gandolfo and De Bonis 2013). Furthermore, confirming international studies, Italian scholars have shown that (1) gambling has a negative multiplier effect in the economy and is a regressive form of taxation that increases social inequalities; (2) legal gambling may increase illegal gambling and enrich organised crime in different ways.

If the rhetoric of the gambling industry is to confine problems to limited numbers of individuals and to assign the risk to specific target groups, research shows that the gambling issue extends far beyond that of addiction. To date in Italy, while the State has put its credibility at stake on this matter, municipalities and organised civil society—e.g., lay and Catholic associations—are aware of the extent of the problem, and are trying to find possible answers. However, the fact that many cultural and social activities of associations and other institutions, including public ones, depend on gambling industry funds complicates the picture, by introducing the risk of creating conflicts of interest among those who seek to prevent the phenomenon and to minimise the social harm (Livingstone and Adams 2015; Sulkunen et al. 2018, forthcoming).

Declaration of Conflicts of Interest The authors declare no conflicts of interest.

Notes

1. The project was funded by the Academy of Finland. More detailed information and results are published in the research report (Rolando and Scavarda 2016).
2. Data published by The Economist based on H2 Gambling Capital. <http://www.economist.com/blogs/graphicdetail/2014/02/daily-chart-0> (last retrieved 15/05/2016).
3. Just to make a comparison, the turnover of the Italian automotive industry was 36.9 billion euros.
4. Unlike slot machines, video lottery terminals offer a multiple choice of games, the maximum bet is 10 euros instead of 2, and maximum winnings amount to 5000 euros instead of 100 euros.
5. <http://www.sistemagiocoitalia.it/>.
6. EGMs include both slot machines and video lottery terminals.
7. Indicatively from 2003 to 2017, when a new Decree Law (50/2017) increased tax rates. No studies of the efficacy of the new regulation system have yet been conducted.

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4

Gambling Policies and Law in Austria

Daniela Bereiter and Stefan Storr

Introduction

Game of chance has always been a special economic sector that the state regulates to prevent morally and financially harmful consequences for individuals and society. On federal level, the Austrian state established a monopoly on games of chance, designed as a concession system, to reduce gambling opportunities in order to combat crime and protect consumers. Bets and gambling machines that do not fall under the monopoly are regulated at provincial level.

Special thanks to Dr. Aiste Mickonyte, University of Graz, for proofreading this text.

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M. Egerer et al. (eds.), *Gambling Policies in European Welfare States*,

Work and Welfare in Europe, https://doi.org/10.1007/978-3-319-90620-1_4

Besides the potential adverse impact on society, games of chance have also been a moneymaker ever since. In 2017, gambling revenues and bets placed by the Austrian concessionaires, Casinos Austria and Österreichische Lotterien, amounted to 4.02 billion euros. With a contribution of 621.84 million euros to tax revenues in 2017, the companies were among Austria's top taxpayers (Casinos Austria Group 2017). Additionally, it is worth mentioning that concessionaires fund certain projects of public interest through gambling revenues. With an annual amount of 80 million euros, Österreichische Lotterien is the most important sponsor of Austrian sports (Casinos Austria Group 2017, p. 17).

The European Court of Justice (ECJ) considers a monopoly or licensing system to be in conformity with EU law, provided that this restriction serves public interests. The funding of public interest through gambling revenues may represent only a welcome side effect, but must not be the real aim of a restrictive policy (e.g., Dickinger 2011, sec. 61). Legal scholars and courts routinely call into question whether the monopoly pursues, above all, a high level of consumer protection.

In the following, this article examines the Austrian gambling monopoly and compares rhetoric with reality; it inquires whether the state pursues consumer protection in reality or only on paper. In this chapter we did not use the term "CJEU", since we refer only to the ECJ and not to the entire court apparatus (including the General Court).

The Conformity with EU Law in the Judicature of the Supreme Courts

In 2016, all three Supreme Courts dealt with the monopoly and its compatibility with EU law. The OGH,¹ the VwGH² and the VfGH³ are independent Supreme Courts, which are empowered to rule on different matters: The OGH is the Supreme Court on criminal and civil matters, the VwGH the highest instance for administrative matters and the VfGH the highest instance for constitutional issues. All courts have to ensure that the national rules they apply are in conformity with EU law. Hence, each Supreme Court ruled on the monopoly's EU-conformity within its competence.

Judgement of the VwGH (Administrative High Court)

First, the VwGH (Ro 2015/17/0022-7) had to rule on the legality of an administrative penalty for an infringement of the monopoly. As a preliminary question in the proceeding, the VwGH had to examine the conformity of the monopoly with EU law on the basis of the ECJ's decision *Pfleger* (2014). In *Pfleger* (2014), the ECJ dealt with the EU conformity of the Austrian monopoly for the fourth time. The ECJ found the monopoly compatible with EU law if the national authorities could demonstrate that criminality and gambling addiction constituted significant problems during the period at issue. According to the previous instance—the Landesverwaltungsgericht Oberösterreich (LVwG OÖ)⁴—(410287/42/Gf/Mu), the state did not provide sufficient evidence on this matter; hence, it deemed the monopoly incompatible with EU law and found the conviction unlawful. In the LVwG's view, the real purpose of the monopoly was not to combat criminality and gambling addiction but to increase tax revenues. Unlike the previous instance, the VwGH decided that the monopoly actually—and not only on paper—pursues to combat gambling addiction and criminality. The VwGH argued that considering the prevalence of illegal gambling, massive advertising measures were necessary to dissuade gamblers from illegal gambling and betting activities. Hence, maximisation of tax revenues is only an ancillary beneficial consequence of the objective pursued. Accordingly, the VwGH deemed the monopoly compatible with EU law.

Judgement of the OGH (Supreme Court on Civil and Criminal Matters)

An Austrian claimant who held licenses for gambling machines in two Austrian provinces filed an injunction suit against a number of Slovak and Czech companies, asserting unfair competitive advantage. These foreign companies offered comparable gambling services in Austria without holding the required licenses. The applicant claimed that these companies infringe the monopoly, arguing that the provincial license

system is inseparably linked with the monopoly system. On the basis of the applicant's argument, the OGH (4 Ob31/16m) also had to examine the conformity of the monopoly system with EU law before dealing with the injunction. Due to the expansionist policy pursued by the concessionaires and the lack of effective control by the state, the OGH doubted the compatibility of the monopoly with EU law.

According to the ECJ ruling in *Dickinger* (2011), a monopolist may advertise its services only in conformity with the principle of proportionality, strictly limiting its measures to what is necessary in order to channel consumers' natural propensity to gamble towards controlled networks. Thus, the OGH argued that the advertising policy of the concessionaires aimed at expanding the market of gambling activities rather than capturing the existing market. To illustrate, Österreichische Lotterien spends between 40 and 50 million euros per year on advertising, which makes it one of the top eight investors as regards expenditure on advertising in Austria. Furthermore, the advertising campaign of Casinos Austria seems to encourage consumers to gamble by adopting slogans such as 'Luck suits you well' or 'Winning makes you attractive'. Further, the company has emphasised in a press release that their 'Lucky days' have attracted over 10,000 visitors per day, resulting in record daily traffic. In light of these facts, the OGH assumed that the monopoly was not compatible with EU law and that it could lead to unconstitutional reverse discrimination (Art. 7 Federal Constitutional Law 1930). As the OGH is not allowed to examine a rule for its compatibility with constitutional law, it stayed the proceedings until the VfGH had decided on compliance of the monopoly with constitutional law.

Judgement of the VfGH (Constitutional Court)

Based on the submission of the OGH, the VfGH (E 945/2016-24) examined the monopoly for its compliance with constitutional law, concretely with Art. 7 Federal Constitutional Law (1930). In order to determine whether there is an unconstitutional discrimination against nationals, the VfGH also had to assess the monopoly system for its conformity with EU law. The VfGH decided that the monopoly was neither

incompatible with EU law nor unconstitutional. A recent ECJ ruling concerning Austria's monopoly has established that national courts have to assess the entire gambling market, taking into account the situation at the time when the legislation was adopted as well as at the stage of implementation. However, the courts need not ascertain empirically the effects of national legislation (*Admiral Casinos* 2016, sec. 30 et seq.). Against this background, the VfGH ruled that the legal framework in question as well as its effects were compatible with EU law. According to the court, the controversial advertising policies of the concessionaires did not expand the overall gambling market. Although some advertising measures may be suitable to encourage consumers to gamble, the court found that in general these activities did not affect the pursuit of objectives of the monopoly in a consistent and systematic manner.

Based on this decision, the OGH then declared the appeal to be inadmissible. With regard to the EU-conformity, the OGH referred to the statements of the VfGH.

Overview of the Gambling Market

Starting with a fragmentary tabular overview, the following chapter explains the meaning of gambling and how it is regulated (Table 4.1).

Austria is a federal state. The Federal Constitutional Law (1930) confers upon the Bund (federation) and the Bundesländer (provinces) exhaustive legislative and executive powers. The Bund has the legislative and executive competence to establish monopolies (Art. 10 para. 1 no. 4 Federal Constitutional Law 1930). Based on this competence, in 1989 the Bund enacted the Glücksspielgesetz (GSpG) (Gambling Act 1989) and established a monopoly over games of chance (sec. 3 Gambling Act 1989). The provinces have the legislative and executive competence to regulate games of chance, which the Bund excluded from the monopoly or which it did not consider as a game of chance from the start (Art. 15 para. 1 and 3 Federal Constitutional Law 1930).

The monopoly covers all games of chance whose outcome depends completely or predominantly on coincidence (sec. 1 para. 1 Gambling Act 1989). Accordingly, it is necessary that a game's outcome primarily

Table 4.1 Overview of Austrian gambling regulation

	Casino concessions	Lottery concession
Legal provision	Sec. 21 GSpG, 15 concessions	Sec. 14 GSpG, 1 concession
Scope of the concession	Casino games, gambling machines in casinos	Different types of lotteries, VLTs, online casino games and lotteries, bets whose outcome depends completely or predominantly on coincidence, like toto
Concessionaire(s)	Casinos Austria holds 12 concessions (3 have not been awarded yet)	Österreichische Lotterien
Gambling related taxes	Casino tax (federal level)	Concession fee (federal level) <i>except for VLTs:</i> → gambling fee (federal level) → additional charges on provincial level → additional value added tax (federal level)
Beneficiary	Private shareholders, Bund (shares and taxes)	Private shareholders, Bund and provinces (taxes, charges), legal duty of sports promotion
	Provincial betting licenses	Gambling machines outside casinos
Legal provision	Provincial laws (9 licence systems)	Provincial laws pursuant to para. 5 GSpG (licenses, prohibitions)
Scope	Totalizator bets and bets placed with a bookmaker	Gambling machines outside casinos
Licence holders	e.g., Novomatic	e.g., Novomatic
Gambling related taxes	Betting fee (federal level)	Gambling fee (federal level), additional charges on provincial level, additional value added tax (federal level)
Beneficiary	Private shareholders Bund (taxes)	Private shareholders, Bund and provinces (taxes, charges)

and mainly depend on coincidence, even if a player's skills may be able to influence the outcome of a game to a certain extent. Games of chance are lotto, bingo, keno, gambling machines and standard casino games, such as roulette, poker or black jack (sec. 1 para. 2 Gambling Act 1989). A game whose outcome depends more on the player's skills than on coincidence is a game of skill, like chess, bridge or tarot (OGH, 14 Os 140/90; VwGH 95/16/0047; VwGH 2011/17/0153). The courts decide on a case-by-case basis whether a certain game qualifies as a game of chance or a game of skill, depending on the abilities of an average player as well as the rules and conditions of a game.

In 2011, the VwGH (2011/17/0296) ruled that also bets whose outcome depends predominantly on coincidence, have to be qualified as games of chance and are subject to the monopoly. Hence, the high court qualified sports toto—a collective bet, combining more than ten single bets on the outcome of several sporting competitions (sec. 7 Gambling Act 1989)—as a game of chance. Conversely, a bet whose outcome depends largely on the player's skills—e.g. a sport bet—is not a game of chance and is not subject to the monopoly (Hoscher and Strejcek 2003, 76 et seq.; Kohl 2013, p. 23). As far as totalizator bets and bets placed with a bookmaker are concerned, all nine provinces established a license system (Lehner 2007, p. 340).

With the monopoly, the Bund is in principle granted the exclusive right to operate games of chance entrepreneurially where the gamblers (or others) have to place a stake in return of a promise of possible winnings (so-called *Ausspielung*). The Bund excluded games of chance that are not organised in form of an *Ausspielung* from the monopoly. The monopoly also exempts, under certain conditions, amusement machines with prizes, life insurance contracts⁵ and lottery games without pecuniary reward. These are tombola games, hoax lottery games (Juxausspielungen),⁶ charity lottery games at fairs (Glückshafen)⁷ and card games in form of tournaments (sec. 4 Gambling Act 1989). Further, the Bund must not organise gambling machines outside casinos (sec. 5 Gambling Act 1989). However, the monopoly includes gambling machines in casinos and *Video Lottery Terminals* (VLT). A VLT is a certain type of gambling machine that looks similar to an *Electronic Gambling Machine* (EGM) from a gambler's perspective. The difference

lies in the source of the game's outcome. While an EGM is a terminal in which the outcome of the game is determined by a mechanical or electronic device in the gambling machine itself, a VLT causes the outcome centrally (sec. 2 para. 3 Gambling Act 1989). Only VLTs are subject to the monopoly (sec. 12a Gambling Act 1989).

Hence, the provinces regulate gambling machines outside casinos (*small games of chance*) in partly differing gambling laws (Events Act of Burgenland 2014; Carinthian Gambling Machines Act 2012; Gambling Machines Act of Lower Austria 2011; Gambling Machines Act of Upper Austria 2011; Styrian Gambling Machines Act 2014). Whereas Styria, Carinthia, Burgenland, Lower and Upper Austria have established a license system, Vienna, Salzburg, Tirol, and Vorarlberg prohibit gambling machines. Even though the regulatory competence for gambling machines is divided between federal and provincial governments, sec. 5 Gambling Act (1989) ensures a largely uniform player protection.

The Structure and the Objectives of the Monopoly

Starting with a brief historical background, the monopoly system and its objectives will be examined below.

Maria Theresa (1717–1780) made the first major contribution to the creation of today's state monopoly. In order to finance the reorganisation of the Austrian hereditary lands, she invented a number lottery in 1751, and leased the right to organise it to an Italian entrepreneur ('Lotto di Genova'). In 1787, Joseph II nationalised lotteries, forming a state-owned entity (k.k. Lotto-Gefällsdirektion) to ensure more effective control of the passion of gambling. However, private entities could obtain the right to organise certain games of chance if they were willing to pay 10% of their revenue to the state. Since 1933, private persons have also been able to get permission for the organisation of banned casino games, such as roulette, poker or dice games. Ever since, the monopoly has distinguished between casinos and lotteries (Schwartz 1998, pp. 10–14; Kohl 2013, pp. 8–9).

Today's monopoly is designed as a concession system. The Bund may confer its exclusive right to private entities and entrust a company with the organisation of games of chance. It gives the concessionaires a privileged market position: sec. 21 Gambling Act (1989) limits the number of concessions for casinos to fifteen and entitles the concessionaire to organise casinos in Austria. For the organisation of lotteries, sec. 14 para. 1 Gambling Act (1989) provides for only one concession to be awarded. The lottery concession entitles the concessionaire to organise lotto, toto, Zusatzspiel (side game), Sofortlotto (instant lottery), class lottery, Zahlenlotto und Nummernlotto (number lotteries), bingo, keno and electronic lotteries (sec. 6-12a Gambling Act 1989). Electronic lotteries do not constitute a special gambling product. They encompass all games of chance available through electronic media, including VLT arcades outside casinos, online casinos and lotteries (e.g., Segalla 2013, p. 281).

In contrast to a license, with a concession the state also transfers certain public duties to privates. Therefore, the concessionaires have not only the right to organise games of chance, but also obligations which are basically aimed at protecting the player and maintaining public order. In the past, the state pursued not only public interests but also wanted to generate highest possible revenues from the monopoly (National Council 1989, p. 15).

Gambling Operators

Casinos Austria holds twelve of the fifteen casino concessions and operates twelve casino establishments. Its gambling revenue equals 330.14 million euros (Casinos Austria Group 2017). The Bund, more specifically, Österreichische Bundes- und Industriebeteiligungen GmbH, holds 33.2% of the shares in Casinos Austria. Further shareholders are Medial Beteiligungs-GmbH (38.3%), Novomatic AG (17.2%), Bankhaus Schelhammer & Schattera AG (5.3%) and private shareholders (around 6%) (Casinos Austria Group 2017, p. 9). CAME Holding GmbH—a member of the Czech Sazka Group—recently acquired

shares held by UNIQA and Leipnik-Lundenburger Invest Beteiligungs AG. As a result, CAME increased its holding in Medial Beteiligungs-GmbH and, at the same time, its indirect holding in Casinos Austria to 34% (“Czech Sazka is the biggest Casino shareholder” 2017).

Casinos Austria holds all shares in Casinos Austria International, one of the biggest players within the global gambling industry. Through its local partner subsidiaries, it operates with foreign permits in 14 countries. It organises 28 land-based casinos in Australia, Belgium, Canada, Czech Republic, Denmark, Egypt, Georgia, Germany, Hungary, Liechtenstein, Palestinian territories and Switzerland as well as one VLT operation in Macedonia and casinos on six American cruise liners. In 2017, people placed 133.9 million euro wagers and stakes in these establishments (Casinos Austria Group 2017, p. 28 et seq.).

Casinos Austria further owns 68% of the shares in Österreichische Lotterien, the sole concessionaire for lotteries. Lotto-Toto Holding Gesellschaft owns the other 32% (Casinos Austria Group 2017, p. 9). With this concession, Österreichische Lotterien maintains through its subsidiaries 16 VLT establishments, different types of lotteries, e.g., number lottery, class lottery, joker, bingo and toto as well as online lotteries and casino games on <win2day.at>. Its subsidiary also holds licenses to organise sports betting offline and online on <tipp3.at> in all nine provinces (Casinos Austria Group 2017, pp. 20–21).

In 2017, Österreichische Lotterien had a revenue of 3.48 billion euros; it made over a third of this amount, 1.61 billion, exclusively through online games (Casinos Austria Group 2017, p. 5). Casinos Austria Group has a group revenue of 4.02 billion euros. With a tax liability of 621.84 million, it is one of the biggest taxpayers in Austria (Casinos Austria Group 2017).

The Austrian Novomatic Group operates more than 2,100 electronic casinos and betting establishments worldwide, thus being one of the biggest gambling companies in the world. The founder Johann F. Graf owns the majority of the company’s shares (Novomatic Group 2017, pp. 16 and 23). In Austria, Novomatic legally operates through its 100% subsidiary Admiral Casinos & Entertainment AG more than 2,200 gambling machines, in total 147 gambling machine establishments in Styria, Carinthia, Burgenland, Lower and Upper Austria.

The 100% subsidiary Admiral Sportwetten GmbH provides sports betting offline and online. With a market share of 50%, it dominates the bets market in Austria (Novomatic Group 2017, pp. 23–24). In 2017, Novomatic had a revenue of 2.53 billion euros and paid 91 million euros gambling-related taxes in Austria (Novomatic Group 2017, p. 2).

Novomatic intended to expand its impact on the Austrian market and planned to increase its shares in Casinos Austria (17.2%). However, by the end of 2016, the OGH (16 Ok 11/16b) ruled that due to significant market shares held by both companies this acquisition would be anticompetitive, as it would strengthen their dominant positions on the market.

Duties Arising from a Concession

In light of EU law, restrictions of the gambling market must primarily serve public interests. Therefore, in order to ensure that the concessionaires fulfil their public obligations under the concessions, the concessionaires are subject to certain requirements, restrictions and guidelines. Some of these are described in the following subsections.

Requirements of the Award Procedure

A concession is limited to a duration of fifteen years, is only granted to a company that is a stock company with a supervisory board established in Austria and requires a share capital of at least 109 million euros for a lottery concession and 22 million euros for a casino concession. The concessionaires further have to ensure that their byelaws do not contain any provisions that could endanger the security and the proper organisation of games of chance. Moreover, shareholders of the concessionaire with a controlling influence must be trustworthy from a regulatory perspective. Managers must have the necessary skills and experience to conduct business properly. Additionally, the applicant must state that he or she exercises the concession in the best possible manner. If more than one tenderer fulfils all the legal requirements, the finance minister grants the concession to the tenderer who is expected

to fulfil the criteria in the most optimal fashion. The decisive factors are in particular the tenderer's experience, infrastructure, measures of development and resources, along with its systems and facilities aimed at preventing gambling addiction as well as its instruments to prevent money laundering and crime (sec. 14 and 21 Gambling Act 1989).

In Engelmann (2010) and Dickinger (2011), the ECJ dealt with the EU conformity of these conditions for awarding a concession. In Dickinger the ECJ dealt with the lottery concession and decided that granting exclusive rights to a single entity may be compatible with EU law, provided that Austria seeks to ensure a high level of consumer protection. To this end, the state must adopt a legislative framework suitable for attaining the objectives pursued by the monopoly and must further strictly control the concessionaires to make sure that these objectives are pursued not only on paper. In the light of these criteria, EU law requires the imposition of certain restrictions on the monopolist. Hence, the conditions for the legal form of a stock company and for a required share capital are compatible with EU law, as they aim to ensure the financial capacity of the concessionaire to fulfil its public duties (Dickinger 2011, sec. 48 and 71 et seq.).

As the ECJ established in Engelmann (2010), the numerical limit of casino concessions also represents a suitable measure to reduce gambling opportunities to protect consumers and prevent crime and fraud. The grant of a concession for a duration of up to fifteen years is also compatible with EU Law, because the concessionaire needs a sufficient time period to recoup the investments made into the setting up of a gambling establishment. The requirement to create a particular legal entity is also justified by the state's objective to prevent money laundering or fraud and the need to ensure a transparent company structure. However, the ECJ held that the award of a concession only to an operator established in Austria without a public call for tenders violates the principle of transparency and constitutes unequal treatment of domestic operators and competitors from other member states. Hence, this practise is contrary to the principle of non-discrimination on grounds of nationality stated in (what are now) Arts. 49 and 56 TFEU (2008) (Engelmann 2010, sec. 30–51).

As a result, the legislator adapted sec. 14 and 21 Gambling Act 1989 to the ECJ case *Engelmann* (2010): Currently, the minister may only grant a casino or a lottery concession after a public call for tenders that complies with the principles of transparency and non-discrimination. In accordance with the ECJ judicature on public procurement, in 2016, the VwGH (Ra 2015/17/0082) ruled that a call for tender shall enclose detailed information on the concession, expressions of interest and the documents required. This call may also include sub-criteria as long as they are transparent to the tenderers.

The state further relaxed the requirement of having the company's seat in Austria, but only for the application procedure. As the law stands, a company established in a member state of the EU or in the EEA may apply for a concession, but still only obtains it under the condition that it will move its statutory seat to Austria. A subsidiary will be sufficient if the foreign company holds an equivalent foreign casino or lottery concession in its country of establishment and if it is subject to an equivalent supervision by an authority that, if necessary, may convey information to the Austrian gambling authority. Moreover, the management has to inform the finance minister about any decisions referring to the Austrian establishment (sec. 14 para. 3; sec. 21 para 3 Gambling Act 1989).

Consumer Protection

To guarantee consumer protection, the Gambling Act 1989 stipulates tailored measures. For example, casino operators are required to observe strict rules to protect Austrian gamblers and gamblers from other EU or EEA member states against the risks connected with gambling. In particular, it limits the entry into a casino to adults, allows the management to prohibit visitors from attending the establishment without giving reasons and requires staff training on dealing with gambling addiction. Moreover, the casino's management is obliged to observe visitors' conduct in order to be able to make a reasonable assumption on whether their gambling frequency and

intensity endanger their minimum income required for subsistence. Finally, this stipulates the possibility to request information on the solvency of persons who appear to be addicts as well as the possibility to ban such persons, temporarily or permanently, from entering casinos (sec. 25 Gambling Act 1989). If the casino management violates one of the due diligence obligations, the casino visitor concerned may bring an action against the management. The casino management may be liable if its gross negligence resulted in the casino visitor's losses, which had affected his or her minimum income required for subsistence. Gamblers may not bring other claims against the casino management regarding the validity of the gambling contract or the gambling losses (sec. 25 para. 3 Gambling Act 1989).

The Austrian government repeatedly tried to restrict visitors' claims, but the VfGH (G 162/07; G 34/10) always declared these efforts unconstitutional. In response to these rulings, in a 2010 amendment (Federal Law Gazette 2010 Part 1 No. 54), the legislator extended the statute of limitation from six months to three years from the date of loss suffered. Further, with a 2014 amendment (Federal Law Gazette 2014 Part 1 No. 13), the unconstitutional limitation of liability to the minimum income required for subsistence was abolished. Nevertheless, sec. 25 para. 3 Gambling Act 1989 is still less favourable than the general limitation period for damages (sec. 1489 Civil Code 1811) that is linked to the knowledge of damage and the damaging party (Bydlinski 2010, p. 690). Damage claims against operators of lotteries are exercised under general civil law (Stefula 2012a, para. 1273, 1274, sec. 126).

Based on these legal requirements, the concessionaires actually pursue a high level of consumer protection: In 2014, Casinos Austria was the first gambling company worldwide to obtain a certificate from the European Casino Association recognising its *responsible gambling management system* (Casinos Austria Group 2017, p. 34). Österreichische Lotterien obtained a certificate confirming its compliance with the *Responsible Gambling Standards* of the European Lotteries Association. Further, the company received a certificate of the highest possible level by the World Lottery Association (Casinos Austria Group 2017 p. 39).

Responsible Advertising

The concessionaires must promote their products responsibly in a regulatory regime. The benchmark for responsible advertising is examined in more detail below.

EU law requires concessionaires to pursue a restrictive policy, including restrictive advertising measures to ensure a high level of consumer protection. Hence, casino and lottery concessionaires as well as license holders of gambling machines are obliged to maintain a responsible attitude in their promotional activities (sec. 56 para. 1 Gambling Act 1989). However, neither the law nor the related legislative materials define the term *responsible attitude*. In 2016, the finance minister issued guidelines clarifying this term. These guidelines apply to all types of mass advertising, sponsoring and marketing measures concerning games of chance that are subject to the monopoly, as well as advertising relating to training platforms and games in which no stake is paid. The guidelines follow the general rules applicable to promotional activities. In accordance with these rules, advertisement should not be misleading or affect consumers' interests, endanger their safety or promote illegal practices. Moreover, it should not encourage consumers to gamble, target vulnerable groups, such as minors, or refer to credit institutions. The evaluation of a certain advertising measure requires taking into account the addiction potential of the particular game, the target group as well as the extent of illegal games in a specific sector (Bundesministerium für Finanzen [Finance Ministry] 2016, p. 42 et seq.).

The guidelines follow the ECJ judicature and overlap with the self-imposed content restrictions of the concessionaires, the so-called *Code of Conduct of Responsible Advertising*. This Code of Conduct applies to all companies in the group and has been certified by the European Association in 2014. Further, the company awarded the *Pro-Ethik Seal of Approval* from the Austrian Advertising Council, confirming their adherence to ethical principles in advertising activities (Casinos Austria Group 2017, pp. 34–36). In fact, the VwGH and the VfGH have also qualified the concessionaires' advertising measures as compliant to EU law (see Sects. [Judgement of the VwGH](#) and [Judgement of the VfGH](#)).

Casino operators from other member states of the EU or EEA may also advertise their branches located in the EU or EEA. However, it requires a permit from the finance minister. This permit shall be granted under the following conditions: First, the foreign license to operate a casino has to meet the requirements of sec. 21 Gambling Act 1989; moreover, the state where the casino operates must be a member state of the EU or EEA; and, lastly, the provisions for consumer protection applicable in this state must correspond to their Austrian counterparts. In 2012, the ECJ held in HIT that this contested domestic requirement of equivalent consumer protection is not disproportionate to the objective pursued—the protection of the population against the risks of gambling—and therefore compatible with EU law. The minister may authorise only the advertising of foreign casino establishments, but not of all foreign *Ausspielungen* like lotteries. The advertising of illegal games of chance without a permit is punishable under sec. 52 para. 1 no. 9 Gambling Act 1989.

Beneficiaries of Gambling

In accordance with EU law (e.g., Dickinger 2011, sec. 61), the state primarily pursues objectives in the public interest (see Sect. [The Structure and the Objectives of the Monopoly](#)). Financial revenues are only welcome side effects which will be discussed below.

First of all, the Bund gains high incomes from taxes. If we look at the taxation of casinos, the concessionaires have to pay a casino tax of 30% of the gross revenue (*actually paid stakes minus paid out prizes*) (sec. 28 Gambling Act 1989). With regard to the taxation of lotteries, the concessionaire has to pay a concession fee that is determined for each game—except for VLTs—and varies between 18 and 40% (sec. 17 Gambling Act 1989). Depending on the game, the fee is calculated based on the sum of actually paid stakes or on the sum of the gross revenue. Additionally, there is a fee for a concessions' application (10,000 euros) as well as a fee for granting the concession (100,000 euros) (sec. 59a Gambling Act 1989).

Further, the concessionaires are prohibited from establishing branches outside Austria and require an approval for the acquisition of qualifying holdings—e.g., Casinos Austria's holding in Casinos Austria

International (see Sect. [Gambling Operators](#))—and for the extension of the company's business (sec. 15 et seq. and sec. 24 et seq. Gambling Act 1989). According to the National Council (1993, p. 8), these regulations aim to prevent confusing structures that may impede an effective supervision.

A company that entrepreneurially operates games of chance is further obliged to pay a gambling fee. The amount of the fee depends on the game and varies between 16% and 40% (sec. 57 para. 1 and 2 Gambling Act 1989). Exempt from this tax liability are enterprises that already have to pay a concession fee or a casino tax (sec. 57 para. 6 Gambling Act 1989). Enterprises that organise electronic lotteries, except for VLTs, without a concession have a tax liability of 40% of the gross revenues. An enterprise that maintains VLTs without a concession or other gambling machines without a provincial license has to pay a gambling fee amounting to 30% of the gross revenues less the value added tax. Authorised VLTs or gambling machines are only taxed at a lower rate of 10% (sec. 57 para. 3 and 4 Gambling Act 1989).

The provinces must not tax the concessionaires or the license holders (sec. 31a Gambling Act 1989). However, the provinces may levy additional charges on VLTs and gambling machines (sec. 14 and 26 FAG, 2016). Apart from VLTs and gambling machines, gambling and betting revenues that are already taxed through the casino tax, the concession fee and betting fees are not subject to value added tax (Value Added Tax Act 1994, sec. 6 para. 1 no. 19 lit. d). In 2017, taxes and fees paid to the state amounted 621.84 million euros (Casinos Austria Group 2017) and accounted for about 0.9% of the total budget (cf. Bundesministerium für Finanzen 2017).

Casinos Austria and Österreichische Lotterien also fund certain projects of public interest, e.g., in the areas of environment, humanitarian and social aid, art, science and research (Casinos Austria Group 2017, p. 49). As far as the funding of sports is concerned, the Bund has the legal duty to fund sports with an annual amount of 80 million euros, paid from the concession fee (sec. 20 Gambling Act 1989). This amount increases annually to the extent to which the concession fee has increased in the last year compared to the year before. In the past 30 years, Österreichische Lotterien contributed a total of 1.4 billion euros to sports (Casinos Austria Group 2017, p. 50).

Further, one per mille of the concession fee and the casino tax is awarded to the player protection agency set up by the finance ministry (sec. 1 para. 4 Gambling Act 1989).

The Enforcement of the Monopoly

In order to comply with EU law, a restrictive system must also be effectively enforced. Which authority guarantees that the concessionaires actually fulfil their obligations and how it ensures this, is described below.

The finance minister is not only the competent authority to grant concessions (see Sect. [Requirements of the Award Procedure](#)), but is also responsible for compliance with the provisions of the Gambling Act 1989. This is based on the fact that the monopoly initially pursued fiscal objectives (see Sect. [The Structure and the Objectives of the Monopoly](#); Schwartz 2016). The finance minister has certain supervision rights, including the right to inspect and examine the records and books of the concessionaires. The concessionaires have to submit certain reports on their financial statements as well as measures concerning the protection of consumers, the prevention of gambling addiction, the monitoring of age limits, their responsible marketing measures, their measures for the prevention of money laundering and crime (sec. 19 and 31, 31b and 31c Gambling Act 1989). The minister has to ensure that the concessionaires fulfil the requirements stated in sec. 21 or 14 Gambling Act 1989 and that their market conduct follows the regulatory and social-political objectives pursued with the monopoly. If a concessionaire no longer fulfils these requirements, or if it violates them or other regulations arising from the Gambling Act 1989, the Minister may order, under penalty, to restore the required conditions within a reasonable timeframe. In case of recurrence, the minister may prohibit the management of the concessionaire from running the company wholly or partially, or even withdraw the concession altogether (sec. 14 and 23 Gambling Act 1989).

As far as the advertising is concerned, the finance minister has to ensure the adherence to a responsible attitude (see Sect. [Responsible Advertising](#)). The state explicitly excluded gamblers' claims for damages allegedly suffered due to unlawful advertising and actions brought

under sec. 1 Federal Act Against Unfair Competition (1984) against irresponsible advertising. Due to the state's participation in Casinos Austria, the supervisory function of the minister could appear to be questionable (Stadler and Aquilina 2011, p. 573). Additionally, the ministry's guidelines for responsible advertising are not binding and not legally enforceable. The establishment of a supervisory authority that is independent from the concessionaires as well as the approval of legal actions brought under sec. 1 Federal Act Against Unfair Competition could remove any doubts concerning the ineffectiveness of the supervision.

The enforcement of the monopoly requires not only an effective supervision of the concessionaires but also their protection against illegal offers. Hence, the entrepreneurial organisation and the facilitation of games of chance without a concession may be liable to administrative penalties (sec. 52 para. 1 no. 1 Gambling Act 1989). Further, credit institutions that transfer a gambler's assets to an illegal gambling company intentionally, in direct cooperation with this illegal gambling company, may be punishable by law (sec. 52 para. 1 no. 10 Gambling Act 1989). Additionally, gamblers who pay their stakes in Austria to play illegal electronic lotteries may be administrative liable (sec. 52 para. 5 Gambling Act 1989). Besides these administrative penalties, contracts with illegal organisers are invalid under sec. 879 ABGB (Stefula 2012b, para. 1270–1272, sec. 62). Hence, gamblers may reclaim their stakes, however, the effectiveness of this civil measure depends on a private person's knowledge of the illegality as well as his or her willingness to bring legal action (OGH 6 Ob 118/12i). Also loans granted to participate in illegal gambling are invalid and consequently cannot be reclaimed (OGH 2 Ob 92/15s).

Conclusion

To summarise, such a restrictive monopoly system is only compatible with EU law if the state actually reduces gambling opportunities to protect consumers and prevent crime. The state must not reduce gambling opportunities, while pursuing an expansionist commercial policy

to finance the public purse. Hence, there has to be a suitable legislative framework and a strict control of the concessionaires to pursue these objectives not only on paper. In addition, advertising measures have to be restrictive and limited to what is necessary to channel consumers' propensity to gamble in controlled networks. The state has to demonstrate that gambling addiction and crime are real problems in Austria. However, providing empirical evidence is not necessary. Thus, the question arises whether in light of EU law, the state pursues consumer protection and combat crime in reality or only on paper.

On paper, the ministry is not equipped to control the advertising policies and the Gambling Act 1989 does not adequately regulate claims brought by consumers or competitors. The effectiveness of combating illegal gambling on the Internet also seems questionable in view of the legal instruments. It seems that the legal framework does not allow strict control and enforcement in all areas, although this is required by EU law. Yet, despite initial doubts of the OGH, all three Supreme Courts considered the monopoly compatible with EU law. In general, the courts decided that the concessionaires' policies, especially their advertising measures, do not expand the overall gambling market and, thus, do not affect the pursuit of objectives of the monopoly.

Declaration of Conflicts of Interest None to declare.

Notes

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2. Verwaltungsgerichtshof [Administrative High Court].
3. Verfassungsgerichtshof [Constitutional Court].
4. Landesverwaltungsgericht Oberösterreich [provincial administrative court of Upper Austria].
5. Arrangement in which money is paid to a (insurance) company, in return of a certain sum to be paid to the beneficiary at the death of the insured.

6. A lottery game in which every ticket wins and the gamblers draw lots to find out their prices.
7. A lottery game in which the gamblers find out if their tickets are winning tickets through drawing.

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5

Gambling Regulation in Spain

Elisardo Becoña and Lucía Becoña

Introduction

Spain is administratively distributed in 17 regions (e.g. Andalucía, Cataluña, Galicia, Madrid, País Vasco, etc.) and two autonomous cities (Ceuta and Melilla). Many of these regions have extensive competences in education, health, agriculture, social services and gambling.

One of the most relevant aspects of Spain's economy is tourism and the leisure industry, catering and related amusements. Of all the workers, 11.8% work in tourism, representing 10% of the GDP (INE [Instituto Nacional de Estadística] 2017). Spain currently receives 7% of the world tourism and 13% of the European tourism. It is the second worldwide country in

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M. Egerer et al. (eds.), *Gambling Policies in European Welfare States*,

Work and Welfare in Europe, https://doi.org/10.1007/978-3-319-90620-1_5

tourism, before the USA and behind France (INE 2017). Tourism was, precisely, the justification that was presented in 1977 to legalise gambling.

Gambling has a long history in Spain. Already in the fourteenth century, King Alfonso the Wise and other later kings regulated gambling. On September 30, 1763, King Carlos III created the National Lottery, which was amended at the end of 1811 to pay for the expenses of the War of Independence. In the nineteenth and early twentieth century, casinos emerged in Spain. In 1924, the government of Primo de Rivera prohibited gambling in Spain, except for the lotteries. The coupon of the 'Organización Nacional de Ciegos Españoles' (National Organisation of Blind Spaniards, ONCE) was created in 1938, and after the civil war, soccer pools were legalised in 1946. Other occasional types of gambling (e.g., greyhound racing) were also present in those years. In 1977, other types of gambling were legalised. New casinos opened up, bingo halls appeared; in 1981, electronic gambling machines (EGMs) were legalised; in 1986 and the following years, new lotteries were legalised. And in 2011, online gambling was regulated.

The population's participation in gambling was uncommon in Spain until the beginning of 1980. The expenditure in gambling did not reach 3 bn € (1980). Due to the legalisation and dissemination of gambling, the amount spent on gambling increased, reaching the current 37.7 bn € in 2016 (with a commercial margin of 8.4 bn €) on more than 200,000 EGMs, dozens of casinos, around 50 bingo halls, hundreds of lottery retail locations, etc. It is noteworthy that, out of the total amount spent in 2016, 10.9 bn € were spent on online gambling of all types (DGOJ [Dirección General de Ordenación del Juego (General Direction of Gambling Management)] 2016). Of the total amount gambled in Spain, lotteries bring in the most (31.44%), followed by EGMs (27.70%), sports betting (17.04%), casinos (11.54%), bingo (5.71%) and others (6.58%). Gambling represents about 0.75% of GDP (commercial margin) or 3.1% of GDP (total amount spent on gambling) (DGOJ 2016; Gómez et al. 2017).

Gambling halls, sports betting on gambling premises, and online gambling are new gambling phenomena, which are slowly growing (DGOJ 2016).

Various games are authorised in specific Spanish regions—exclusively for them—, usually lotteries for specific acts. Among them, two stand

out: the Grossa lottery of Catalonia and the Charity Raffle of Melilla. The Grossa lottery is similar to the Christmas lottery, but only for the Catalonian region. The Charity Raffle of Melilla is a very old traditional lottery (from 1922) that takes place in that city and dedicates the benefits to charity. In the above-mentioned games, the regulator is the region or city, not the Central Government.

It should also be noted that the Regions are continually requesting the Central Government to transfer to them the jurisdiction on gambling in their regions and, above all, to authorise them to collect the income and decide what to do with the taxes obtained from gambling. In practice, some taxes are transferred to the Regions (e.g., the annual tax of the EGMs), but most of the gambling rates and taxes are collected by the central administration.

General Gambling Legislation in Spain

The Legislation from 1977 to 2011

In 1977, all types of gambling were completely legalised. The consequences of such legalisation were clear: higher expenditure in gambling, more problems for people due to their gambling behaviour, and the emergence of pathological gamblers (Becoña et al. 1995), but also a large amount of revenue for the Public Treasury. Towards the end of the 1980s and early 1990s, the problems for Spanish citizens entailed by gambling were evident. Social alarm was growing, and the associations of affected people and many professionals sounded the warning bell. The first epidemiological studies of pathological gambling also appeared. In 1992, a commission of the ‘Congreso de los Diputados’ (Chamber of Deputies) concluded that the regulation of gambling in Spain was inadequate and made several suggestions for its regulation and the control of gambling harm (Congreso de los Diputados 1992). Based on these suggestions, several measures, specifically targeting EGMs, were implemented: 1990 (Royal Decree 593/1990) and 1993 (Royal Decree 259/1993), which led to a decrease of revenue. This changed in the year 1998 (Royal Decree 2110/1998), when a new Regulation of Recreational and EGMs was elaborated, allowing more

EGMs in establishments. If the amount of money gambled on EGMs decreased with the first measures, going from 11.2 bn € in 1988 to 7.6 bn € in 1990 with the new liberalisation, expenditure on gambling increased from 7.5 bn € in 1997 to 10.4 bn € in 2000.

In conclusion, during this period, the aim of the legislation is the collection of tax revenues instead of focussing on gambling problems.

The Legislation of 2011 and the Following Years

In the year 2011, an important change in the regulation of gambling appeared with a new gambling law (Law 13/2011 of Gambling Regulation). It focuses on the following aspects: the regulation of remote electronic games; protection of minors; opening to new gambling operators; taxation (the DGOJ is within the Ministry of Finance); with very detailed and specific rules for new operators and new types of games, detailed developments of the law for each game; gamblers' rights, and the defence of vulnerable groups; inspection and control of the operators and of the implementation of gambling; penalties for breach of the law; and the activity of lotteries, while the ONCE is maintained. A relevant aspect of the new 2011 legislation is the allowance of new operators who, after a formal application, can operate on the market. Private operators can enter the gambling market, mainly in online gambling.

As the above law primarily targeted online gambling, this started formally in Spain in 2012. Till then, there were no legal mechanisms to control all the Internet bets. Between 2011 and 2014, the regulations for each type of bet were presented, and there is currently a very thorough and complete legislation of the types of gambling in Spain.

This Gambling Law materialised in 2014, through the granting of new licenses for new operators, with further liberalisation of gambling. By 2015, there was a total of 221 licenses granted (103 for casinos, 67 for wagers, 30 for EGMs, 25 for poker and 9 for contests). In 2016, these increase to 302 licenses (DGOJ 2016). Also in 2014, the regulation of online EGMs and online cross-betting appeared. The portal web www.jugarbien.es was created by the State, the aim of which is to encourage responsible gambling.

The DGOJ of the Ministry of Finance is in charge of controlling all the gambling activities in Spain, both public (State lotteries) and private. This implies a monopoly in which the State allows some licenses. Also in recent years, the State controls all online gambling that any citizen in Spain can perform. Hence, the persecution of illegal online websites, both in Spain and in other countries. Several websites have been cancelled by eliminating the telephone operator service through court orders. A council of gambling policies has been created, which includes members of the regions and of the state administration. This council is a body of participation and coordination, although not of decision-making. In turn, the diverse regions have an administrative body dedicated to the task of controlling gambling in their territories through inspection, with a high level of efficiency.

The Regulation of National Lotteries

The National Lottery depends on the ‘Sociedad Estatal de Loterías y Apuestas del Estado’ (SELAE, State Society of Lotteries and State Gambling), which is a public company that, in turn, depends on of the Ministry of Finance. We can currently distinguish four basic types of lotteries: (a) the National Lottery, (b) sports betting, (c) horse race betting and (d) other lottery types. In no case do they engage in active gambling but instead, they work as a lottery structure.

The draws of the National Lottery are performed weekly, on Thursdays and Saturdays. Various extraordinary draws take place each year, the tickets for which can be purchased both offline and online. The two most important extraordinary draws are the Extraordinary Christmas Draw (December) and the Extraordinary Christ-Child Draw (January). At the tax level, we note the example of the National Christmas Lottery. In the year 2016, the expenditure was approximately 3.3 bn €. Of this amount, 70% was paid in prizes (2.3 bn €, of which 20% is deducted from the important prizes as taxes from the winners with a prize over 2500 €), and the remaining 30% (1.1 bn €) went to expenses incurred by the draw and to public finances. The cost of each lottery ticket is 20 €.

Horse racing bets are called Lototurf and Quintuple Plus. Lototurf is a combination of a lottery draw of numbers and horse race bets, and the Quintuple Plus is a horse race bet in which the gambler tries to predict the outcome of five specific horse races.

The Quiniela and the Quinigol are two kinds of gambling based on predictions about the future outcome of soccer matches (football pools). In the Quinigol, the gambler must guess how many goals each team will score to win a particular prize, and in the Quiniela (football pools), the gambler must decide which team will win the match. With regard to Sports Betting (Quiniela and Quinigol), the present sales during 2015 amounted to 273 millions €. The Primitiva, Euromillions, Bonolotto and El Gordo de la Primitiva operate in a very similar way.

The Regulation of the ONCE Coupon

The ONCE is a not-for-profit social corporation governed by public law, which was created in 1938 to resolve the lack of employment of blind or visually impaired people in Spain. Since its creation, the sale of coupons has been its main source of income to carry out its social work and to employ its affiliates. Currently, the ONCE has approximately 70,000 members. Taking into account its employees—33,000—and other indirect jobs of people who provide services, it employs about 100,000 people. The ONCE is an organisation with very high social acceptance.

The legislation that regulates the ONCE (Royal Decree 358/1991) refers to its aims: on the one hand, its funds must be destined to the prevention and diagnosis of visual deficiency and to research of specific treatments and, on the other hand, it must take on the important mission of educational attention, formation and professional training and promotion of employment. Lastly, we must mention the work of awareness-raising of society that it is carrying out (Garvia 2016).

The ONCE has created ILUNION, a large business group whose main goal is to generate quality employment for people with disabilities, and it currently has 33,000 workers, of whom approximately 12,000 are people with disabilities.

The above-mentioned regulation of the ONCE, allows it to commercialise various types of gambling: the Coupon, the weekend coupon (known as the Cuponazo, created in 1987), and the Combo (the first semi-active gambling of the ONCE, created in 1994). The Rasca Scratch Card appeared in 2006 as the first instant lottery of the ONCE. There are currently three modalities that encompass all the products: the instant lottery, the mode of active gambling of the ONCE and the coupon. The marketing of the Coupon products is carried out through three types of support: pre-printed coupons, coupons issued at the sales point and tickets bought through the Internet on the ONCE's official gambling website.

In 2012, the ONCE has commercialised the active gambling product called Eurojackpot concurrently with operators of other countries.

The Regulation of Electronic Gambling Machines

Technically, there are three types of EGMs with prizes: Type A EGMs, or videogame machines; Type B EGMs; and Type C EGMs, which are the same as Type B, but available only in Casinos, and for which the betting and the prizes are greater than in Type B. In recent years, additional versions of these machines have appeared (special versions of each category, with varied types, e.g., B1, B2, B3, B4, BG or multi-user) which allow interconnection in certain circumstances. Type B EGMs are the most important gambling means in Spain, so we are going to focus on them. They represent 27.7% of the current expenditure on gambling (in past years, they represented 40% of expenditure per year). Moreover, they are one of the most addictive types of gambling (Becoña 1996; Ochoa et al. 1994), they are widespread, and account for the majority of the cases of pathological gambling in Spain (75%, see Becoña 2010).

Currently (data from 2015), there are 207,245 Type B EGMs (1 for every 224 inhabitants). Expenditure on EGMs reaches 10.1 bn € per year. EGM gambling is operated by private companies. The administration supervises this gambling and charges taxes. The gambling industry estimates that 130,000 people work in gambling-related jobs

(Gómez et al. 2016). This explains the relevance of this type of gambling, together with a huge income in the form of taxes, especially for the regions, the majority of which directly charge the tax. Hence, the interest in the adequate regulation of gambling.

All the aspects of these versions are regulated. Thus, the price of each item in Type B EGMs is 0.20 €, and the maximum prize is 500 times the money gambled (100 €) or the sum of the price of the simultaneous matches. The machine will return in prizes at least 70% of the price of the matches played. The mean duration of each match is at least three seconds.

Type B EGMs became very popular in Spain because from the beginning, they were allowed to be placed not only in bingo halls, casinos and gambling premises, but also in bars, cafes and restaurants. Currently, there are 160,000 bars, cafes and restaurants with EGMs (80% Type B); 18% of these machines are in gambling halls, and 2% in bingo halls. There are very few in casinos, which tend to have Type C EGMs (with higher bets and bigger prizes).

Due to the crisis, many bars have closed in Spain, between 20,000 and 30,000 (i.e., the number of catering establishments dropped from 231,771 in 2007 to 207, 117 in 2013) (Gómez et al. 2016). The relation between EGMs and bars is clear. Substantial part of the income of the bars comes from the EGMs. The tax that must be paid annually for each EGM ranges between 3500 and 6000 €. The mean current profitability (2016) of a Type B EGM is about 1400 €/month per machine, which tends to be distributed as follows: 50% for the company that installed the machine and 50% for the owner of the bar. Currently, a bar can have two to three EGMs, depending on the regions. One is usually for off-line gambling, and the other is for remote online gambling. The operating companies sign a 4–5-year contract for the installation of the machine, which may be extended. There are various operators of Type B EGM, from small businesses to large ones.

In these years of economic crisis, several thousand Type B EGMs were removed from the bars. It is estimated that, of the 255,133 machines in 2007, only 199,156 remained in 2016, a decrease of 20%. This is important because many regions have authorised a maximum number of EGMs which remains stable year after year. But the benefit through EGMs is increasing every year.

In recent years, EGMs have more technological elements, which allow the gambler to accumulate the winnings to play again, or to gamble several matches at once, using pre-payment systems, card payment, etc. In authorised establishments, there may be several interconnected machines. All of this is strictly regulated with extensive and clear rules about the technical aspects, installation and the collection system.

In 2011, a new law on gambling in Spain was drafted (Law 13/2011 of Gambling Regulation). In 2014, it was developed specifically for EGMs that can be interconnected to remote locations or for online gambling (Order HAP/1370/2014).

The Regulation of Bingo Halls and Casinos

Once gambling was legalised in 1977, bingo emerged with great force. Its novelty led to the opening of hundreds of bingo halls. As people realised that gambling was not so profitable and that it caused many problems, bingo halls lost many customers, and many of the halls closed down in the 1990s. In 2016, there were a total of 309 bingo halls in Spain. In them, 1.7 bn € were gambled. In these halls, other services, such as beverage or food, are also offered.

Bingo is current regulated through Order EHA/3087/2011 of November 8 (BOE, no. 277, 2011, November 17), which developed the 2011 law for bingo. It stresses both the protection of participants and the public interest, such as the protection of minors, the prevention of pathological gambling, money laundering and the financing of terrorism.

The licences are general and individual, for five years, and extendable. The gambling rules are individual for each operator, but they must be public. The legislation is thorough concerning the prizes, payment of prizes, claims, inspections, advertising, promotions, rates and taxes.

As in other places in Europe, gambling casinos emerged in Spain in the mid-to-late nineteenth century, associated with luxury. Many of them were in spas or beach or leisure areas, such as San Sebastian, Santander, the Isle of La Toja (Pontevedra), or in large cities

(e.g. Madrid). Currently (2017), there are 48 casinos in Spain. In casinos, 1.6 bn € are gambled (2015), with a benefit of 342 million € for the business owners. Half of all the country's expenditure in casinos is accumulated in Catalonia (440 million) and Madrid (380 million). Casinos can also offer shows and other associated services, such as cafes, restaurants and hotels.

Casinos have been very strictly controlled for decades. After the latest regulatory gambling law of 2011, specific rules have been developed for each type of game. For example: for Black Jack, the regulation is found in Order EHA/3088/November 8, 2011 (BOE No. 277, November 17, 2011). This indicates that the license for Black Jack is for three years, although it can be extended. Licenses must be requested from the DGOJ. The amount of each item is established by the operator but it must be public. The rules for Black Jack, as for the others, are very thorough with regard to all its features, and operators can request a license for up to five types of Black Jack (i.e. Super Black Jack 21).

The Regulation of Online Gambling

Law 13/2011 regulates the activity of online State gambling when it is performed by means of electronic, computer and telematic, and interactive channels. This law provides the basic regime but each gambling mode has set some peculiarities in the specific rules that regulate each of the different modalities.

In spite of the fact that off-line gambling is still predominant in Spain, the amount gambled online in 2016 was 10.9 bn €, with a yearly increase of 27% in relation to 2015 (DGOJ 2016).

A Bad Consequence of Gambling: Problem and Pathological Gambling

It is clear that, in Spain, we have gone from to a small to an important expenditure on gambling. The most relevant consequence for people who engage in excessive gambling is pathological gambling.

Its prevalence in Spain was about 1.5% in the 1990s (Becoña et al. 1995), according to the criteria of the *Diagnostic and Statistical Manual of Mental Disorders-III* of the American Psychiatric Association (APA 1980), and between 0.3 and 0.4% (in the past year) and 0.9% (life) (Becoña 2010; DGOJ 2015a; Gómez et al. 2016, 2017) according to DSM-IV criteria (APA 1994). Among online gamblers (Gómez et al. 2016), there are 7.4% pathological gamblers and 14.4% problem gamblers according to DSM-IV criteria. Another weak point refers to the government's system of 'self-exclusion', through which people can ban themselves from entering bingo halls or casinos. Thus, as of December 31, 2010, there were 26,508 people who were self-prohibited from bingo halls and casinos, and another 58,508 in the regions; a total of 86,000 persons. Self-prohibition from EGMs in bars is not possible. Self-exclusion can be permanent or for a few years or months. The person can demand self-exclusion because of the existence of gambling problems. Self-exclusion is applied to the Administration and, after studying the case, the self-exclusion is communicated to bingos and casinos.

Many persons demand treatment for pathological gambling in Spain. Several associations of rehabilitated gamblers throughout the country, such as centres for alcoholism, addictions or mental health centres have treated these people, as well as clinical psychologists and psychiatrists in private practice. There is much scientific literature about the prevalence, characteristics and treatment of pathological gambling in Spain (e.g. Becoña 1996; Echeburúa et al. 2010).

The gambling industry tries to underestimate the relevance of the problem of pathological gambling in order to justify the advertisement, promotion and increase in gambling (Becoña 2009). Therefore, these industries usually refer to responsible gambling policies, such as self-regulation, which, as we know from the case of alcohol and tobacco, are ineffective measures to control an addiction (Babor et al. 2009).

Many gambling companies argue that, with an efficient administrative control and sound companies, the possible problems that pathological gambling may produce are already solved (Gómez et al. 2017). Reality indicates that this is not the case.

Conclusions

Currently, gambling in Spain is very important, both socially and economically. Millions of Spaniards gamble each week. It is a source of taxes and jobs. But it also causes problems, such as pathological gambling, for some of the gamblers.

In Spain, gambling is well regulated, with clear and comprehensive rules, with a good system of inspection and control. The collection of taxes from gambling is efficacious. The Ministry of Finance exerts control. Until recently, only cash collection took precedence. Recently, the administration has timidly promoted responsible gambling, in order to protect minors, vulnerable people or groups, prevent delinquent behaviour, mitigate the detrimental effects of gambling and preserve the rights of the consumers in this activity (DGOJ 2015b, 2016). The administration has an advisory council of responsible gambling, which includes the gambling industry, associations of gambling addicts, and experts on this issue (see www.jugarbien.es). Advertising games of chance is forbidden off-site when it is related to EGMs, bingo and casinos. The publicity of lotteries, ONCE coupons and, most recently, sports betting online websites is permitted. The legislation in general is very restrictive with the advertising of gambling in Spain.

There is still no fluid coordination between the Ministry of Finance and other ministries, such as the Health Ministry, which has to attend to the people with gambling problems. The taxes go directly to the ordinary cashbox of the Ministry of Finance. It is easy to forget about the large number of people who have self-banned themselves from gambling in Spain, about 85,000, and the existence of the many thousands of pathological gamblers. The Spanish gambling industry continues to be concerned only with extending its supply of gambling opportunities, and, with few exceptions, is largely indifferent to the fact that gambling can become pathological and lead to serious problems. Meanwhile governments continue to collect vast sums from gambling in the form of taxes. The gambling industry has used its power and influence to favour its market penetration. Governments should allow the voices of the affected people to be heard, and cease to focus almost exclusively on collecting the tax income generated by gambling.

Several attempts have been made to create large casinos in Spain. The last example is Eurovegas in 2013. The promoters wanted to build a complex of hotels, casinos and resorts in Madrid or Barcelona, intended to attract gamblers from all over Europe. It was highly opposed by the Spanish population because, in order to set up in those cities, the company demanded changes in the Spanish legislation and other EU directives, and also requested a large public funding for its creation. These attempts will continue because of the Spanish geographical situation, the 46.5 million citizens who live in the country and the tourism market. Gambling is still a huge business. The past dilemmas of regulation, control, health and business are still currently present.

Although there has been a lot of progress in gambling studies in Spain, there are important shortcomings that make it difficult to determine the full reality of gambling. Gambling has become a social and economic phenomenon of great relevance during the past few decades. It has also brought serious problems to a part of its users (pathological gambling). The administration has not been interested in studying the game of chance until a few years ago. The eruption of private gambling, with special mention of online gambling, through which national and international companies have entered the market needs to be related to the interest shown by many companies in expanding gambling due to Spain's tourism. In this field, a struggle between protectionism and neoliberalism has been waged. Hence, we should underline the relevance of the study of games of chance and the need to find a balance between freedom and control.

Declaration of conflicts of interest The authors declare no conflicts of interest.

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Part II

Gambling for Designated Purposes



6

Gambling and Doing Good? On the Relationship Between Gambling Regulations and Welfare Services in Germany

Kathrin Loer

Introduction: The 'German Way' of Restrained Gambling Regulations

There is a huge probability of losing money or other goods when people gamble. This kind of thrill is one aspect of the game. People who gamble do actually often lose a lot of money. High stakes and lost games might jeopardise people's (financial) basis and become an existential threat. People literally gamble away the roof over their head. The 'easiest' way of preventing people from such hazardous behaviour could be seen in strictly prohibiting gambling. But, a prohibition could provoke that gambling providers always find ways to offer gambling illegally, which in turn increases the risks for gamblers. Thus, prohibition is not necessarily the most adequate solution. But, if we generally accept that it is the duty of the state to protect its citizens then other ways of dealing with gambling need to be found, especially given that

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the circumstances in which gambling takes place have changed. Thus, we have to discuss how the German regulator (a) abstains from finding adequate gambling regulations that keep up with the changing circumstances and (b) for a long time has kept to a tradition of double standards when it comes to gambling regulations.

Generally speaking, one possibility would be that regulators could channel gambling demand and supply with strict regulatory procedures as well as with control and sanctioning systems for all types of gambling. Indeed, regulators frequently call it ‘channelling’ when referring to gambling laws (e.g. for the Dutch case Littler 2011, p. 108). Designing a specific ‘channel’ for gambling via regulation is challenging since it would need to tackle people’s interest in gambling. What regulatory tools can do, however, is help minimise risks and limit detrimental effects to gamblers. Regulatory tools also impact (private) actors offering gambling by affecting their economic interests in a negative way. Thus, if we start from the premise that it is the state’s duty to protect its citizens,¹ the regulatory actors have to find tools to effectively protect gamblers (a) against themselves (avoiding pathological gambling) and (b) against operators who could try to exploit gamblers in several ways.

As mentioned above, prohibiting gambling is not an adequate solution since some gamblers and operators would then go underground.² Moreover, in Western societies prohibition is politically not attractive as it manifests the state’s authority and cuts down on individual freedom. The state would need a large and costly system of controlling and sanctioning to effectively prevent gamblers from gambling and to hinder operators from offering gambling. This might be one reason why in Germany traditionally it is the state itself that offers gambling as far as lotteries, casinos, and betting are concerned. In so doing, the state limits or even closes the market for private actors. A second reason against prohibition could be that—as we will see for the German case—the state finances social purposes, incl. treatments for addiction prevention, through the revenues it collects from public gambling institutions and from taxes in the small niches of legal private gambling activities.

At first sight it might be obvious to keep gambling ‘in good hands’ with the state operating all types of gambling. This could be a plausible assumption especially if the state then spends those public monies for

public goods. But this argument ignores several developments that challenge the monopoly of the state and asks for regulatory changes to open the market (at least partially). At the same time, it ignores the activity of private actors, which are at play regardless and therefore it fails to introduce effective regulatory schemes for private operators.

The aim of this chapter is to discuss whose interests influence the success or failure of possible regulatory changes and how regulatory contradictions can be explained. As will be shown in the following sections, changes are needed to cope with varied circumstances. The contribution is divided into three parts. The next chapter will show how gambling regulations in Germany have developed, how gambling is regulated, and which instruments are used. It will illustrate which qualities of institutional persistence can be observed (problem structure) in spite of challenging circumstances. The next section then moves on to explanations for institutional persistence, regulatory failures and first slight changes. It considers which actors are involved and institutionally embedded, how they represent their interests, and how institutional stability is constantly reproduced. Finally, the last section offers explanations for Germany's gambling regulations.

How Is Gambling Regulated in Germany?

In Germany, gambling is dominated by a state monopoly (lottery, casinos and partially betting) and a small regulatory set for a specific market segment open to private actors which mainly concerns the use of EGMs. Each form of gambling has to be officially approved and is object of a contribution system which consists of either taxes (Rennwett- und Lotteriesteuer) or the delivery of the profit (number games or football pools) or a specific fee (casinos). Gambling taxes—similar to all other taxes—flow into the state's budget.³ All other revenues (profits and fees) are earmarked and exclusively financing social and cultural activities as well as sports (cf. next subchapter).⁴

Whereas these rules focus on the national context, regulators have to consider that gambling regulations are being challenged. Over the last decades, we find challenges resulting from a constantly growing online

gambling market, new technological tools and requirements resulting from the Single European market (SEM). All these factors lead to blurred territorial lines and require regulatory measures that accept these changes as given. Interestingly enough, German regulators to this day have failed to bring forth tools that adequately address those regulatory challenges. So far this phenomenon of institutional persistence and regulatory failure has not been discussed in the political science literature and there is little agreement on what effective regulation would entail.⁵

Over time we see that the public engagement in gambling relied on trust in the public authorities. The fact that state authorities supervised gambling activities led to the expectation that people were protected from developing gambling habits causing problems. It was more or less easy to oversee these activities in a narrow and non-complex territorial setting. People developed different varieties of gambling—be it lotteries, betting, roulette or other games. These developments regularly either led to prohibitions or they provoked state interventions in order to control the activities—not least to ensure that gambling revenues find their way into public budgets (Rombach 2008). The development of these state-led gambling offers and their professionalisation were more and more promoted by a number of technological developments: the art of printing, the development and expansion of postal services, and the distribution of first currencies (e.g. the German Mark in 1871). The current debate on gambling regulations parallels these historical developments. One source of today's changes is the expansion of the Internet and the development of new communication technologies that provide new opportunities for operating gambling activities. Another one can be found in the SEM and the facilitation of the common currency. As a result, we see blurring lines of territorial (and thus market) boundaries and the opening of a transborder gambling market. These developments are challenging German gambling regulations while the ever-existing challenge to balance people's interest in gambling and the danger of existential damages continues to exist.

The danger of existential ruin also exists when people regularly use (electronic) gambling machines (EGMs) in restaurants, bars or gambling halls. Interestingly enough, this part of the German gambling market is quite open to private operators, and it is a profitable

source of income: The gross returns in 2015 added up to 5.3bn Euros (Glücksspielaufsichtsbehörden der Länder 2016, p. 6) from which the private operators received approximately 3.0bn after taxes and charges. Restrictions for this industry are in place with regard to youth protection and measures safeguarding addictive behaviour but not with regards to market proliferation. This has led to the mushrooming of gambling halls (Kuske and Timmann 2015, p. 12), which are often regarded as a blot in the street scene. In response to a public debate on the increased numbers of gambling halls, slightly stricter rules went into effect to establish a minimum distance between two gambling halls in 2012. This late and minor regulation on market proliferation as well as the still relatively open market in this segment could be surprising since the state continues to uphold its monopoly on lotteries and betting arguing that by doing so they maintain gamblers' safety and prevent the development of pathological gambling habits. Thus, the stationary gambling sector profits from a low regulatory level whereas the opposite is true for lotteries and betting although both segments require regulatory standards concerning gamblers' protection and addiction prevention (Haß and Lang 2016).⁶

The German Länder have dealt with challenges and expected (side) effects of gambling in a number of different ways. In the early years of the Federal Republic of Germany,⁷ they each established a different form of monopoly and opened just small niches for private gambling, which resulted in a distinct heterogeneity. Overcoming that heterogeneity was requested by the German Federal Constitutional Court in 2006 (BVerfG, 1 BvR 1054/01, 28.03.2006, Paragraph 120): The court had to rule on the question of whether the state monopoly could remain in force or not. It came to the conclusion that a Länder monopoly can only be justified if the monopolists effectively fight and/or limit (pathological) gambling. It also had in mind the imbalance between gambling regulations in the different market segments where one part (stationary gambling machines) is open to private actors whereas the other, larger segment (lotteries and betting) is closed and dominated by the state. Historically, each Land had its own regulations in place; this arrangement was criticised by the Court as being not effective enough due to its heterogeneity. As a reaction in 2008 a treaty on gambling, the Staatsvertrag zum Glücksspielwesen

in Deutschland (GlüStV), was ratified followed by a second (slightly changed) version in 2011, the Glücksspieländerungs-staatsvertrag (GlüÄndStV), which was effective until March 2017. The GlüStV subjected the state-owned gambling institutions and the narrow market of private operators to tight restrictions.

Both contracts (GlüStV und GlüÄndStV) provoked a host of problems regarding private actors since the state monopoly on lotteries and (sports) bets, which make up half of the gambling market, were effectively upheld. In the face of (international) online gambling, the SEM and the Euro solutions for overcoming the virtually closed shop principle (monopoly) would have to be indicated. And yet, the Länder allowed only limited market access to private actors who had to pass a licensing procedure which never effectively took place.⁸ Both treaties reflected a broad agreement among the Länder to retain the state monopoly and the existing institutional settings. Although the treaties managed to preserve the almost closed market for lotteries and sport bets in Germany, they seemed to have ignored the fact that there is an online gambling market. For private providers and gamblers in that market (e.g., online sport bets), the treaties meant that they continued to be operating in illegality. That also meant that gamblers could not benefit from safety measures that would be effective in a strictly regulated private market.

In March 2017, the Länder agreed on an amendment of the GlüÄndStV (= 2nd GlüÄndStV), which slightly opened the market for sport bets. Since the specific licensing procedure failed, the Länder are now—for the first time—obliged to give licenses to private actors based on transparent and comparable rules. However, the new treaty does not open the market for lotteries. Central to all versions of the gambling treaties (Glücksspielstaatsvertrag) is the fight against pathological gambling and there remains a strong focus on public providers. Be it public or private, all varieties of gambling need to consider the prevention of addictive behaviour, channel gambling into legal products, follow legal rules and protect especially young people.

Even if the recent agreement of the German Länder could be classified as a (small) step forward, the last decade showed an example of institutional persistence and inaction with regard to regulating gambling in Germany. That long-time nonaction is surprising for three reasons⁹:

First, several times, private gambling operators have brought lawsuits against Germany resp. against German Länder to the European Court of Justice (ECJ). The ECJ had to rule if the state monopoly was justifiable in a SEM based on the argument that it protects public safety (Gefahrenabwehr). The Court held that indeed such justification is possible, but subject to the requirement that the regulatory design in national order is consistent (Judgement of 8.9.2010 – Case C-46/08, Carmen Media Group). Second, different German administrative courts have asked for transparent procedures on licensing private operators (Becker 2015, p. 411). Third, the German Länder accepted the broad market of EGM and their usage in bars, gambling halls, etc. despite the fact that gamblers could be easily seduced to gambling since these machines are readily available. This stands in contrast to the arguments employed by the Länder who inhibit liberalisation and disallow private operators in another part of the gambling market (namely lotteries and sports betting) by justifying it with gamblers' protection and for preventive causes.¹⁰

In sum, the following spectrum of factors call for regulatory answers that by far extend the existing system: a growing market of online-gambling with (a) no or little chance for operators to act legally and (b) high risks for the consumer (gambler) since consumer protection is not in place and there is a high risk of addiction. German regulation would have to fulfil the requirements of the SEM (freedom to provide services). There is need to remedy the malfunction of existing rules (licensing/granting a concession). Further, the mushrooming of gambling halls calls for regulatory answers.

Considering those aspects, it is puzzling that the legislator has been so resistant to adequately regulate the market for such a long time¹¹ and applies double standards.

Analysing the Reasons of German Peculiarities in Gambling Regulations

The German case of gambling regulation can be analysed as a perfect example of institutional inertia. For that reason, the analysis will consequently follow the historical institutionalism approach to explain

inertia and contradictory behaviour. It follows the definition of institutions ‘as formal or informal procedures, routines, norms and conventions embedded in the organisational structure of the polity or political economy’ (Hall and Taylor 1996, p. 938) and argues for considering ‘coalitional equilibria’ (Capoccia 2016, p. 21) as an explanation.

The gambling monopoly (lotteries and (sports)bets) in itself is institutionalised by path dependency seeing that the state has been acting as an operator for decades and has developed gambling infrastructures (Rombach 2008). Furthermore, the monopoly is supported by the Criminal Code (Law 284–287) prohibiting unlicensed public gambling. Routinely, the revenues of lotteries and other gambling operated by the state have been of benefit to welfare organisations (particularly Diakonie and Caritas) and public infrastructure in sports. Gradually such gambling revenues have become a major source of income for these actors in an institutionalised manner (the whole spectrum of funding includes social services, environmental protection, cultural institutions and sports). These beneficiaries run public service infrastructures themselves that are actually institutionalised in a literal sense by building houses, parks, etc. but also by employing people and offering public goods.

Following Capoccia (2016, p. 21), we know that ‘[p]reexisting institutions can influence the extent and even the possibility of gradual transformational change’. As he points out ‘institutional constellations may empower incumbents to steer or stymie transformative change by allowing them to time decisions on institutional reform, which can be used strategically to make it more difficult for “losers” of previous institutional fights (again likely to exist virtually everywhere) to challenge the coalitional equilibrium underpinning an institutional arrangement’ (Capoccia 2016, p. 21). The German gambling regulations thus can be characterised as such a ‘coalitional equilibrium’.

The equilibrium is the result of the relationship between institutions and action and shows which powers and power relations are decisive: no matter which party or party coalition is in power, it is interested in being re-elected. Re-election has to do with voters being satisfied with the government. This satisfaction could be in danger when employment is insecure. Job security in cultural institutions, in environmental projects, and especially in the service sector has to do with funding since

it mostly is not self-sufficient. Hence, the institutional stability of all organisations and providers in these fields is crucial for any government due to its electorate that is employed at one of the major organisations (Diakonie/Caritas) or has to do with people that are employed there.¹² Two examples illustrate that power: Diakonie and Caritas expressed their belief in a state monopoly (Deutscher Caritasverband 2010; Diakonie 2010) and strongly support refraining from opening the market at all. In the largest federal state, North Rhine-Westphalia, beneficiaries in all spheres (welfare, sport, culture, and environment) formed a coalition to support the state monopoly in lotteries (e.g. Dombau-Verein Minden 2015; Münsteraner Erklärung 2015). These examples show how civic organisations and interest groups have institutionalised their positions. The strength of their positions can be explained by them being part of the institutional structure in key areas of public infrastructure and services. These infrastructures and services normally suffer from not being (or not completely) competitive without public funding. To sum up (a) these infrastructures and services require extensive funding (and would need it from elsewhere if private actors joined or completely took over the lottery or betting market) and (b) the beneficiaries could intimidate the Länder governments by arguing with job losses or starting a campaign on promoting addictive behaviour when opening the market. Though, if the Länder safeguard the funding scheme, the regulator could also adorn itself with being the benefactor for the organisations and their employees, etc.

The German case is an interesting example of an institutional equilibrium based on a spectrum of ‘resources, incentives, strategies, and attitudes’ (Capoccia 2016, p. 23) that has a reciprocal impact on two groups of actors: on the one hand on the state as a rule-maker (regulator) and concurrently as a rule-taker (gambling operator) and on the other hand on the beneficiaries as indirect rule-takers when it comes to edicts, decrees, etc. concerning the sources of lottery and betting income. Path dependencies strengthen these ties. The political debate furthermore draws on the argument of protecting gamblers and preventing pathological gambling and has established a normative consensus that gambling is ‘in good hands’ if the state offers it.

This argument could puzzle the observer when it comes to the other segment of the market: the market for EGMs. Here gambling is offered by private operators and this fact seems to be (nearly) undisputed. This is puzzling since these commonplace opportunities (EGMs in restaurants, service areas on freeways, etc.) might have a much more seductive effect than lotteries. Path dependency has characterised this segment since 1951 when Germany started to allow the use of EGMs. Just like in the case of lotteries and bets we find a coalition equilibrium albeit with a different set of actors: the state on one side, and gambling machine producers and gambling hall operators on the other. The latter are subject to rather lenient regulations stipulated by the former. The regulator in turn fulfils the obligation to protect its citizens by establishing some rules for gamblers' protection and prevention of addictive behaviour. The regulator also collects (high) taxes. In doing so, the government supports a strong industry (machine producers) and partly a service sector (gambling halls) where many people work.¹³ The historical context shows that the state itself never produced these machines but that they were developed and established by private actors and could not be taken on easily by the state. Insofar this market is hedged on the one hand but also maintained and supported on the other hand. Interestingly enough, the gamblers themselves (in general) are not conceived as an interest group since they are not organised and therefore do not play any political role.

Comparing both segments of the market explains the stability of this institutional inertia. But it also leads to the question why there are different standards of market access for private operators. The political debate on gambling is pursued and centred around the argument of consumer rights, gamblers' protection and the need to fight addictive behaviour. Political actors put these arguments forward to justify the state monopoly. Seeing the threats of machine gambling on the one hand (which is politically accepted) and acknowledging that private actors offering lotteries or bets could be strictly regulated (which is missing because they operate illegally), this contradiction is still puzzling. The comparison of the two market segments, state operated vs. private operated gambling, and especially the character of the coalitional equilibrium that stabilises

the existing institutions in each segment leads to five explanatory dimensions to answer the question why the regulatory levels differ.

First, there is an economic dimension that strongly determines the development of regulations. Upholding the state monopoly for lotteries and bets stabilises a large economic sector, especially the sector of voluntary welfare, which benefits massively from the state-owned lotteries. Furthermore, there is a large job market behind the beneficiaries. Cultural, environmental and sports institutions also profit from these revenues. Although an open market would still generate taxes, private actors would receive the larger share (= profits) from lotteries and bets.

The second dimension is a spatial one and is related to the fact that a national focus thus far dominates the regulatory actions. As long as gambling could be mainly concentrated on national territory, it was possible to mainly keep a national focus. Considering the long tradition of state-operated lotteries, bets and casinos the urge for private actors to enter the German market was not very strong. The Internet gambling option, however, has opened new business opportunities. Although the state has been challenged to reconfigure the gambling market it continuously receives strong support from the beneficiaries (electorate) who have a vested interest in upholding the previous structure. On a national level, this was a win-win-situation for those actors.¹⁴

The relationship between actors who are powerful due to their institutional embeddedness constitutes the third dimension. Taking the example of the big welfare players (Diakonie and Caritas) or lobby groups representing smaller beneficiary groups, we see how state actors and beneficiaries are bound together. The state monopoly secures a financing base for organisations offering public goods. Thereby, the funding is institutionalised and the resulting goods are part of citizens' everyday life (welfare services, sport facilities, cultural life, etc.) and consequently develops a powerful societal relevance. The emergence of the coalitional equilibrium in the case of EGMs fell in the early years of the Federal Republic of German democracy and during those days prohibiting these machines or expropriating the producers was not an option. That is why both parties (regulator and machine industry) started to live with a regulatory scheme trying to adapt to technological developments.

Cultural acceptance of gambling and their different facets is the fourth dimension. The idea of state-operated gambling keeps these activities out of the realm of 'shabbiness' or dubiousness that is often associated with gambling. People can for example buy lottery tickets in news agencies or other shops that are open to everyone and embedded in culturally accepted business areas. Haltern (2016) stresses this argument to advocate the lottery monopoly and also points to a second cultural aspect: News magazines regularly inform about lottery numbers, the drawings are shown on national television and therefore takes place in people's living room. These news reports on German public television and radio stations are highly reputable which in turn reflects on the lotteries and lends them the impression of being a 'public institution'. In doing so, it provides the lottery business with an integrity that would be missing if there were a variety of different private lotteries that for practically purposes could not all be considered in the news and that would operate without any connection to public media, etc. (Haltern 2016, p. 111).

In contrast to lotteries, sport bets also had a high reputation but could not maintain this image of honesty and trustworthiness since sport bets in Germany suffered from bet scandals in 2005¹⁵ (soccer). Although traditionally sport bets used the same infrastructure (people could place their bets in news agencies) and announcements were made on radio and television shows, this kind of gambling generally works differently because variables play a role that cannot be totally controlled (referees, soccer teams, soccer player, etc.). The bet scandal from 2005 exposed the integrity of a state-operated betting business as a myth and its cultural acceptance suffered.

The case of gambling machines is different from both lotteries and bets: The mushrooming of gambling halls was increasingly criticised during the last 10 or 15 years on account of their shabby image. With regard to gambling machines a silent acceptance can be observed, but it is a silent not a state-sponsored acceptance. Neighbourhood bars and middle-class restaurants run such machines and they are part of the culturally accepted gastronomical infrastructure but usually not in the centre of attention.

The fifth explanatory dimension is connected to the embeddedness of the different actors. In contrast to the well-functioning powerful

network of the Länder governments and welfare organisations, new private actors lack both political and economic embeddedness. Private operators in bets and lotteries mainly utilise new technology (Internet) and (a) do not have to be based on German territory and (b) can operate with a small staff. Both aspects keep them out of the traditional cultural and political system and actor network. The new technology allows for organising gambling with only a small staff, which means that these new private actors cannot threaten governments with job losses. To the contrary, these technology-based gambling operators and their business models are a threat to state-operated gambling and thus to jobs in a widespread field of welfare, culture, environmental projects and sports. Although there is the danger of formulating a chicken-and-egg argument, the illegality of private operators has to be considered as well. Since they have no or only a weak normative and cultural acceptance it is hard for them to be politically and economically embedded.

Conclusion

This chapter shows that in political terms there is no 'easy' way of preventing people from engaging in hazardous behaviour. In Germany, the Länder do not exercise their duty to protect their citizens coherently. Gambling regulations falls into two separate parts, where on the one hand gambling in socially accepted spheres and frames (lottery, casino, for a long time also bets) is deemed to be acceptable. On the other hand, gamblers find a private sector (machines, gambling halls) that is politically accepted and controlled but has a, at best, ambivalent image. Institutional inertia characterises both segments. The way in which the German regulators deal with gambling as a whole reveals that they apply double standards.

Until now, the coalitional equilibrium between the state and gambling beneficiaries explains institutional inertia and the contradictory behaviour of political actors. Upholding the argument of 'doing something good' and backed by powerful actors, the state monopoly for lotteries will possibly survive in the future. External pressure on the market for sports bets (SEM, lawsuits, bet scandals) resulted in a partial

opening and first initiatives on how to effectively regulate that market under the new conditions. To follow these steps without giving up high protection standards could be a way to overcome the tradition of double standards. Except for the regulatory initiative that introduced a minimum distance between gambling halls, this market segment is clearly characterised by regulatory stability (inertia), which is important with regard to the need of high (maybe higher) protection standards.

All in all, gamblers' protection is the argument for how German gambling regulations are configured. This argument however is not convincing, since there is a long tradition of a private market for EGMs, which pose a danger for people and carry the risk of developing an addiction. On the other hand, political actors should and could restructure gambling regulation with regard to lottery and sport bets without giving up standards. The analysis showed that in fact until today it is the coalitional equilibrium in the different spheres of the gambling market that stabilised a powerful actor network and dependencies (rather than constraints due to gambler's protection), which can explain institutional inertia and contradictory behaviours.

Declaration of conflicts of interest I declare no conflict of interest.

Notes

1. According to the contemporary interpretation this duty ("Schutzpflicht") can directly be derived from the German constitution ("Grundgesetz") (Calliess 2006).
2. Of course, we could find cases where prohibition might work (e.g. prohibition of sports betting in the U.S. or gambling rules in Islamic countries).
3. Only the taxes on horse-racing bets are earmarked for horse breeding and the like.
4. The gross returns of the gambling sector in 2014, for example, sum up to appr. 35bn Euro which generates more than 5bn Euro taxes and more than 10bn Euro profits—in contrast: 1.5bn Euro black market (Handelsblatt Research Institute 2017). One specific share of the

profits is earmarked (social or cultural institutions, sports) but the percentage differs with regard to the gambling sectors and between federal states (e.g. for lotteries appr. 25% of the profits flows into the funding of social or cultural activities and institutions). Gambling is one part (>11%) of the whole “leisure industry” with a volume of 300bn Euro.

5. Adam (2015) so far is the only one to have conducted a political science analysis on German gambling regulations. He only focused on moral politics and surprisingly started by stating that Germany had liberalised the gambling market (sport bets) (Adam 2015, p. 195), which, however, never effectively happened until March 2017.
6. Haß and Lang diagnose machine gambling and lotteries (here: “Keno”) to be posing the highest risk for pathological gambling.
7. The special regulatory arrangements of the GDR are excluded.
8. Although the GlüStV spelled out the details of the licensing procedure has never been successfully applied for reasons connected to non-transparency, formal mistakes, and the like and which subsequently has led to lawsuits filed by private competitors. (For details see e.g. Becker 2015, p. 411). Furthermore some rated the “Glücksspielkollegium” as a violation against the principle of democracy (Kirchhof 2015; Hessischer Verwaltungsgerichtshof – Upper Administrative Court of Hesse, of 16 October 2015, Case 8 B 1028/15).
9. Beyond the general observation of technological (Internet) and political (SEM and Euro).
10. In doing so, the state upholds a regressive tax which infringes the ability to pay principle. Lottery players with lower income significantly contribute to a greater extent to tax revenues (for details see Beckert and Lutter 2008).
11. Experts from economics, law and psychology offer different arguments to criticise the monopoly and call for effective and consistent regulation (Becker 2015; Daumann and Breuer 2008; Dörr 2010; Glöckner and Towfigh 2010).
12. Caritas is the biggest employer in Germany with approximately 617,000 employees (<https://www.caritas.de/diecaritas/wofuerwirstehen/millionenfache-hilfe>. Accessed on 30 April 2017), Diakonie is also a very large employer with approximately 464,000 employees. Together both organisations employ over 1,000,000 people. This figure is even higher than e.g. the car industry with appr. 700,000–800,000 employees (<https://www.vda.de/de/services/zahlen-und-daten/zahlen-und-daten-uebersicht.html>. Accessed on 11 January 2018).

13. Gambling halls partly compete with state-owned casinos, which also run gambling machines.
14. This is similar to examples from other European countries (Des Laffey and Laffey 2016).
15. In 2005, it became apparent that a German referee manipulated several matches in different soccer competitions in order to profit from betting. The scandal gained major attention worldwide and was followed by several regulatory improvements to prevent such manipulation.

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7

Gambling Policies in Slovenia: Financing Tourism Infrastructure, Sports and Designated Non-Governmental Organisations

Tamara Besednjak Valič and Mirna Macur

Introduction: The State of Gambling in Slovenia

Gambling was present on Slovenian territory even before the formal state of Slovenia existed. Following historical data (Luin 2004), the first casino was opened in city of Portorož on the Slovenian Coast in 1913; casinos were also present in the city of Gorizia. Before the WWI, the city was known for its vivid social life and the role it had in the Austrian–Hungarian Empire (Cossar 1975). After the Second World War, the city became part of the State of Italy, however state casinos were opened near the Italian border in Nova Gorica in Slovenia. Gambling was severely restricted after the First World War, and it was only after the Second World

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M. Egerer et al. (eds.), *Gambling Policies in European Welfare States*,
Work and Welfare in Europe, https://doi.org/10.1007/978-3-319-90620-1_7

War, in 1962, the authorities adopted the Gambling Act that addressed the games with so-called 'random outcome' (Makarovič et al. 2011).

It was in 1965 when the still valid distinction between the so-called classic games of chance and special games of chance was put forward. Classic games of chance are defined as lottery games, lottery games with instant prizes, quiz lotteries, bingo, lotto, sports betting, sports polls, raffles and other similar games in which the gamer holds some sort of a ticket as confirmation of participation in the game. Classic games can be run permanently or sporadically. Special games of chance are poker, roulette, black jack, games on gambling machines and similar games. Both distinctions are clearly described in the currently valid Gaming Act (2011) and in the Gaming Tax Act (1999). Gaming Act defines two licence holders to run classical games of chance: Lottery of Slovenia (Loterija Slovenije) and Sports Lottery (Športna loterija), both owned by the State of Slovenia. These two organisations are de facto monopolies in the field of running classical games of chance in Slovenia, both on-line and off-line.

The Gaming Act (2011) defines the type of venue that can run special types of games. This is how the Gambling Act distinguishes between the casino venue that can run all types of special games of chance and gambling halls where only games on electronic gambling devices can be run. Casinos are in part owned by the state and municipalities, however gambling halls allow private partnership. The government can, according to the Gambling Act, issue up to 15 licences for casinos and up to 45 licenses for gambling halls. To date, there are 10 running licences for casinos in Slovenia and 26 running licences for gambling halls. This number varies over the years; in 2007, there were 13 operating casinos and 36 operating gambling halls (Makarovič et al. 2011).

Currently, the data for the period between 2005 and 2015 is available to aid in understanding the scope and the importance of gambling industry for Slovenia. In Fig. 7.1, the dynamics and the scope of the Gross Gambling Income (GGI) for Slovenia are presented with data divided by the two types of games: classic games and special games of chance. GGI is calculated as all gambling income decreased by out-payments (in the form of winning prizes) with added promotional monetary tickets. Promotional money tickets are a form of marketing

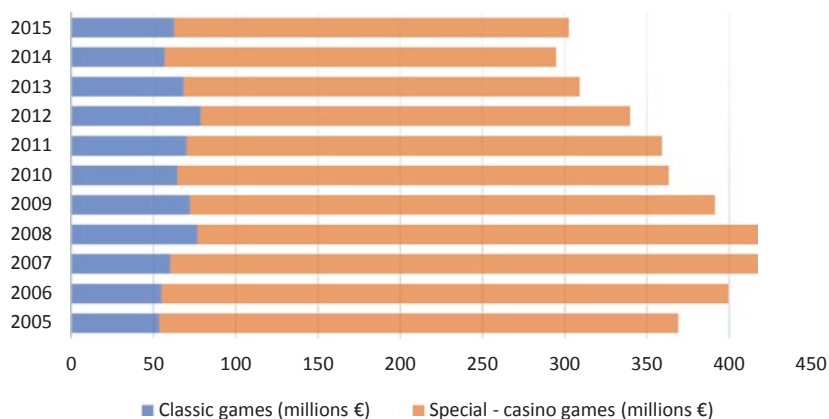


Fig. 7.1 Gross Gambling Income by Type of Game (Sources Ministry of Finance of Slovenia 2016a, b)

in which the establishment freely gives sums of money in the form of a playing ticket. Such tickets can only be spent on gambling. In Fig. 7.1, the wide discrepancy between the scope of the two is seen, which may be explained by the fact that the stakes in special-casino games are much higher than in classic games, also larger share of foreign players are engaged in special games of chance proving the tourist orientation of Slovenian special-casino gambling. From 2007 to 2013, the increase of GGI is noticeable for the classic games of chance with the explanation of economic crisis being the main motivator of people to engage in a cheaper way of gambling. In the segment of special games of chance, the decrease started in 2008 and reached its bottom in 2014 with figures in 2015 showing some modest GGI increase. Nevertheless, with the modest increase, the levels of GGI in 2015 remain below the levels of 2005. The explanation behind the figures may be in the maturity of Slovenian gambling market along with exhaustion of the main market, which is the north-east of Italy, which also suffered the impacts of economic crisis.

FIHO (a foundation that finances disabled persons' organisations and humanitarian organisations in Slovenia) and FŠO (a foundation that finances sports' organisations in Slovenia) annual accounts, own calculations.

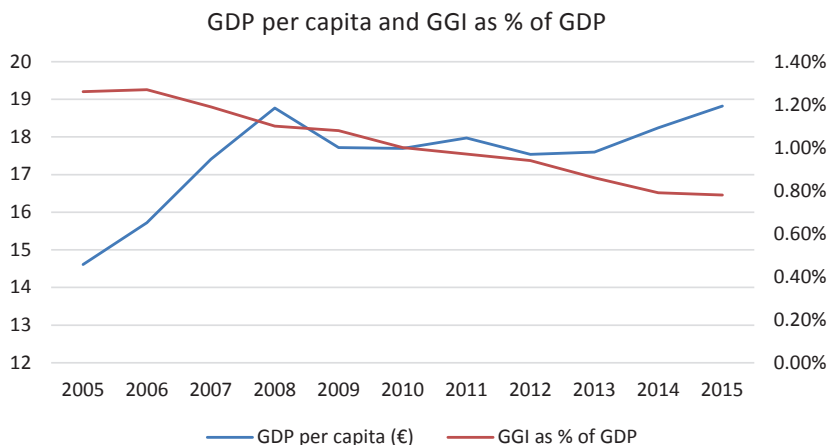


Fig. 7.2 GGI as % of GDP (Sources Ministry of Finance of Slovenia 2016a, b)

In Fig. 7.2, the trend of a slight decrease of gambling revenues can be observed and confirmed; the gambling industry contributed from 1.26% of national GDP in 2005 to 0.78% in 2015 with total GDP per capita ranging from 14,608 euro in 2005 to 18,823 euro per capita in 2015.

The total size of Slovenian national budget in 2015 was nearly 41 billion EUR. The decrease is not only due to rise in GDP but also in the decrease of gambling revenues. Similarly, the FIHO and FŠO foundations, along with municipalities included in ‘designated tourist areas’ who rely on gambling money are receiving less, according to the presented information. The overall trend in decreasing the revenues leads us to conclude the need to reassess and re-position the current gambling policy.

The Money Aspect: Licence Fee and Gambling Tax Main Beneficiaries

There are two types of payments that licence holders must follow. Namely, there is the licence fee and the gambling tax, both being calculated on the basis of monthly GGI diminished for out-payments and including promotional money tickets.

The licence fee for conducting classic games of chance is set by the national government and is based on the previous year's GGI and simulations for the upcoming year. The licence fee ranges between 20 and 45%. Funds obtained through licence fees for conducting classic games of chance are designated to directly support humanitarian and disabled persons' organisations through the FIHO foundation and sports organisations through the FŠO foundation; 80% of the licence fee paid out of lottery games is designated to finance FIHO foundation, and 20% of the mentioned licence fee is designated to finance FŠO activities. In contrast, 80% of the license fee paid out of sports-related lottery games is designated to finance FŠO activities, and the remaining 20% is allocated the FIHO activities. The result of such division in license fee payments show the significantly larger portion of revenues for FIHO in comparison to FŠO (see Fig. 7.3).

The licence fee paid by the casino license holders ranges between 5 and 20% and is calculated on the basis of the size of GGI, whereby licence fee for gambling halls licence holders is fixed and set at 20%. The funds gathered by licence fee payments are distributed in the following manner: 2.2% goes to FIHO, and 2.2% goes to FŠO. The rest is

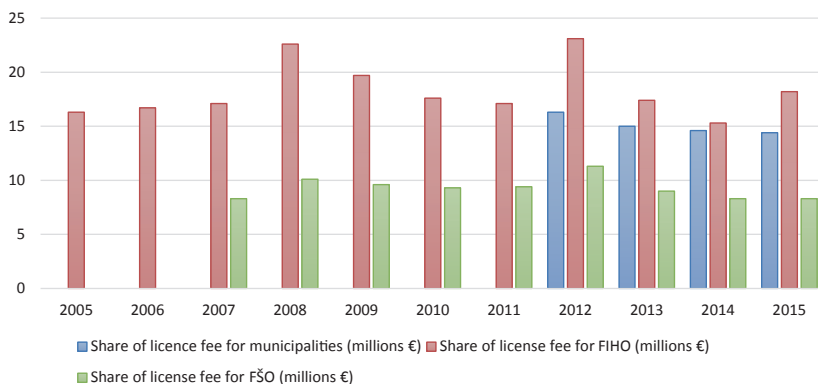


Fig. 7.3 License fees for municipalities, FIHO and FŠO (Sources FIHO 2017a; FŠO 2017)

distributed in the following manner: 50% goes directly to the national budget with the aim of promoting the development of tourism, and 50% goes directly to local communities to be able to support the local tourist infrastructure. The licence fee paid by casino operators is distributed between the municipalities included in ‘designated tourist areas’, whereas such areas are not established for gambling halls operators. More about the designated tourist areas is elaborated below; the share of license fee for ‘designated tourist areas’ is seen in Fig. 7.3.

Within the Slovenian legislation, the gambling tax is elaborated within its own law. It was passed in 1995 and has been modified eight times since then, with the last change in 2014. The license holders are obligated to provide monthly payments, directly to the national budget. The classic games are taxed with 5% of GGI, and special games of chance are taxed with 18% of GGI (Gaming Tax Act 1999). The law does not elaborate the purpose of use of these payments.

Where Does the Money Go: Financing Municipalities and Selected Services of FIHO and FŠO

According to the Gambling Act, there are the following beneficiaries of gambling money we were able to retrieve the data for: municipalities, FIHO and FŠO. Unfortunately, we were not able to retrieve the data on the exact sums of gambling money that go directly to the state budget. Municipalities annually received from €16.3 million in 2012; €15.0 million in 2013; €14.6 million in 2014; and €14.4 million in 2015 (Fig. 7.3). The amounts are decreasing due to overall GGI and gambling revenue decrease. It has to be added, that municipalities did receive their share of gambling money also prior to 2012. This does not result in featured figure due to availability of these data.

In contrast, a large portion of licence fee money goes to FIHO and FŠO. They distribute the money each year to the non-profit organisations that fit their profile. Yearly tenders are published (e.g. in 2016 for 2017), followed by the results of these tenders.

Figure 7.3 shows the amount of funds FIHO received in 2005–2015. The total of distributed funds in 2017 was €17.460 million: €11.349 million for organisations for the disabled and €6.111 million for humanitarian organisations (FIHO 2017c). Twenty-seven NGOs for disabled applied and 26 received funds for their programmes for the year 2017 (FIHO 2017a).

Funds vary due to different needs and different sizes of the organisations—many of them are associations of NGOs for certain type of disability, so the received money goes to their main activities as well as their regional and local branches. The biggest amount of money (i.e. €1.4 million) was received by the Association of Societies of the Blind and Visually Impaired; the Association of Societies of Deaf and Those with Hearing Problems; the Association of Societies for Help in Mental disorders; and the Association of the Disabled from Work. The smallest amount of money was received by the Association of the Disabled in War (FIHO 2017b). To the same tender, 95 humanitarian NGOs applied and 85 received funds for their work, whereas 10 NGOs did not meet the criteria. The amounts of money that were distributed go from several thousand euros to one million euros (the highest amounts of money were received by the Slovenian Red Cross and Slovenian Caritas) (FIHO 2017b).

FŠO manages smaller amounts. In 2017, it distributed €5.6 million for sports activities, research and the development of sport (FŠO 2017) to various sports organisations: numerous member organisations, youth sports organisations; a small amount of money is delivered as sports scholarships and for top athletes. It is perhaps worth mentioning that in Slovenia most NGOs operate in the sport and culture realm, so sports associations and societies are numerous. In 2017, there was €2.4 million dedicated for investments into sports facilities by FŠO (€1.714 million to be spent in 2017) (FŠO 2017).

It is difficult to assess the distribution of money by FIHO and FŠO because NGOs that receive the money cannot be compared in size and in the programmes that they provide. This is especially true for FIHO. Many NGOs are left out of FIHOs and FŠOs' distribution of money: some are too small, some do not meet the criteria, but many claim that they do not have the right 'connections'. This is especially true for the

field of health: The Ministry of Health in Slovenia is a poor financier of the NGOs whereas FIHO distribution of the money is carried out by large associations of NGOs themselves. There have been many of allegations mostly by small NGOs in this regard (e.g. Pečarič 2012, 2013) but no serious supervision has been made over the years. The importance of FIHO and FŠO for non-profit sector in the field of health, social care and sport is enormous because they are two of the most important financial supporters for them.

In the Shade of Gambling—Consumer Protection and Problems Related to Excessive Gambling

The currently valid Gambling Act (Gaming Act 2011) in Slovenia was passed in 1995, with slight changes and modifications occurring over the years. The Gaming Act does not explicitly deal with consumer protection. Nevertheless, the following measures have been implemented in order to assure some level of protection:

- Entry barred to persons below 18 (Gaming Act 2011, art. 83);
- All visitors must identify themselves with valid identification document for entering an establishment (Gaming Act 2011, art. 78);
- Possibility to impose ‘self-imposed restriction’ in all casinos and gambling halls in Slovenia, with the possibility to make a restriction internationally, on the basis of bilateral agreement (Gaming Act 2011, art. 9);
- Casino and gambling hall venues must offer clients notification about the possibility of gambling problems (Gaming Act 2011, art. 8) and exercise the continuous education of employees to promote responsible gambling.

As for the implemented level of consumer protection, the above measures were gradually implemented over the years by the regulator. These measures were not implemented as the result of external pressure but rather as the result of reactions to the detected needs of users.

Excessive gambling became a problem for some Slovenians, but no attention was paid to these problems for a long time. For years, the vast majority of casino and gambling hall visitors were foreigners; gambling was strictly tourist-oriented (near the Italian border more than 90% of visitors were Italians), so it was easy to believe that gambling problems did not exist in Slovenia. However, in 25 years of Slovenian independence, two major things happened that contributed to gambling problems of Slovenian citizens: the ban on casino/gambling hall entrance for Slovenian citizens was abolished in 1995, so Slovenians became more engaged in gambling both in terms of casino and gambling hall visits. The ratio between foreign and domestic casino and gambling hall visitors at the end of the 1990s was 90 vs 10% (approximately); however, at the end of 2000s, the ratio was 70 vs 30%. The number of domestic guests is steadily increasing. The rise of Internet gambling without serious supervision also affected Slovenian citizens.

Gambling problems were screened several times in smaller, mostly adolescent samples; however, only one large representative national study was conducted in Slovenia, i.e. in 2008. With a total of 10,001 respondents age 18 and more, this study had a record-breaking sample size in comparison with other social science studies in Slovenia. Sampling and proper sample weighting allowed the sample to be representative of the Slovenian adult population. According to this study, approximately a third of the population engaged in gambling at least once in 2008. The scope of gambling problems was revealed with the South Oaks Gambling Screen (SOGS) test included in the survey questionnaire. Almost six per cent of respondents answered at least one question in the SOGS test in the affirmative, and nearly two per cent answered two questions in the affirmative. Furthermore, the data show that 1.45% (three or four affirmative answers) of respondents display a tendency to problematic gambling and an additional 0.76% (five or more affirmative answers) have serious problems with gambling, i.e. they may be considered pathological gamblers (Makarovič 2009). Additionally, the survey was conducted in 2008, analysing the possibilities of gambling-related problems at casino employees confirming the statements that they might be an at-risk group to develop gambling-related problems (Besednjak 2009).

The data from the 2008 national study were also analysed in terms of determining the most endangered groups of the population, i.e. those most susceptible to gambling problems. They are mostly men, young, with middle-level education, divorced and single persons. The issue of young people must be highlighted. While 0.14% of persons above the age of 55 have severe gambling problems, this number rises to 1.68% among persons under 30. This could be associated with the lifestyle of young people, who experiment more and take more risks; they also have different attitude towards gambling, which will mark these people to a great extent in their later years. Thus, it is reasonable to take a more detailed look at the gambling problems of young people (Makarovič 2010).

In 2010, the School of Advanced Social Studies in Nova Gorica conducted a survey among secondary school students in two Slovenian regions: Goriška and Dolenjska (higher years, mostly 4th (finishing year), $N=1113$). The SOGS-RA test measuring gambling problems was included in the survey. Among the Goriška region students, 4.41% of students already had gambling problems, and 2.57% had serious gambling problems in 2010. Even more gambling problems were found among the Dolenjska region students: 4.09% had gambling problems, 3.73% showed signs of pathological gambling. The results of the test were compared to the adult population (Makarovič and Macur 2010). There is a trend of increased prevalence of gambling among the young compared to the adult population. This also means that the risk of developing gambling problems among the young is higher than in the adult population in Slovenia. All this clearly indicates that much more should be invested in prevention, as the young population is highly vulnerable and more susceptible to risks caused by gambling addiction. Unfortunately, we don't have newer data to establish whether gambling problems have grown in this population, especially due to online gambling.

The data presented are outdated but are the only reliable data ever collected in the field of gambling prevalence along with gambling-related problems. A few smaller studies on adolescent samples in Slovenia have been conducted: Krek (2010) among secondary school students in the Primorska region ($N=926$), Krek et al. (2010) among students of the University of Ljubljana ($N=521$); and some other unpublished studies,

who are also outdated. Nevertheless, none of these studies raised public debate about gambling and gambling-related problems.

The most intensive public discussion about gambling problems in Slovenia appeared in 2007 (prior to there being any reliable data on the scope of gambling-related problems) when the American company Harrahs' (today Caesars Entertainment Corporation) planned to open a destination resort casino in a joint venture with the state-owned casino operator HIT Ltd. of Nova Gorica. The public was against such a project, claiming a potential rise in gambling problems. An additional problem that was presented before the investment in this resort was the need to change the legislation. The result of these public debates was the closure of the project—investment never started. After that event, public debate stopped immediately. The public was not interested in the proliferation of gambling that occurred immediately after the closure of the project (from more on the issue, see Makarovič 2008). In 2012, the Office of Gambling Supervision (UNPIS) was closed, with its jurisdictions passed to the Special Tax Office.

The abovementioned public debate was the only one ever focusing on gambling as a source of problems. There has never been a visible debate on gambling policies and distribution of gambling funds. The two main beneficiaries, FIHO and FŠO, are independent in the distribution of money and usually are not subject to the financial audits that other public institutions regularly are.

Conclusions and Future Prospects

Analysing the ten-year period from 2005–2015, we were able to detect two dynamics. On the level of income, the so-called 'gambling money' deriving from licences has been subjected to several changes in the period 2005–2015. These changes are inevitably connected to the world economic crisis on one hand and the trend of the maturing of gambling market on the other. At this stage, both trends, lead towards the general GGI decrease direction proving the vulnerability of destination gambling. Funding social services solely from one, namely 'gambling money' source can become problematic with the decreasing revenues.

There was an intensive period between 2008 and 2013 when efforts were made by several researchers to provide insight to the existence and scope of gambling-related problems. Nevertheless, nothing has been done in terms of adequate use of gathered data to provide any kind of policy development in the field. The main document managing gambling remains the above-mentioned Gambling Act with its absence of systematic anti-problem gambling policy. There are some proposed legislative changes (Ministry of Finance 2016b):

- Permanent licence is given to Sports Lottery to conduct sport betting and to Lottery of Slovenia to run other classical games of chance. Prior to this, Sports Lottery was about to run other classical games of chance.
- All gambling providers will face advertising limitations as follows: gambling advertisements must not enhance false feelings on possible wins, it must not engage under-aged children, advertisements cannot be shown on buildings and places near schools and kindergartens, gambling advertisement cannot be displayed at events primarily targeting young children. Additionally, advertising of gambling is forbidden on radio and television during shows for under-aged persons, it is forbidden in print and electronic media for under-aged children, it is forbidden in cinemas before, during and after movies for under-aged children. Lastly, gambling advertising is allowed only for concession holders.
- The introduction of the possibility to obtain the licence to conduct Internet gambling (prior to this change, the licence to conduct Internet gambling was conditioned with obtaining the licence for running a casino). De facto, this article indicates a step in a direction of the further liberalisation of gambling in Slovenia.
- The number of licences to run classic games of chance is limited to the existing two.
- The licence holder does not need to be a company established in the Republic of Slovenia, but it can be registered in any of the countries of the European Economic Area (EEA). This change was introduced after the pressure of the European Commission.

In terms of any updates or changes over the flow of licence fee money, no attempt has been. For the period when the proposed changes were put into public debate, no such suggestion occurred. It is unclear when these changes of legislation will be implemented, but the most serious motive for change of legislation in 2017 is not the pressure of the European Commission for the liberalisation of gambling in Slovenia, but an attempt to sell the biggest state-owned casino (i.e. HIT, Nova Gorica), for which a change of the Gambling Act is necessary (Svenšek 2016). The proposed legislative changes have not been put in effect yet since the proposed changes have not been passed.

To summarise, with slight changes, the main Gambling Act in Slovenia has been valid since 1995, and the distribution of the gambling revenues has remained the same. The changes proposed in 2016 do not address the issue of revenue distribution in any aspect. Therefore, the conclusion is that for the state of Slovenia, the distribution of gambling revenues as set in 1995 remains valid in 2017. What is missing in this is the fact that firstly, gambling patterns among Slovenians have changed in the past 22 years and, secondly, new means of gambling have emerged, especially via the Internet, which can cause more gambling-related problems. Part of the gambling revenues therefore should be aimed to cover the topic of gambling-related problems. The current state of the legislation namely aims to channel the gambling money towards tourism infrastructure updates, and organisations for the disabled as well as humanitarian and sports organisations. The current status quo at this stage fits into the daily agenda of main beneficiaries of 'gambling money', since there has not been a real public debate on the justification of such policy of distributing the gambling funds. There has also not been any serious effort made to prove the need to make any significant changes in the different distribution of funds collected from the gambling.

Declaration of conflicts of interest We do not have a conflict of interests. School of Advanced Social Studies has obtained research funding in the past from the gambling company HIT, however the authors of this chapter have never had any consultancy contract with any gambling company in Slovenia or abroad.

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8

State Lotteries in Europe: A Cross-National Comparison of How Lotteries Are Controlled, Operated and Benefit Government, Private Industry and Civil Society

Lynn E. Gidluck

Introduction

In most cases, lotteries in Europe and throughout the world are a publicly provided form of gambling. Nations or regional governments have legal monopolies, often acting as the regulator, operator and beneficiary of state lotteries. State licensed lotteries in the European Union (EU) are required by law or through their licenses to make payments to society (European Lotteries 2015). On average, a state licensed lottery in the EU gives back to society as mandatory payments (not including sponsorships), 64% of each euro it earns (European Lotteries 2017a).

In addition to state lotteries, almost every country in Europe has small-scale charity lotteries, frequently organised by clubs and associations. Only a small number of privately operated charity lotteries exist at a national level because most countries protect national lotteries as state monopolies. If charity lotteries are permitted, they are usually

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M. Egerer et al. (eds.), *Gambling Policies in European Welfare States*,

Work and Welfare in Europe, https://doi.org/10.1007/978-3-319-90620-1_8

allowed to operate only at a local or regional level and restrictions are placed on the prizes that can be awarded. This prevents them from competing with national lotteries (Association of Charity Lotteries in the European Union 2015).

While charity lotteries provide an important source of income for their beneficiaries, their contribution to society, relative to national lotteries, is much smaller. In 2015, the 300 beneficiaries of the Association of Charity Lotteries in the European Union received €600 million (Association of Charity Lotteries in the European Union 2015). In contrast, European Lotteries (EL), an association that represents the interests of 70 national lotteries, reports that its members contributed €23.5 billion in 2016 to state budgets and funds earmarked for good causes. The average amount that EL members in the EU paid back to society in 2016 was €42 per capita (European Lotteries 2017a). For this reason, the focus for this chapter is directed at state lotteries.

This chapter offers cross-national, comparative research of state lotteries in Europe. It reviews the main methods for operating and regulating lotteries. The chapter also details the ways in which proceeds from lotteries are directed to community activities. Community benefit funding, as defined by Adams (2008) refers to a variety of arrangements that enable communities and the individuals and organisations within them to benefit from them. The research demonstrates that there is a complex array of approaches to which lotteries in Europe are used as a mechanism for raising revenue. Significant variation is also seen in the causes to which lottery proceeds are directed. Examples from different parts of Europe are selected to illustrate the diversity of issues covered in the chapter.

Methodology

The first step in the research was a review of Thompson's (2010) *International Encyclopedia of Gambling*. Many entries in this resource provided 'clues' to interesting policy approaches which were then explored. The second step was Google Scholar search using the terms 'lottery' and 'country name' for every country in Europe. To ensure an exhaustive

search process, references and bibliographies of seminal documents were scanned for relevancy. Further searches were conducted using the names of researchers identified as having an interest in specific countries. To broaden the scope, links to the member-lotteries of the World Lotteries Association (WLA) and the European Lotteries Association were then reviewed. General Google searches were also conducted (country name+lottery) to retrieve media accounts and sources outside the academic milieu.

In the absence of recent case study research for many countries, in some jurisdictions it was challenging to determine how lottery revenues are used and how the industry is regulated. The author was limited to reviewing English-only sources and using Google Translator for annual reports, newspaper accounts, promotional material and websites of lottery providers. It is difficult to ascertain the accuracy of country-specific data provided by sources like these. For these reasons, the work presented in this chapter is preliminary and provides only a broad and cursory overview.

Lotteries were categorised based on the degree to which civil society, private sector businesses or government are involved in the operation and distribution of benefits from state lotteries. While a quantitative measure for the rate of adoption of different policy approaches is proposed, as Kingma (2008) noted, regulatory models are never clearly defined or mutually exclusive. 'In practice various regulatory principles compete, coexist, and operate together in regimes which are often ambiguous and incoherent' (Kingma 2008, p. 455).

Bearing Kingma's caution in mind, jurisdictions were classified by the most dominant regulatory model within their bailiwick. Jurisdictions where the government has assigned a high degree of discretion to a sector of civil society in both the operation of the lottery as well as the distribution of the profits in some sort of collaborative effort with the state were assigned to Category A. Category B was reserved for lotteries operated by an agency where the state is the majority shareholder or where they provide very strict dictates on private operators licensed on their behalf and how revenue from lotteries will be directed. In countries that fall into Category C very little effort (if any), was found to publicise how lottery revenue benefits society.

An Overview of the Findings

A total of 47 countries in Europe were examined from March to May 2017.¹ The majority of countries ($n=43$) had national lotteries of some form. Of the countries that allow lotteries, about 14% ($n=7$) of the cases, the government licenses civil society organisations to both operate national lotteries and distribute the revenues (Category A). In more than half the countries ($n=23$), the state is the dominant figure in operation and revenue distribution (Category B). Most countries in this category direct lottery funds to specific good causes or make some effort to publicise how the funds benefit society. In the remainder of the cases, profit from lotteries is treated like other revenue sources, funding government-wide priorities. In Category C, ($n=13$), private sector companies that have a considerable financial interest in gambling, are licensed by the state to operate lotteries, with civil society usually benefitting only indirectly (Table 8.1).

Organisation and Regulation of Lotteries

As Kingma and van Lier (2006) note, in the 1990s gambling markets in Europe and around the world expanded significantly and there was clear market pressure on national governments to treat lotteries as a free market in the entertainment economy. This contradicted traditional policies in which gambling markets are tightly regulated by the state and in many cases, are even operated by state monopolies. Direct market competition was discouraged because of concerns relating to addiction and crime. Despite market liberalisation, the majority of European lotteries (86%; $n=37$), continue to have strictly controlled monopolies. Of these, in most cases ($n=23$), a majority state-owned agency operates the lottery. In six instances, civil society organisations have monopoly rights to one or more national lotteries. Eight countries have either privatised their national lottery (Greece, Ireland and Malta) or awarded exclusive licenses to private sector operators.

There is a competitive environment in only 6 of the 43 lottery countries. In these cases, there is often one or more dominant players where new entries to the marketplace face tremendous competition to well-established or early entrants. For instance, in the Czech Republic,

Table 8.1 Rate of involvement or benefit to civil society organisations

High		Low	
Category A	Category B	Category B	Category C
Monopoly environment			
Iceland	Belgium	Austria**	Albania
Liechtenstein	Bulgaria	Belarus	Armenia
Luxembourg	Croatia	Bosnia & Herzegovina	Georgia
Portugal	Denmark	Cyprus	Greece
Slovenia	Estonia	France	Hungary
Switzerland	Finland	Hungary	Ireland
	Latvia	Montenegro	Italy
	Macedonia	Serbia	Malta
	Norway	Slovakia	
	Poland		
	Romania		
	Spain		
	Sweden		
	United Kingdom*		
Competitive environment			
Netherlands			Azerbaijan
			Czech Republic
			Lithuania***
			Moldova
			Ukraine

*State holds a monopoly on the licensing of the national lottery but a private company operates it on its behalf. Despite this, significant effort is taken to earmark funds and/or having non-governmental representatives make decisions on how lottery profits are spent. In all other cases with Category B lotteries, an agency where the state owns all (or the majority of the shares), also operates the lottery

**Austria could be categorised in either Category A or B. There is only one licenced lottery operator (Austrian Lotteries), 15% of the shares of which are held by the federal government and 85% by private shareholders

***Lithuania will grant a lottery license to any national enterprise or foreign enterprises which has set up subsidiaries and perform their activities in the country. All companies must donate 8% of the sold tickets to charitable organisations. One lottery, owned by the National Olympic Committee and the Olympic Foundation of Lithuania, has between 93–99% of the market share (Association for Charity Lotteries in the European Union 2017)

Sazka (owned by a Czech oil and gas company), possesses over 90% of the lottery market (Szczyrba et al. 2015). Netherlands is unique in that it has a diversified lottery market but the state has decreed that a lottery license can only be obtained if the revenue serves the public benefit (Kingma and van Lier 2006).

Main Beneficiaries of Lottery Proceeds

There is substantial variance in the causes that countries direct lottery revenue. The European Lotteries Association notes that sport is the main beneficiary of funding from their member organisations. The second main beneficiaries are charities and projects in the social sector, especially projects encouraging social inclusion. The field of culture and cultural heritage is the third most likely area to receive support from lotteries, followed by projects in the category of science/health/research (European Lotteries 2013).

Lotteries are one of the main funding sources for both grassroots and high-performance sport. In 2012 more than 2.3 billion euros was directed to sport from revenue raised from state lotteries, with top countries in absolute terms being the UK (€730 million), Germany (€400 million), France (€224 million), Norway (€218 million) and Finland (€151 million) (Borrmann et al. 2015). In relative terms, the highest value directed to sport is Norway (€42 million), Cyprus (€33 million), Finland (€28 million), Denmark (€17 million), UK (€11 million) and Austria (€9.5 million) (Borrmann et al. 2015).

Charities and social projects are the second main beneficiaries of lottery funding, receiving more than 1.5 billion euros annually. In Belgium, since 2006, the National Lottery has funded the full costs of a collective insurance programme for volunteers. The insurance policy covers civil liability, legal support and physical injury during voluntary activities. The programme was designed to protect non-permanent volunteers that take part in occasional or temporary initiatives. The management of these funds is entrusted to the provinces (European Lotteries 2017b).

The third broad area that benefits from lottery support is the arts. Culture and cultural heritage receive about 1 billion euros per year from lotteries. Some of the most important museums and architectural heritage in Europe have benefitted from lottery funds. Examples include the restoration of the Louis XIV statue in Versailles; expansion of the Egyptian Museum in Turin and the Uffizi Gallery in Florence, and the opening of the Domus Aurea in Rome. In Germany, up to two-thirds of the revenue generated by the Länder lotteries are used to support

cultural projects and cultural heritage (European Lotteries 2011b). In the UK, lottery funds provide ongoing funding for eight of England's top 10 most popular cultural attractions and financial support to 21 of the UK's 25 world heritage sites (European Lotteries 2011b). In Estonia, revenue from lotteries flows into the state budget but the Gambling Tax Act stipulates that 46% of the proceeds from lotteries are to be directed to the Cultural Endowment of Estonia (Ratzenbock et al. 2012).

Main Methods for Operating Lotteries and Distributing Revenue

Just as the types of causes that state lotteries support varies from jurisdiction to jurisdiction, so do the regulatory systems and ways countries distribute lottery revenue.

General Revenue Funds

For all governments, at least some of the revenue from lotteries is directed into the state's general revenue funds. European Lottery Association members reported that over 60% of lottery revenue flowed to their state general revenue funds (European Lotteries 2017a). These funds are treated like any other revenue earned by government and used to fund priorities determined through the budgetary process by elected representatives. Some countries make very little attempt to garner public support for having a national lottery. General statements, such as the one made by the national lottery of Cyprus on its website, are made: 'The Government Lottery pays millions and helps our country' but funds are not designated for specific areas of social benefit. This is also the case with France where La Française des Jeux is 72% state owned. The proceeds raised do not contribute to earmarked charities, but mainly to the state budget (Marionneau 2015).

Lafaille et al. (2005) believe this approach is the easiest for governments to administer. They suggest dedicating revenue to charitable causes brings 'an equal weight of political gain and headaches'.

On the other hand, they caution, 'dedicating gaming profits to the state treasury has no great PR for either bad or good' (Lafaille et al. 2005, p. 81). Earmarking lottery revenue for 'good causes' as a public relations tool has been criticised by researchers and policy makers. A national enquiry in Australia (Productivity Commission 1999) supported earmarking of gambling revenue for problem gambling, harm minimisation, and community awareness campaigns, and for the funding of problem gambling related research and data collection. When it came to earmarking for other programmes, the Commission was more critical. The report noted the difficulty of assessing the effectiveness of activities that received earmarked revenue. Commissioners also noted that the practice affords a privileged budgetary position to specific functions that are not subject to the scrutiny of the annual budget process.

More recently, Paldam (2008) noted that governments should understand that using stakeholder groups like sport and culture organisations as 'alibis' comes at a price. These organisations are often large and well-organised and powerful pressure groups. Once they become accustomed to revenue from lotteries, it can be difficult for the state to change future policy directions. Adams (2008) also raised the point that when community organisations accept funding, this often lays the foundation of reliance and dependency.

Government Mandated and/or Administered Contributions

Some countries have passed legislation dictating how the proceeds from their state-owned lottery operator will be distributed. In the Czech Republic, for instance, gambling operators are required to contribute a fixed percentage of their yield (6–20% depending on the amount of the revenue) to social, health, sports, environmental, cultural or other public purposes (Tetřevová and Svědík 2012). In Austria, there is only one licensed lottery operator (Austrian Lotteries), 15% of the shares of which are held by the federal government and 85% by private shareholders (Nikkinen 2014). Through the Austrian Gaming Act 2010, the licensee provides annual taxes to the federal government in the amount of €80

million for the promotion and funding of sports. The act stipulates that beginning in 2013 this amount would be increased every year provided that revenue increased in the last year as compared to the year before that (Austrian Lotteries 2016). Legislation in Estonia is very detailed, indicating precise percentages of lottery revenue that flows to regional investing; the Estonian Red Cross; the advancement of culture; social projects (science, education and support for young people and children), support for participation in the Olympic games and other sport-related undertakings and problem gambling (Nikkinen 2014).

Many countries like Bosnia and Herzegovina help civic associations through government grants. The 'Half of Happiness to Others' fund distributes 50% of lottery revenues to organisations like soup kitchens, groups assisting people with disabilities and those fighting addiction (Visser 2016). In Macedonia, lottery legislation lists the organisations entitled to receive lottery proceeds. 50% of proceeds are used for financing programmes of associations of people with disabilities, sport associations and the Red Cross (Hadzi-Miceva-Evans 2010). In Romania, the Ministry of Finance has established a National Solidarity Fund which, among other things, provides allowances for minors, microcredit for small businesses and grants to social assistance institutions (Nikkinen 2014).

Community Administered Contributions

In countries like Croatia and the UK, the areas and level of support from lotteries are decided by government but decisions on individual grants are made by an independent body (albeit one that may include some government representation) (Hadzi-Miceva-Evans 2010).

Croatia stands apart in its decision to use some of the proceeds from the national lottery to create and provide ongoing funding to a non-profit entity which has a mission is to serve and strengthen civil society in Croatia. The International Centre for Not-for-Profit Law (2003) hailed the establishment of the National Foundation for Civil Society Development (NFCSD) as a 'critical step forward for the development of civil society and the financial sustainability of non-governmental not-for-profit organisations in Croatia'.

The NFCSD collaborates with the Council for Development of Civil Society, a cross-sector advisory body of the government, and the Office for Co-operation with NGOS, to develop public policy for the not-for-profit sector in Croatia. As the strongest public grant making institution in the country, the NFCSD provides essential support services to NGOs. The majority of the members on the governing body are representatives of civil society. This means that the foundation acts independently from the government. The foundation's focus on institutional support allows community service organisations to concentrate on its 'core business' rather than investing scarce resources into continuous fundraising and working from project to project. The organisation also supports separate projects and programmes for civil initiatives that are at the community level and volunteer driven. It also provides grants to support partnerships between NGOs and units of local government to improve living conditions in the community. Other grants are directed to organisations working in areas such as public advocacy, the development of democratic institutions in society and the rule of law, and the development of civil society in Croatia (Vidacak 2010).

The UK has also gone to great lengths to establish a mechanism outside the direct purview of government to distribute lottery funds. Income raised from ticket sales flows to the National Lottery Distribution Fund and then is allocated to the distribution bodies according to a formula set by the Department of Culture, Media and Sport. Sports, Arts and Heritage bodies each receive 20% of the lottery revenues while Health, Education, Environment and other Charitable Causes receive 40%. There are 12 lottery funding organisations, including Arts Councils in England, Northern Ireland, Wales and Scotland as well as the British Film Institute, the Heritage Lottery Fund, Legacy Trust UK and national sport federations in England, Ireland, Wales and Scotland and UK Sport which supports Olympic and Paralympic sports in the UK (National Lottery Distribution Fund 2016). Each is independent of the government but must follow guidelines when deciding which organisations should receive National Lottery Funding.

A separate agency of government, called the BIG Lottery Fund, was set up in the UK to distribute funds to other charities. The BIG Lottery Fund to Health, Education, Environment and other Charitable Causes. BIG's governing board is appointed by the State. Its five committees

(one for each country and one for the UK) are subsequently appointed by the Board, with state approval. Each country committee has the responsibility for developing its own part of the overall strategic framework for the BIG Lottery Fund (Paine et al. 2012). For the year ended March 31, 2016 the BIG Lottery Fund made over £580 million in grant awards to nearly 12,000 projects across the UK (BIG Lottery Fund 2017).

The allocation of UK lottery proceeds has not been without its critics. National lottery funding has been spent at times on expensive and unsustainable building projects. The most notorious of these projects was the Millennium Dome in Greenwich. Other costly projects such as the Sheffield's National Centre for Popular Music (closed in 2000, £11 million in lottery money); the National Centre for Visual Arts in Cardiff (closed in 2000, £3 million in lottery money); and Life Force, a museum in Bradford about the history of religious belief (closed in 2001, £2.2 million lottery grant) (Hesmondhalgh et al. 2015).

A ground swell of criticism also arose when more than £425 million was diverted from the BIG Lottery Fund to support the London 2012 Olympics. It emerged after the Games that the government had underspent on the Olympics by more than £500 million but, despite this, the money taken from the Big Lottery Fund was not returned to the good causes. Charities were further outraged when the Olympic stadium, which cost over £480 million to build, was handed over to the Premier league football club West Ham on a 99-year lease (Doward 2016).

Operation and Distribution by Public Interest Associations

Countries like Iceland, Liechtenstein, Luxembourg, Portugal, Slovenia and Switzerland assign licenses to public interest associations or foundations to run national/regional lotteries. These organisations also distribute the proceeds to specific causes within their mandate. Any entity or sector that becomes dependent on a source of income is almost certain to do everything in its power to maintain this privileged position. Governments establishing relationships with public interest associations to operate and benefit from state lotteries must take this into consideration.

Research on the provincial lottery in Saskatchewan, Canada (Gidluck 2016) demonstrates that such funding regimes can empower people at the community level to shape public policy and develop innovative programmes that meet the unique needs of individual communities. However, lacking similar scopes of enquiry, it is impossible to ascertain whether countries that have designated public interest organisations to run state lotteries have achieved similar positive results.

The operation of all gambling activities in Iceland is restricted to non-governmental institutions or charities (Olason and Gretarsson 2009). Until 2006, the University of Iceland Lottery had an exclusive license to run different kinds of lotteries and coin-operated gambling machines. All profits remain with the university except for a license fee. Two other central actors in Iceland are *Islensk Getspá* (Lotto Iceland) and *Islenskar Getraunir* (Icelandic sports pools). Surplus from these lotteries goes to sports and programmes for the disabled. *Getraunir* has a monopoly on sports games and *Getspá* operates games of chance with different charity organisations (Örnberg 2006).

The International Lottery in Liechtenstein Foundation (ILLF) is a private foundation. The ILLF is the only lottery operator in the country. For each Golotto ticket, 5% is donated to charities and projects in Liechtenstein and abroad. In addition, the websites which operate ILLF games also allocate a certain percentage of the revenue to fund charities. For example, 25% of all proceeds from the Plus Lotto are donated to the International Federation of Red Cross and Red Crescent Societies (Hadzi-Miceva-Evans 2010).

In Luxembourg, the national lottery is operated by the 'Oeuvre Nationale de Secours Grande-Duchesse Charlotte', which was originally set up to provide support to veterans of the Second World War (European Lotteries 2011a). This association continues to collect, manage and direct the net revenue from the lottery to beneficiaries that include the National Cultural Fund, the National Solidarity Fund, the Luxembourg Olympic and Sports Committee, the Luxembourg Red Cross, the Luxembourg League for Prevention and Action medico-social, and the Caritas Foundation of Luxembourg (Association of Charity Lotteries in the European Union 2015).

The Santa Casa da Misericórdia de Lisboa lottery, established in Portugal in 1498, is one of the oldest lotteries in the world. For centuries all profits went to the hospital in Lisbon and for many years lottery tickets were sold by long term, but mobile patients as a form of social welfare. Over time other beneficiaries were added (Novamedia 2003). On its website Santa Casa claims to be the second largest landlord in Lisbon, using its properties to support social housing objectives. It also operates a Bank for Social Innovation which offers programmes that support social innovation including a granting programme that provides funding for projects to encourage solutions to social problems, especially to businesses promoted by individuals who are unemployed. Santa Casa also offers a number of vocational training programmes.

Switzerland has two major lottery organisations. The Société de la Loterie Suisse Romande (LoRo) operates in the six French-speaking cantons, while the Swisslos Interkantonale Landeslotterie (SwissLos) is active in the German-speaking cantons, as well as in Ticino and Lichtenstein (Villeneuve 2011). Redistribution of the benefits from LoRo is made according to strict rules stipulating that lottery revenue must be used for charitable projects or for the public interest. In each canton, the money is distributed differently (Villeneuve 2011). The largest share of benefits from SwissLos is directed to the cantons, following a predefined agreement that provides funds to amateur sports, cultural, environmental and welfare projects (Villeneuve 2011).

Conclusions and Suggestions for Future Research

As Smith and Rubenstein (2011) suggest, gambling is not an essential product or service. Unlike core programmes provided by governments like health care and education, gambling is unnecessary. Moreover, when government-run, gambling represents a form of regressive taxation. Despite its portrayal as a 'voluntary' or 'painless' form of tax, a wide body of literature contradicts this perception. Low-income individuals spend a larger share of their income on lottery tickets than those

with higher incomes (Beckert and Luther 2013; Blalock et al. 2007; Grote and Matheson 2011; Oster 2004; Meyer et al. 2009; Papineau et al. 2015). For these reasons, governments across the globe have to varying extents felt pressured by their citizenry to justify their involvement in operating, promoting and benefiting from lotteries. In order to overcome opposition to state sponsored gambling, governments frequently designate profits from lotteries towards specific agencies or good causes.

Whether earmarked funds enhance spending or simply substitute previously allocated revenue is difficult to ascertain and most certainly, measuring the impact of lottery funding is in many respects a subjective exercise. Practices vary dramatically from one jurisdiction to the next. What *is* clear is that government choosing to allow and benefit from lotteries (and other forms of gambling), have a moral obligation to ensure that more good than harm comes from their participation. This means that policy analysts and the government leaders that they advise, need to acknowledge that revenue raised from lotteries is different than other forms of taxation. Adequate funding needs to be directed to programmes aimed at helping individuals and families impacted by gambling. It is also imperative that a public discussion take place about the pros and cons of various policy approaches for how lotteries are operated and regulated and how funds from them are spent. Whether it is more ethical for lottery revenue to flow to government general revenue funds or to earmarked charities, is a debate citizens, through their elected officials should have a say in.

Do state-owned operators operate more ethically and uphold the interest of the public more than private sector operators? That is what governments would like us believe. However, the desire to generate revenue and the mandate to uphold the public interest, mean that governments navigate murky boundaries when they enter the gambling business. Lotteries and other forms of gambling are morally contested industries that polarise public debate. Whether governments choose to delegate operation of lotteries to private sector businesses, public interest agencies or set them up as state enterprises, in order to minimise public concern, the state is obligated to ensure that there is strong oversight and regulatory structures that are transparent, garner public confidence and promote integrity (Smith and Rubenstein 2011).

This chapter provides but a cursory comparison of how state lotteries in Europe are operated and regulated and how revenues are directed. Comparative research of lotteries and other forms of gambling remains underexplored, offering many promising opportunities for relevant and important areas of study. Countries like Croatia, Iceland, Liechtenstein, Luxembourg, Portugal, Slovenia and Switzerland, that have pursued novel approaches with their lotteries, warrant in depth case study research to determine whether they provide lessons that other jurisdictions can learn from. For instance, insight from Kingma and van Lier's (2006) pilot study of the Netherlands, Sweden, the UK, Italy and Hungary could be used to determine if the size, structure and significance of the civil society in various countries corresponds to the degree of effort taken to earmark funds or involve not-for-profit organisations in the operation of lotteries and distribution of revenue. Research could also be expanded to include a look at the revenue directed to good causes in comparison to total lottery revenue collected, the structure and nature of games offered and efforts taken by the state to control, limit and treat the potential harmful effects of participation.

Declaration of conflicts of interest None to declare.

Note

1. According to [World Atlas.com](http://WorldAtlas.com) there are 47 countries in Europe. Their list includes only countries recognised (as such) by the United Nations, not dependencies and/or territories. Regarding England, Scotland and Wales, though considered individual countries, they are all a part of the United Kingdom (UK), and therefore included within the United Kingdom on the list.

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9

The DNA of Bingo: Charity and Online Bingo

Donal Casey

It [charity] ... is in the DNA of bingo. (Commercial bingo operator)

It was our nightmare scenario that someone picked up on the idea that a charity is running a bingo website and ran a massive exposé on why that was such a bad thing. (Charity worker)

Introduction

In 1995, the International Lottery in Liechtenstein allowed the general public to purchase lottery tickets over the Internet (Williams et al. 2012). This is reported to be the first time persons have been able to gamble online. The first Internet bingo website, www.ibingo.com, opened three years later in 1998 (Williams et al. 2012). Placing lotteries and bingo at the birth of online gambling is important for two reasons. Firstly, it foregrounds the prominent role online gambling plays in raising money for good causes

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M. Egerer et al. (eds.), *Gambling Policies in European Welfare States*,

Work and Welfare in Europe, https://doi.org/10.1007/978-3-319-90620-1_9

and broader welfare objectives. Secondly, it defocuses attention away from commercial forms of gambling such as poker, casino and sports book, which have dominated online gambling debates and discussions.

The global online gambling revenue in the European Union (EU) has been estimated to be over €20 Billion (see H2 Gambling Capital Report in Folkspel 2017). Of this, just over €920 Million was attributed to online bingo. While less economically significant than other forms of online gambling, bingo plays an important role for many non-commercial operators with charities and charity lotteries offering online bingo in a number of EU member states. In the UK, the People's Postcode Lottery uses online bingo to fundraise for the Dogs Trust and the Dame Kelly Holmes Trust. Marie Curie, a charity that provides support to persons with terminal illness and their families, offered online bingo in the UK up until 2016. The Health Lottery in the UK, which manages lotteries on behalf of 51 smaller society lotteries that fundraise for local health care causes, raises money through online bingo. In Sweden, online bingo is used as a means of fundraising for good causes by Folkspel, IOGT-NTO and the Swedish Postcode Association. In Ireland, Rehab Lottery is the main charity that uses online bingo to generate revenues. The funds generated by Rehab lottery are used to provide services to persons with disabilities, persons with autism and persons with brain injuries. While exact figures on the share of charitable income derived from online gambling are sparse, the importance of online bingo for charities is emphasised in a report by the Swedish charity lottery Folkspel, whose members include 73 non-profit organisations ranging from the Swedish Red Cross to the Swedish Motorcyclists (Sveriges MotorCyklister). Folkspel's report outlined that online bingo was its biggest digital product and accounted for 71% of its digital revenues (Folkspel 2017). This chapter examines charitable online bingo in the EU and critically assesses a number of distinct challenges that emerge from the game's use as a fundraising mechanism.

Methods and Data

This chapter draws upon research undertaken for "The Bingo Project" (Bedford et al. 2016). The project explored how bingo is regulated in different places and what this understanding can contribute to broader

debates about gambling in law, politics and political economy. The project is situated within law and society research that is interested in rules on the ground and how stakeholders experience regulation. The examination of online bingo in the EU sought to ascertain what happens to bingo—a game that is firmly rooted in the local—when it moves online, and how regulation responds to this shift. The UK, Spain, Italy, Ireland, Denmark, Portugal and Sweden are key EU online bingo markets. However, this chapter focuses on the UK, Ireland and Sweden. The countries were chosen as they emerged from the research as the significant sites of charitable online bingo in the EU.

We collected empirical data from 2015 onwards. We analysed and coded the data with NVivo to draw out key themes and compare across the project's case studies.¹ We employed a range of qualitative methods to collect data. In addition to informal conversations and scoping chats, we conducted 40 semi-structured interviews with online bingo stakeholders in the period June 2015 to March 2016.² Interviewees included regulators, trade associations, lotteries, commercial operators, charities, testing houses, lawyers, software providers, affiliate marketers and responsible gambling consultants. The interviews were recorded and transcribed. We sent transcripts to interviewees to approve and make changes if needed. The interviews were anonymous and confidential. Observations of online bingo sites complemented the interviews. We chose six online bingo sites, ranging from a large operator running proprietary software to small white-label sites operated by charities. These observations gave us a sense of the game's mechanics, the interactions during play, and how regulations impact upon and are experienced by players as they sign up and play. Further, we conducted participant observation at nine industry conferences and events. The documentary analysis used in this study spanned legal cases, policy documents and political debates. We collected CJEU and the EFTA court judgments, Advocate Generals' opinions and data relating to European Commission's infringement proceedings. We used the European Commission's Technical Regulation Information System (TRIS) to identify changes in member states' regulation. We examined policy documents and political debates at the EU level relating to gambling, and more recently, online gambling.

Bingo and Charity

Bingo originated from the Genoese lottery (Depaulis 2016; Reith 2002). States used the lottery to raise revenues, and the lottery spread throughout Europe in the seventeenth and eighteenth centuries (Depaulis 2016; Reith 2002). Towards the end of the eighteenth century, a table game derived from the lottery appeared. The game, 'using individual cardboard layouts and 90 numbered balls drawn from a bag', was called various names such as 'Loto' in France and 'Tombola' in Italy (Depaulis 2016, p. 49). The game was played as 'Housey-Housey' and 'Tombola' in the British Army and Navy (Dixey 1996). In the USA, the game was introduced as Keno, but renamed Bingo in the 1920s (Depaulis 2016). In the following discussion, I sketch the contemporary link between bingo and charity, and explain why many charities use online bingo as a fundraising mechanism.

The connection between gambling, charity and good causes influences gambling regulation in a number of ways. As Campbell argues, '[a] major consequence of charity or "worthy cause" gambling has been to legitimise what was once seen as a vice or a sinful activity' (Campbell 2009, p. 77). The legitimating role of charities and good causes partly constitutes Kingma's 'alibi' model of gambling regulation (Kingma 2008). In the 'alibi' model, gambling remains controversial and is legalised primarily to channel players from illegal markets. Further, private profit is 'discouraged' and gambling revenues are 'allocated to social interests, in terms of welfare, sports and other "just causes"' (Kingma 2004, pp. 49–50). Kingma contrasts the 'alibi' model to the 'risk' model of regulation in which gambling is framed as acceptable commercial entertainment and an important economic sector, and the state's role is to regulate risks emerging from liberalised markets (Kingma 2004, p. 49). It is the 'alibi model' of gambling regulation, Kingma contends, that is aligned with 'the principles of the welfare state' (Kingma 2004, pp. 49–50).

Charitable gambling also provides a 'halo effect' that inoculates it from the negative perceptions associated with commercial gambling (Christensen et al. 2009, p. 217). For example, Fure-Slocum describes how, in 1940s, Milwaukee, a district attorney that refused to issue warrants

for illegal bingo operators or players was accused of putting a ‘*halo of innocence on gambling conducted for religious and charitable purposes*’ (Fure-Slocum 2013, p. 145, emphasis added). Christiansen and colleagues further explain how the ‘halo’ effect produced by charitable gambling led to decreased monitoring by authorities (Christensen et al. 2009).

This juxtaposition of virtue and vice in charitable gambling is discussed by Annette Shiell in the context of nineteenth-century charity bazaars in Australia (Shiell 2012). The bazaars offered not only goods for sale and spaces for socialising, but also lotteries, raffles and games of chance used for charitable fundraising (Shiell 2012). Shiell describes the charity bazaar as a paradox—it encapsulated responsibility and civic duty through its *rason d’être*, which was the provision of support for charitable causes’, while it ‘also encouraged gambling through games of chance’ (Shiell 2012, p. 17). As a ‘key form of charitable gambling’, bingo also ‘directs our attention to ... the complex mix of virtue and vice involved in gambling liberalization debates’ (Bedford 2015, p. 469).

An interviewee exclaimed that charity ‘is in the DNA of bingo’. In many EU member states, and indeed globally, bingo is traditionally associated with charitable fundraising more than private profit. The association between bingo and charitable fundraising, some have argued, has led to greater public acceptance of the game (Moubarac et al. 2010). In this context, Bedford describes bingo as having a ‘liminal status as “not real gambling”, but a site of social interaction, community, and even care’ (Bedford 2011, p. 376). Indeed, Dixey explains that the ‘significance of bingo lies not in the game itself – a simple game of calling numbers and ticking them off, with a prize to the first person to tick off all the numbers’ (Dixey 1996, p. 138). Rather, Dixey argues that ‘bingo is a cipher’ to which different groups ‘attach meaning and content’ (Dixey 1996, p. 138). What value, then, do charities and charity lotteries attach to online bingo and why is bingo viewed as a legitimate means of charitable fundraising?

Despite its roots in state-run lotteries, online gambling is now associated with private profit, international capital and risk. As such, one must ask why is it that charities now use online bingo to generate revenues. One explanation is purely instrumental—online bingo can raise

revenues for charities in the same way as lotteries, raffles and other forms of gambling. However, the more interesting question is why charities perceive online bingo as a legitimate means of fundraising. One answer lies in the perception of the game as a soft, socially acceptable form of gambling that resembles a lottery, and which is recognisable and attractive to potential players.

The launch of the Rehab Lotteries' online bingo site in 2005 gives us a sense of these drivers for charities to expand into online bingo (Parlay Entertainment 2005). The managing director of Rehab Lotteries exclaimed that the site was 'the most serious attempt yet in [Ireland] to use the internet to generate fundraising income for good causes'. He went to emphasise the close connection between bingo and lottery, pointed to the site as 'ideal for the distribution of new and fun lottery products'. Revealing the link between global capital and the third sector in this sphere, the Vice President of Parlay games (a Canadian-based bingo software provider) noted the connection between charities and land-based bingo and that online '[b]ingo will provide an excellent community-based environment to the existing lottery games'.

Interviews with key stakeholders also emphasised the perception of bingo as 'fun', rather than risky, and the perceived similarities between bingo and lotteries as the key reasons why charities exploit online bingo as a fundraising vehicle. When asked why charity lotteries sought to expand into online bingo, a software provider explained that lotteries 'perceive that if they are going to enter e.gaming, it's the softest entry point from lottery through to bingo'. The software provider went on to say that:

The perception of bingo is obviously that it's a softer, more acceptable form of gambling and maybe there isn't the same societal taboo that there might be about casino or table games. So the lotteries think well, if we are going to enter this market we don't want to cannibalise or piss off customers we've already got or create a perception that we are some sort of hard gaming companies. So actually, the way we could do that is going to enter through bingo.

The interviewee explained further that bingo and lottery 'are very similar games' and that bingo 'is a lottery ultimately'.

Nevertheless, an interviewee that worked for a UK charity pointed out that online bingo was still ‘a grey area’ for the organisation. The interviewee explained that there had been discussions within the charity about whether or not online bingo was ‘a justifiable fundraising product’ and ‘whether or not it was appropriate that a charity was doing this’. The interviewee outlined that:

The feeling was that as long as charities are allowed to offer low level, low stakes gambling activities like society lotteries that this was in line with our fundraising. Therefore, anything that provides fundraising return to the charity and then can be used to fulfil the charity’s stated purpose is acceptable.

The interviewee went on to note that it was important that people were already familiar with online bingo given its popularity in the UK. They noted that online bingo ‘is a product that you instinctively already know’ and ‘you are familiar with that from dealing with it in the commercial space’. As such, all that the charity needed to do was convince players to ‘do it for charity’. While the expansion of charities into the online bingo market is legitimated by perceptions of the game, we also need to address the regulatory environments that allow charities and charity lotteries to expand into online gambling markets.

The Regulatory Environment for Charitable Online Bingo in the EU

The Court of Justice of the European Union (CJEU) has recognised that member states may regulate gambling for a number of public interest reasons. However, in *Schindler*, the CJEU noted that using gambling to generate revenues for the state or good causes cannot be the primary objective of a member state’s regulatory framework (*Schindler Case C-275/95*: para 60). Interestingly, the Advocate General took a different approach to the CJEU and stated that liberalisation and competition ‘could hardly fail to have far-reaching consequences for a number of lotteries of long-standing which are a major source of finance for important benevolent and public-interest organizations’.

Despite this, the CJEU has kept with the Schindler decision. In Läärä, the Advocate General noted that '[t]he fact that lotteries may be an important means of financing benevolent ... activities or social and charitable works ... cannot in itself be regarded as an objective justification' (Läärä 1997). In Zenatti, the CJEU reiterated that the contribution that gambling revenues make to good causes could be 'only an incidental beneficial consequence and not the real justification for the restrictive policy adopted' (Zenatti 1998: para 36; Stoß 2007). Nevertheless, the CJEU and the EFTA Court have recognised that gambling services may be restricted to prevent gambling becoming a source of private profit, which can facilitate charitable gambling and is closely linked to Kingma's 'alibi' model of regulation (Sjöberg and Gerdin Case C-447/08: para 45–46; Ladbrokes Case E3/06).

While political discussions at the EU level have ignored charitable bingo, the importance of charitable gambling has been recognised by a number of EU institutions. The European Parliament highlighted that member states have an interest and a right to regulate and control their gambling markets in order to 'protect the culturally-built funding structures which finance sports activities and other social causes in the Member States' (European Parliament 2008, p. 3). In 2010, the Council of the European Union addressed 'The Sustainable Contribution of Lottery and Related Services to Society' (Council of the European Union 2010). The Council stated that lotteries' role in funding good causes should be recognised at the EU level, and importantly, '*[i]n the same manner, certain Member States allow for other games of chance to fund such benefits* (emphasis added)'. The European Commission's Green Paper on On-line Gambling in the Internal Market, published in 2011, also addressed the '[f]inancing of benevolent and public interest activities' (European Commission 2011, p. 30). In response to the European Commission's Green Paper, the Association of Charity Lotteries in the EU—a number of whose members offer online bingo—stressed 'the importance of the private funds from charity lotteries for the civil societies' in the EU and noted that the Association regretted 'the fact that fundraising for good causes is considered a mere ancillary effect in European jurisprudence. For the members of ACLEU, fundraising is their *raison d'être*' (Association of Charity Lotteries in the EU 2011).

Bingo is used by third-sector organisations in a number of jurisdictions situated on the spectrum between ‘alibi’ and ‘risk’ models of gambling regulation (see Casey forthcoming). The UK’s online bingo market, for example, was liberalised with the 2005 Gambling Act. As a result, charities operate under the same regulatory and competitive conditions as commercial operators. By contrast, Sweden and Ireland’s regulatory frameworks carve out online bingo from the competitive market and reserve it for non-profit organisation and/or the state. With no specific online bingo regulation in Ireland, the game is regulated by the Gaming and Lotteries Act 1956. In the 1965 case of *Bolger v Doherty* (Bolger 1970), the Irish Supreme Court held that bingo fell within the definition of lottery for the purposes of the Gaming and Lotteries Act 1956. As such, bingo is categorised as a lottery in Ireland, with the consequence that online bingo can only be provided by organisations run for charitable and philanthropic purposes.³ In Sweden, Lotteries Act 1994 (SFS 1994: 1000) only permits ‘true lotteries’ to be offered by Swedish non-profit associations and to the state monopoly Svenska Spel.⁴ The Lotteries Act 1994 was amended in 2002 to allow these organisations to offer lottery games online (SFS 2002: 592).⁵ Online bingo is categorised as a numbers game in Sweden and defined as a ‘true lottery’ in the Swedish Lotteries Act 1994 (Lotteriinspektionen 2017). While online bingo is seen as economically productive for charities in these countries, charitable bingo ‘is an activity in which the positive and negative aspects are closely intertwined, even simultaneously present’ (Paarlberg et al. 2005, p. 433). With this in mind, I now examine what can be considered the ‘negative aspects’ of charitable online bingo.

The Challenges

I think for a lot of people the online bingo ... is still a grey area, like is it the right thing to do for charity. (Charity worker)

You can argue that online bingo isn’t bingo anyway. (Commercial bingo operator)

Land-based bingo is firmly rooted in national and local environments, and often associated with fun, neighbourliness, friendship, social

interaction and community (Dixey 1996; Bedford 2011; Moubarac et al. 2010). These characteristics of land-based bingo colour perceptions of online bingo. As I noted, to understand why charities use online bingo as a means of fundraising, we must look beyond regulatory frameworks and to stakeholders' perceptions and framing of the game. Despite its perception and its use by charities, online bingo is a gambling product driven and shaped by the priorities of transnational commercial operators and service providers that supply the technological infrastructure such as software and platforms. As McMillen notes:

Whereas gambling in the past was shaped by cultural values of localized communities, contemporary gambling is increasingly commercialized, standardized and global. It has become big business, central to the activities, values and commercial imperatives of national and transnational organizations. (McMillen 2003, p. 50)

In what follows, I identify three key challenges that emerge from charities' use of online bingo as a fundraising mechanism that flows from the dominant commercial logic of the online bingo market.

Charity and Profit, Altruism and Utility

The online bingo ecosystem is controlled and shaped by international operators and service providers that supply the technological infrastructure on which the game is delivered to customers. In discussions in relation to the Dutch charity lottery market, an interviewee observed that lotteries 'end up drawing on private companies anyway to provide them with everything'. In the words of the software provider:

[I]f you look at some of the dominant players in the Dutch market, where there is a very strong lottery culture, they are all looking to work with private operators. Not only to provide them with technology but also to run their businesses, their e.gaming businesses. Because whereas they may be making billions and billions a year in Lottery, they haven't got a clue what they are doing in e.gaming.

Similarly, an interviewee who worked for a UK charity that entered the online bingo market described how, although the charity drove the marketing of their online bingo site, it was a large commercial platform provider that operated the website in return for a percentage of any of the websites gambling revenues.

It is clear that when charities and charity lotteries use online bingo as a fundraising tool, they are reliant upon those that provide this technological infrastructure and can be seen to merely ‘plug in’ to the infrastructure controlled by international capital. However, there is a tension between private profit and capital accumulation and ‘[t]he voluntary redistribution of private wealth for public benefit’ that ‘underpins the history of charity’ (O’Halloran 2012, p. 10). With each node in the online bingo ecosystem extracting profit, a key challenge faced by charities and charities lotteries that employ online bingo to fundraise is how they reconcile this private profit with the ‘ethos of “charity”’ (O’Halloran 2012, p. 32).

Speaking in the context of gambling and charity, O’Halloran observes that ‘[i]t is an association that favors utility over altruism’ (O’Halloran 2012, p. 59). The substitution of utility for altruism as a motivation was echoed in interviews. Indeed, a person that worked for a UK charity that entered the online bingo market explained that their charity online bingo site was run ‘exactly’ like a commercial online bingo site. Further, they noted that the goal of the site was to attract those that were not interested in giving to charity. In the words of the interviewee:

For the online bingo it is explicitly to engage with an audience of people who are not at all that interested in giving to charity as a specific thing, but would be interested in doing something they already do, but for charity rather than not.

Charities use of online bingo to fundraise poses a particular challenge because ‘[i]n terms of the “gift relationship”, it has to be conceded that the altruism quotient is at least diluted for both parties when commerce intervenes’ (O’Halloran 2012, p. 42).

The Changing Nature of the Game

Sites of gambling, Reith explains, can be understood by ‘delineating the categories of skill and chance, the rate of play of a game, the player’s relation to the game, the spatial organisation and the social integration of the site, and the socioeconomic constitution of the players themselves’ (Reith 2002, p. 93). Like land-based bingo, online bingo attracts more female players than other forms of online gambling (Bedford et al. 2016). However, online bingo players tend to be younger than those that play the land-based game. In contrast to land-based bingo that is played in brick-and-mortar premises, online bingo can be seen as a diffuse site of play, with a non-interactive relation between the players and the game. Further, in online bingo, any form of skill is removed as players do not have to mark cards or call ‘Bingo’ as cards are automatically marked and winners automatically announced. However, I wish to focus upon the mechanics of online bingo, and in particular, the rate of play.

The rate of play refers to the number of gambles that take place during a period of time (Reith 2002). Rate of play or event frequency is a risk factor for problem gambling, with some arguing that ‘forms of gambling that allow the opportunity for rapid cycles of stake, play and determination having particularly great potential for causing problem gambling’ (Orford et al. 2003, p. 82). Indeed, ‘some games are structurally more likely to encourage repeat play than others’ (Reith 2002, p. 95). Compared with land-based bingo, online bingo has a much faster rate of play. A clinical psychologist interviewed as part of the project categorised online bingo as a high risk form of gambling given its rate of play. He explained that:

I think one part is of course the speed of the gambling form, where a lot of online gambling forms are kind of quick ones, online poker, online slots, other online casinos, but also online bingo.

When discussing the perceived risk of problem gambling associated with online bingo, regulators likened the mechanics of online bingo to casino games. One regulator explained that they ‘didn’t significantly distinguish between online bingo and online casino products, because most of the characteristics are the same’. Another regulator noted that:

[Online] bingo is considered as a casino game.... That way it's still a concern. It's not being considered as an innocent game. That's the difference from the land based game where everybody knows that elderly people like to play bingo at hotels and so on.

There is little published evidence on the relationship between problem gambling and the structural characteristics of online bingo (Stead et al. 2016). However, statistics published by GamCare, a UK gambling addiction charity, show that 2% of the 25,738 calls to the organisation in 2014/2015 and 1% of the 24,249 calls to the organisation in 2015/2016 related to online bingo (GamCare 2016, p. 6). Although low compared to other forms of gambling, these figures are much greater than the number of calls related to brick-and-mortar bingo (GamCare 2016, p. 6). With this, we must then at least question the perception of online bingo as a 'softer', less risky form of gambling—a perception acquired from the land-based game—and the decision of charities to use a potentially harmful form of gambling as a means of revenue generation.

An Alibi for Side Games and Slots?

During our research, many commercial operators and regulators spoke about the importance of slots and other side games for online bingo operators. A software provider explained that:

It's [slot machines] critical in most instances. I think it's where the money is made. ... Most companies actually and we are included operate bingo pretty much at a loss. So bingo itself does not make money. It just sits there and it draws customers into play bingo and it's community-led and it's experiential and then they go and they play slots around the bingo and that's where the money is made.

A land-based bingo operator further argued that 'online bingo is just a portal and a gateway into harder forms of gambling online'.

Given that most commercial operators use slots as a means to generate revenue, charities that engage in online bingo must make the decision as to what types of products they are going to use to make money,

i.e. the product mix. An interviewee from a UK charity expressed caution as to the types of side games offered on their online bingo site:

We kind of do switch on and off any of the specific promotional games that we don't want. There are some long running games that we don't have. Anything with a casino feel, even if it is based on the same actual game mechanics as anything else.

However, online bingo sites run by charities and charity lotteries in the UK, Ireland and Sweden all offer some form of side games such as instant scratch games and slot machines. For example, the UK Peoples Postcode Lottery actively promotes slots and other side games on its online bingo site. The site asks customers to:

Play our fantastic Instant Scratch and slot games and start winning today!
You can play these fantastic games while you play bingo too, so the fun never stops.

The mingling of these different forms of gambling on charity online bingo sites not only challenges how we perceive charitable online bingo, but also opens up the potential for bingo to be an alibi or camouflage for other forms of riskier gambling.

Conclusion

There has been very little research on charitable gambling. Despite this, the use of online bingo by charities and charity lotteries across many EU member states emerged as a key theme from 'The Bingo Project' (Bedford et al. 2016). For some, online bingo is perceived as a familiar, 'soft' and less risky form of online gambling—a perception inherited from the land-based game. This perception drives the game's acceptance as a means of charitable fundraising. Nevertheless, concerns with harm need to be reassessed as bingo moves online. The game's rate of play has increased in the online environment, while online bingo websites are used as vehicles to cross-sell other forms of gambling.

More fundamental, however, is the extent to which the foundations of altruism and public benefit that underpin charities are eroded by the instrumental nature of gambling transactions and the profit that accrue to private commercial gambling services providers. It is this jarring of private profit, harm and utility with altruism and public benefit that is at the core of the normative challenges posed by charitable online bingo.

Looking forward, we must ask what role online bingo will play in charitable fundraising in the future given the growing liberalisation and commercialisation of EU online bingo markets (see Casey forthcoming). In 2013, the Irish government published the Gambling Control Bill which sought to regulate online gambling for the first time in Ireland and proposed opening up the online bingo market to commercial operators (Department of Justice and Equality 2013). In March 2017, the governmental inquiry on Swedish gambling regulation recommended the liberalisation of the Swedish online gambling market, including online bingo (see Hallstedt 2017). In the Netherlands, the Remote Gambling Bill proposes to liberalise the Dutch online gambling market. While the Remote Gambling Bill proposes to reserve lotteries for the non-profit sector, commercial operators will be able to offer 'short odds' bingo on the liberalised market (The State Secretary for Security and Justice and the State Secretary for Finance 2014; Roelofs and Littler 2014). The trend towards the liberalisation and commercialisation of online bingo markets raises questions about whether charities will be able to compete on liberalised markets, how charities will compete and whether EU member states too are questioning the role online bingo should play in charitable fundraising.

Declaration of Conflicts of Interest Funding for the research presented in this chapter was provided by the UK's Economic and Social Research Council (Grant ES/J02385X/1, A Full House: Developing A New Socio-Legal Theory of Global Gambling Regulation). The ESRC has not placed any restrictions on publishing other than that they be acknowledged as a source of support. I have paid to attend industry-sponsored events. I have not received any direct or indirect payments from the gambling industry or any other groups substantially funded by gambling to conduct research or to speak at conferences or events. I have no other conflicts of interest to declare.

Notes

1. NVivo is a software package used for qualitative data analysis. The software facilitates the organisation of qualitative data, such as interview transcripts, and allows researchers to code this data in order to identify cross-cutting themes.
2. The stakeholders we spoke with during the informal conversations and scoping chats included regulators, operators and affiliate marketers.
3. Bolger v Doherty [1970] IR 233.
4. Law on Lotteries (lotterilagen) (1994:1000), SFS 1994, No. 1000: Section 15 and Section 45.
5. Law (2002:592) Amending the Law on Lotteries (lotterilagen) (1994:1000), SFS 2002, No. 592.

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Part III

Legislative Changes



10

Why Restrict? Seven Explanations for the Electronic Gambling Machines Monopoly in Norway

Anita Borch

Introduction

Despite not being an EU member, Norway follows EU internal-market laws ensuring the free movement of people, goods, services and capital through being a signatory to the EEA Agreement. One exception concerns the national gambling market. The main argument for keeping national-level regulation of the gambling market is that restrictive measures aim to protect consumers from gambling-related problems and therefore serve a legitimate public interest (Planzer et al. 2014). Due to this regulatory approach, two opposite tendencies were observed in Europe: a process of convergence towards a common policy standard (Adam and Raschzok 2014) versus regulatory practices that vary widely, across both countries and particular games (Swiss Institute of Comparative Law 2006). Norway is an illustrative example of the latter case. Unlike most European countries, including its ‘social democratic’

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M. Egerer et al. (eds.), *Gambling Policies in European Welfare States*,

Work and Welfare in Europe, https://doi.org/10.1007/978-3-319-90620-1_10

brother Denmark (Esping-Andersen 1990, 1999), Norway restricted its gambling policy by monopolising its national market for Electronic Gambling Machines (EGMs) in the 2000s (Jensen 2016). In this chapter, I first introduce seven possible explanations for this ‘opposite move’ (e.g., Jensen 2016; Borch 2015). After briefly describing methodology, I analyse how these explanations correspond with stories told by 13 stakeholders who were directly or indirectly involved in the monopolisation process (for a description of this process, see Box 10.1).

Box 10.1 The Norwegian monopolisation process

1995: After lobbying from the Sports Association and private operators, the Ministry of Justice proposes that not only humanitarian organisations but also sports clubs and other organisations of public utility can offer EGMs and that private operators can run EGMs. Parliament passes the proposal. Machines became accessible ‘everywhere’—in groceries, kiosks, restaurants, etc.—where the age limit of 18 years might be hard to control. Problem gamblers increase in number.

1998: The Ministry of Justice proposes restricting the EGM market by reducing their accessibility and potential harm. Parliament returns the proposal to the Ministry with an order that regulation on EGMs should be amended to maintain licensees’ revenue from machines. The Ministry arranges several meetings with licensees and private operators, resulting in an amended proposal that is, per them, nothing more than a codification of practices existing in the market.

2001: Responsibility for regulating private lotteries, bingo and EGMs is transferred from the Ministry of Justice to the Ministry of Culture and Church Affairs.

2002: The Minister of Culture and Church Affairs, Valgerd Svarstad Haugland, proposes restricting the EGM market. Comments are solicited. Licensees and private operators reject the proposal. The minister decides to pursue EGM-market monopolisation to be run by Norsk Tipping, as monopolisation will make the market easier to regulate and control. The minister meets with the 10 socially beneficial and humanitarian organisations (10H) in Norway: the Red Cross, the Norwegian Society for Sea Rescue, the Norwegian Cancer Society, the Norwegian Association of Disabled, Blindeforbundet (association for visually disabled people), the Norwegian people’s aid, Landsforeningen for hjerte- og lungesyke (association for people with heart and lung diseases), Save the Children Norway, the Norwegian Refugee Council and Nasjonalforeningen for folkehelsen (association for public health). The 10H are offered 18% of Norsk Tipping’s surplus if they accept monopolisation, which they do.

2003: Parliament passes a proposal for EGM-market monopolisation.

2003–2007: Norwegian EGMs Operators' Association (NOAF) successfully sues in Oslo Town Court against monopolisation. The Ministry of Culture and Church Affairs appeals to the Court of Appeals and wins. The EFTA Surveillance Authority (ESA) brings the case to the European Free Trade Association Court (EFTA Court), and NOAF appeals to the Supreme Court. Both the EFTA Court and the Supreme Court accept monopolisation in 2007. The Ministry's official justification for monopolisation was primarily to reduce societal harm caused by EGMs.

2006: Trond Giske, who replaced Svarstad Haugland as minister at the Ministry of Culture and Church Affairs (now the Ministry of Culture), bans banknote acceptors on EGMs. Problem gamblers decrease in number.

2007–2010: Old EGMs are replaced by Norsk Tipping's Multix machines. The number of problem gamblers continues at a lower level or decreases further.

2010– present: Norsk Tipping launches new platforms and games, such as Belago machines (bingo) (2011), EuroJackpot (2012), 60 online games (2014), and Nabolaget (2015). Some online games are similar to those offered by the old EGM regime.

(Borch 2015, pp. 47–48)

Seven Theories of the Opposite Move

Norway's registered gambling market includes both public and private providers. Public providers are Norsk Tipping and Norsk Rikstoto. Norsk Tipping offers sports betting, national lotteries, online games (including casino), EGMs and scratch cards. Norsk Rikstoto offers horse race betting. Private actors primarily offer bingo, lotteries and shipboard gambling. In addition, unregistered gambling providers exist; they are basically private operators registered abroad offering online gambling services. Net gross turnover in 2015 from the four types of providers was NOK 6.8 billion; 1.2 billion; 1.3 billion and 1.3–1.6 billion,¹ respectively. In total, providers distributed NOK 5.5 billion. Most of the money was distributed to sports (51%). Amongst other receivers were culture (12%), horse betting (10%), humanities (8%) and health (8%). Approximately, 4.2 billion of the money was distributed by Norsk Tipping (Meld. St. 12 2016–2017). In 2015, Norsk Tipping's market share was 75% (Lotteri- og stiftesestilsynet 2015), an increase of 52% from 2006 (Lotteri- og stiftesestilsynet 2006), the year before the state company obtained sole rights to the EGM market.

Although some of the increase may have other causes than EGM-market monopolisation (e.g. Norsk Tipping's launching of casino, bingo and scratch cards on the Internet and cell phones in 2014) (Meld. St. 12 2016–2017), the change in market shares clearly shows Norsk Tipping emerged from this monopolisation process as the supreme economic winner. To what extent economic reasons explain EGM-market monopolisation is debatable. Per previous literature on Norway and its opposite move, seven explanations (E) of the monopolisation process are presented below. As I will explain in the conclusion, the explanations are not mutually exclusive; rather, they create a cluster of overlapping explanations partially supplementing each other.

E1: Welfare Society. Using the seminal theories of Esping-Andersen (1990, 1999), Norway's opposite move may be the result of its 'social democratic' welfare system, which tends to put social responsibility on the state, unlike 'conservative' (e.g. Germany) and 'liberal' (e.g. the UK) welfare systems, which tend to put it on civil society (non-governmental organisations, the church and the family) and the market, respectively (Borch and Roos 2012). Gambling tends to be seen as a social responsibility in Norway and as an individual responsibility in the UK. One criticism of this theory is that it explains why Norway differs from the UK, which has liberalised their markets in recent years, but not why Norwegian gambling policy differs from those of Denmark and Sweden. Norway, Denmark and Sweden have traditionally shared the same political system and gambling policy. However, in recent years, Denmark has adopted one of the most liberalised gambling regimes in Europe (Jensen 2016, p. 120), and Sweden will soon liberalise its gambling market (Cisneros Örnberg and Hettne, this volume). Since Scandinavian countries are part of the same social–democratic welfare system, Jensen (2016) argues the different gambling policies cannot reflect different welfare systems.

E2: Oil Wealth. Another explanation of the opposite move could be that the Norwegian state, due to its oil wealth, could forego the extra revenue that liberalisation of the national gambling market would have caused. Jensen (2016) has also criticised this explanation because it fails to meet two conditions: first, that the Norwegian state continued launching big-prize lotteries about 20 years after oil production became

profitable indicates the state needs the extra gambling revenue liberalisation may provide. Second, although Norwegian oil production has been profitable (in 2016, it accounted for approximately 10% of the state's income (Regjeringen. no. 2017a), huge parts of this profit are put into the government's Pension Fund (i.e., the 'Oil Fund'). To avoid overheating of the economy, only 3–4% of the fund can be spent annually. Jensen maintains that although a considerable amount, it is insufficient to satisfy Norwegian voters. Instead, most believe the state spends too little on core welfare services. Norwegian politicians would therefore have been able to make good use of the additional gambling revenue. An argument against Jensen's conclusion is that it is based on the notion that EGM-market liberalisation would increase the state's gambling revenue. Finnish reports indicate, however, that monopolies are not necessarily more restrictive than other systems (Planzer and Wardle 2011; Planzer 2014; Marionneau and Järvinen-Tassopoulos 2017). For example, NAO (the Swedish National Audit Office) reported in 2012 that Svenska Spel seems to have used its monopoly position as a protective layer against competition instead of tackling problem gambling (NAO 2012). It is also a fact that monopolies market their games. Nevertheless, justifications for EGM-market monopolisation in Norway were formulated when liberalisation was generally *considered* to be less restrictive than monopolisation. As I will come back to in E6, a general fear was that EGM-market liberalisation would lead to an additional increase in the number of problem gamblers, which then was regarded as 'out of control' (Borch 2015).

E3: Tax Revenue. Jensen (2016) suggests a third explanation for why the Norwegian state did not decide to liberalise the national EGM market, namely that Norway, unlike Denmark, had little fiscal interest in promoting gambling due to a technocratic—and at that time entirely uncontroversial—decision made in Norway in the early 1990s about what part of the state budget should finance public R&D. His argument: in 1990, the Norwegian state's gambling revenue stood at 38.9% (Ot.prp. no. 52 04/03/1992: 6). In addition, there was a 28% tax on prizes bigger than NOK 10,000 won on games provided by foreign operators. At that time, big-prize lotteries had been very successfully running for five years, while online gambling was still over the horizon.

Sport clubs began to complain their revenue share was too small and unpredictable because of natural fluctuations in turnover (Ot.prp. no. 52 04/03/1992: 4).

In 1992, the government therefore decided to streamline gambling legislation to help sport clubs and reduce administrative costs by pooling revenue from sports betting and lotteries and dividing the money equally between sports, culture and research. Previously, 33% of the state's tax revenue from gambling went to research. Since this gambling revenue was lower than the 33% of total revenue that research would have gotten from all gambling activities, the state in return eliminated the share that it previously got from taxes. It then compensated for this loss by moving some public research spending from the national budget into the gambling budget. As the state no longer 'depended' on tax revenue from gambling to finance research and other causes, Norwegian politicians were free to prioritise health and social issues about one decade later, unlike their Danish colleagues.

E4: Revenue Distribution. Jensen's (2016) explanation (E3) suggests that the Norwegian state restricted the market due to a lack of fiscal interest. Norsk Tipping's increased market after monopolisation shows, however, the Norwegian state profited from restrictions in the 2000s. Restrictions may have an economic explanation, as Jensen suggests (2016), but not necessarily the one he eventually suggests. In a previous report (Borch 2015), I explained how the monopolisation process was initiated and partially led by Norsk Tipping. Indeed, the state company apparently initiated monopolisation as early as 1998, when problem gambling may have been anticipated but not empirically explored.² Therefore, restriction of the gambling market was an attempt to ensure and maybe increase the state's gambling revenue on behalf of the Sports Association, the Red Cross, Redningssekskapet and other organisations receiving Norsk Tipping's gambling revenue.

E5: Harm Reduction. A fifth explanation is that restricting the gambling market was conducted to reduce the number of problem gamblers related to EGMs. In 1986, Norsk Tipping launched Lotto. Lotto was extremely successful and stole customers from societal organisations. Simultaneously, EGMs could be offered only by humanitarian organisations. Some such organisations ran machines themselves, but others

had private operators running machines for them. To compensate for lost customers, in 1995, societal organisations were also allowed to offer EGMs—also run with or without private operators' help (Borch 2006, 2012). Consequently, EGMs became available 'everywhere'—in groceries, kiosks, etc. Gross turnover from them increased dramatically, and Norsk Tipping, which then represented the nation's expertise on gambling, warned the government about societal harm it may cause, including for problem gamblers and their families. The monopolisation process started, in other words, in a political climate of increasing awareness and concerns about EGMs and their potential social impact (Borch 2006, 2012). When Norsk Tipping's machines replaced banned EGMs in 2007, the percentage of gamblers with problems related to EGMs declined (Pallesen et al. 2013). In this respect, monopolisation is regarded as greatly successful (Borch 2015). It should be noted, however, that some of the reduction may have been a continuation of a tendency started in 2006, when banknote acceptors on EGMs were banned (Borch 2015). It should also be noted that some problem gamblers began betting on sports and gambling on unregistered games instead (Bakken and Weggeberg 2008). Per the Canadian Problem Gambling Index (CGPI), 1.6% of Norwegians report some kind of gambling-related economic problems. Nearly 3% report that gambling may cause problems or that they need treatment or other assistance (Meld. St. 12 2016–2017). How these results relate to the corresponding percentage of problem gamblers elsewhere is uncertain. While one study indicates the percentage of problem gamblers is lower, another suggests it is higher in Norway than elsewhere in Europe (Meld. St. 12 2016–2017).

EG: Regulation Power. A sixth explanation is that EGM-market monopolisation was necessary for the government to regain its regulatory power over a market that was 'out of control'. In 1998, three years after EGM-market liberalisation, the Justice Minister, Odd Einar Dørum, made the first attempt to restrict the EGM market. His suggestion was rejected by Parliament after intense lobbying from licensees and private operators. The next attempt, in 2002, was by the Minister of Culture and Church Affairs, Valgerd Svarstad Haugland. When it was also counteracted by licensees and private operators, she decided

to pursue a monopoly. To increase the likelihood of having monopolisation accepted by Parliament, she reached agreement with the 10H (see Box 10.1) that profited most from the EGM market and, thus, had most to lose. To compensate for their loss, the 10H was offered 18% of Norsk Tipping's surplus if it accepted monopolisation. The distribution of 18% was based on licensees' income from the EGMs, meaning organisations that had benefited most from the EGMs were those who caused most societal harm. The agreement has been criticised, not least by previous private operators that lost all their income, and by societal and humanitarian organisations that had refrained from offering EGMs due to the societal harm they could cause. However, without this agreement, proposed EGM-market restrictions would unlikely have been passed by Parliament. Licensees' power was simply too strong. The theory explains why restrictions took the form of monopolisation, not the form of restrictions on the existing market (e.g. reduced numbers of EGMs, an increased age limit and/or a decrease of sales locations).

E7: National Control. The last explanation addressed here is that Norway's government was interested in maintaining the national state's control of the gambling market. Whereas Denmark is an EU member who follows EU laws, Norway twice refused EU membership, in 1972 and 1992. When Norway's Parliament passed a proposal for monopolising the Norwegian EGM market in 2003, the Norwegian EGMs operators' association (NOAF) successfully sued in Oslo Town Court. The Ministry of Culture and Church Affairs successfully appealed in the Court of Appeal. Next, the EFTA Surveillance Authority (ESA)³ sued in EFTA Court. Motivated by this event, NOAF appealed in Norway's Supreme Court. Both the EFTA Court and the Supreme Court accepted monopolisation in 2007. Although Norway belongs to EFTA, public resistance towards following EU legislation that may be against national interests is most likely stronger in Norway than in Denmark and other 'true' EU members. Broadly speaking, therefore, restriction of the gambling market that occurred in the early 2000s is a telling example of a small state's fight for its right to make national political decisions in a globalised world. However, national control can hardly be the only motivation explaining EGM-market monopolisation; it should be seen as an additional factor triggering other social and/or economic motives.

As described, several possibilities exist for why Norway's government, unlike Denmark's, restricted its national gambling market. This study's methodology is briefly outlined before the explanations are scrutinised.

Methodology

The sample includes 13 representatives from different types of actors involved in the EGM market from the late 1990s to the mid-2000s. Table 10.1 shows representatives and their types of actors.

As Table 10.1 shows, the sample comprises representatives from government, bureaucracy, national authorities, sports organisations, humanitarian organisations, private operators, local owners, therapists, self-help groups, interest groups, researchers and the press. Most types of actors are represented by only one person. However, the Sports Association is represented by two because the first person interviewed had not been part of the early phase of monopolisation. I also interviewed another private operator known for his critical views on the monopolisation process and its consequences.

Informants were contacted via email or telephone in January 2015; all willingly participated in interviews. Five were face-to-face interviews, and the remaining by telephone.

All interviewees were asked to tell their stories as freely as possible, from the first time they heard about monopolisation to when monopolisation began, and its possible consequences. The researcher taped and transcribed all interviews. An interview summary was subsequently sent to the interviewee for comment, revision and approval. After approval, a report of the summaries, entitled 'The monopolization of the Norwegian slot machine market', was published in 2015 (Borch 2015). Using this report, I identified and classified explicit explanations of the monopolisation (Table 10.2). Explanations that seemingly do not fit any described above (Explanations 1–7) are classified as 'other'. Because the analysis covers only explanations made explicit and approved by interviewees, they cannot be regarded as reflecting 'true motives'. Since interviewees represent different public interests, their statements must instead be considered as their official versions of the monopolisation process—versions

Table 10.1 The sample

Name	Occupation and workplace	Type of actor
Valgerd Svarstad Haugland	Politician of the Christian Democrats (KrF). Minister of Culture and Church Affairs, 2001–2005.	Political minister
Rolf Sims	Senior legal adviser, Ministry of Culture. Worked in the bureaucracy addressing gambling political questions more than 20 years.	Bureaucrat
Atle Hamar	Director, Norwegian Gaming Authority	Governmental authority
Jan Peder Strømslid	EVP Strategy and Business Development, Norsk Tipping	State-owned gambling business
Inge Andersen	Secretary-General, the Norwegian Olympic and Paralympic Committee and Confederation of Sports (NIF)	Sports association
Per Tøien	Head of Communication and PR, Norwegian Olympic and Paralympic Committee and Confederation of Sports	Sports association
Bernt Apeland	Former advisor and, later, communications and fundraising director for the Norwegian Red Cross	Humanitarian organisation
Ottar Dalseth	President of EGMs Operators' Association (NOAF) (2002–2007)	Private operator/association
Anita Fjærem	Worked at the Ministry of Justice until 2000. Later started a private business offering bingo. Has also been a NOAF board member.	Private operator/association
Ingjerd Meen Lorvik	Senior adviser, specialist in clinical psychology, Borgestadklinikken and head of the Norwegian Association on Gambling and Gaming Problems (NFSP).	Treatment/interest group
Lill-Tove Bergmo	Head of Gambling Addiction Norway (Previously Relatives of Gambling Addicts [PTS]).	Self-help group/interest group

(continued)

Table 10.1 (continued)

Name	Occupation and workplace	Type of actor
Ingeborg Lund	Researcher, The Norwegian Institute for Alcohol and Drug Research (SIRUS)	Researcher
Jon Inge Hansen	<i>Verdes Gang</i> (VG) journalist	Journalist

which can be exposed to the public's critical eye. Motives are complex and not necessarily brought up to the surface. Hence, although motivations are not explicitly confirmed in interviews, it cannot be ruled out that they played a role in the monopolization process.

Results

Table 10.2 shows if and how stakeholders, implicitly or explicitly, explained the government's market monopolisation decision.

As Table 10.2 shows, all participants except the researcher explicitly stated at least one reason why the government decided to monopolise the market.

Harm Reduction

The government's official justification for monopolisation, to reduce societal harm caused by EGMs, was confirmed by the Ministry of Children and Church Affairs and one private operator:

I first heard about problems related to EGMs when I was a minister in the Ministry of Children and Family Affairs from 1997 to 2000. Relatives contacted me and told me that their spouse or child had problems with these machines and that the family's situation worsened as the problems escalated. When I became the Minister of Culture and Church Affairs, for socio-political and strategic reasons, Norsk Tipping examined the opportunity to establish a monopoly in the slot machine market. (Valgerd Svarstad Haugland, political minister, see Borch 2015, p. 13)

Table 10.2 The sample's explanations of monopolisation

	E1: Social welfare	E2: Oil wealth	E3: Tax revenue	E4: Revenu e distrib ution	E5: Harm reducti on	E6: Regulat ion power	E7: Nationa l control	Other
Minister								
Bureaucrat								
Governmental authority								
State-owed gambling business								
Sports association								
Sports association								
Humanistic organisation								
Private gambling operator								
Private gambling operator								
Treatment /interest group								
Self-help group/interest group								
Researcher								
Journalist								

Dark Grey = Primary explanations

Light Grey = Secondary explanations

The monopoly was justified by the concern for problem gamblers. (Anita Fjærem, private operator/association, see Borch 2015, p. 13)

The only stakeholder who explicitly denied the official justification was the other private operator. Per him, the Ministry of Culture and Church Affairs had only economic reasons for monopolising the market. The statement was explained by his account of an occurrence at a Brussels meeting with the ESA:

The official intention behind the monopoly is to protect the population against gambling problems. However, per Einar Bull, president of ESA from 2002 to 2006, Valgerd Svarstad Haugland told him, in his office in 2005, she did not want to regulate the existing market, because she wanted the state to have the money and control the market. It was more important for her to get rid of the private market than it was to protect Norway's population. (Ottar Dalseth, private operator/association, see Borch 2015, pp. 28–29)

The private operator argues the government's true motivation for monopolisation was not harm reduction but economy and power.

Revenue Distribution

Rather than seeing monopolisation as resulting from purely social-political or economic interests, most interviewees saw it as resulting from both harm-reduction and economic motives. The self-help group/interest group representative, Lill-Tove Bergmo, believes social-political concerns were prioritised:

I like to believe that the monopoly was primarily passed for reasons of prevention and harm reduction, although I do see that there might have been some economic motives as well. Gambling is big business, and the state wanted to raise money for the voluntary sector. (Lill-Tove Bergmo, self-help group/interest group, see Borch 2015, p. 39)

Another treatment/interest group representative, Ingjerd Meen Lorvik, believes, however, economic motives were predominant:

On one hand, Norsk Tipping has its own department aimed at preventing gambling problems. On the other hand, the company aims to provide money for the voluntary sector. Responsibility versus money is its dilemma. So far, the aim of providing money is prioritised, mainly because the Sports Association constantly, and apparently without constraints, demands more money. (Ingjerd Meen Lorvik, treatment/interest group, see Borch 2015, p. 37)

As this response indicates, the Sports Association is an important driver of change in the Norwegian gambling market by putting economic pressure on authorities and Norsk Tipping. Since 1995, its share of Norsk Tipping's surplus increased from 33 to 64% (Borch 2015; Regjeringen.no. 2017b). A recent argument for increasing its share comes from the Betsson Group (2014), suggesting that the Sports Association needs more money to finance the maintenance backlog of buildings and facilities, which in recent decades Norsk Tipping financed. Today, the maintenance backlog increases 4.5 times quicker than the allocated gambling fund, meaning the need for Norsk Tipping's surplus will increase in the future. If this need is unmet, people will be prevented from participating in sports. Although the

argument comes from a non-academic source, it indicates the current distribution of Norsk Tipping's surplus has some unfortunate consequences that must be addressed soon.

Norsk Tipping's concern for the voluntary sector indicates, per Atle Hamar, that monopolisation had economic reasons:

It was Norsk Tipping that had initiated the monopoly. The slot machine market represented a big market, and the company wanted to channel the money into the voluntary sector. (Atle Hamar, governmental authority, see Borch 2015 p. 19)

Private operators also argue monopolisation had economic reasons. Anita Fjærem told about a greedy state immediately after EGM-market monopolisation changed data bingo–market rules to move turnover from private operators (offering data bingo) to Norsk Tipping (offering Belago):

Authorities did not want to do that [restrict the private bingo market]. Instead, they banned our bingo machines in 2010 and introduced Belago in 2011. Now bingo halls offered two games: data bingo and Belago. Private local owners offered data bingo; Norsk Tipping offered Belago. Local owners got 45–50 and 35 per cent of these games, respectively. Unlike EGMs, data bingo is not a one-to-one game but a game where many players participate in each drawing, making it a very slow game. To totally kill the game, the government decided, along with other restrictions on this game, that there should be a 30-second break between each drawing. Obviously, turnover from data bingo decreased immediately. (Anita Fjærem, private operator/association, see Borch 2015, pp. 35–36)

Anita Fjærem portrayed a powerful state that knows what it wants – and takes it. An alternative explanation is that the Ministry of Culture and Church Affairs wanted to reduce harm related to bingo machines. After monopolisation, bingo machines were the only EGMs not monopolised that still caused harm. The quote above nevertheless illustrates private operators' position in the monopolisation process. From their viewpoint, monopolisation was unnecessary since licensees and private operators could have imposed similar restrictions.

Increase Regulatory Power

Per E6, a failed attempt to restrict the market possibly motivated monopolisation:

Before the proposal and enactment in Norway's Parliament, several unsuccessful attempts were made to regulate the market. Important to understand is that monopolisation was the last, not the first solution. (Rolf Sims, bureaucrat, see Borch 2015, p. 15)

The many failed attempts explain why the Ministry of Culture and Church Affairs wanted increased control of the EGM market. Monopolisation would make the EGM market easier to regulate—the third significant explanation for monopolisation.

Norsk Tipping's new machines would be put into a digital system so we didn't need to go to each machine but could regulate them simultaneously. If we wanted to change the market, we merely needed to push one button. (Valgerd Svarstad Haugland, government minister, see Borch 2015, pp. 13–14)

Indeed, as private operators pointed out, the Gaming Authority also could have digitally controlled licensees' games in the same way Norsk Tipping controls their games today. Indeed, in 2002, when the Ministry of Culture and Church Affairs decided to pursue monopolisation, the Gaming Authority was examining the possibility of regulating the existing EGM market by an online control system similar to Norsk Tipping's current system:

When we were informed [about the monopoly], we had been working with a project aiming to develop an online control system for the existing slot machine market. This project was, of course, closed when the new model was launched. (Atle Hamar, governmental authority, see Borch 2015, p. 18)

However, per the Ministry of Culture, an online system regulated by the Gaming Authority would have been less efficient because the process would have taken longer if licensees or private operators resisted change:

A monopoly model makes it easier to regulate and supervise the market. A market regulated through licensing, with more participants, would require public consultations to amend regulations—a process that can create disagreements and, therefore, be time consuming. Removing games that, for example, create problem gambling would, therefore, take more time. State ownership of Norsk Tipping allows for quicker amendments to regulations and the swift removal of games if necessary. Although Norsk Tipping will generate profit for the voluntary sector, the company has a stronger focus on the socio-political side of gambling, which is well embedded in their organisation. (Rolf Sims, bureaucrat, see Borch 2015, p. 18)

Social Welfare and National Control

Interviewees sporadically mentioned other explanations. The journalist seemingly made a ‘social welfare’ argument, claiming the gambling policy practised in the 2000s was a disgrace for a social democracy like Norway:

I spoke with two other journalists about this, and our common understanding was that there were some people who made enormous sums out of other people’s tragedy. We could not understand how an industry could develop that far, and over such a long period of time, without anybody doing something about it. Some of these people expanded from nothing into being very wealthy, which was so little ‘Norwegian’ so un-social-democratic. It was all explained by the mythic constellations between gambling and voluntary organisations that turn gambling money into something positive, something that funds sports grounds, research, etc. (Jon Inge Hansen, journalist, see Borch 2015, p. 43)

A gambling policy allowing a small group of private operators and the voluntary sector to get rich at the expense of vulnerable groups seemingly broke with this journalist’s national identity (i.e. what it meant to live in a social–democratic regime like Norway).

The press’s increased criticism of national gambling policy cannot be seen independently from the grassroots movement pursuing a national EGM ban in Norway. The grassroots movement was initiated by Lill-Tove Bergmo in the mid-2000s while her husband recovered from problem gambling.

In Lyngen municipality, where I live, we managed to have slot machines removed from the market in 2004. In 2005, I became politically active to influence other municipalities to do likewise. When we managed to make Lyngen slot-machine free, we also managed to raise a grassroots movement against the system. In 2006, there was great focus on slot machines in Norway. Cities and regions competed to be first to totally ban slot machines. More and more people were engaged in this process... Simultaneously, politicians pursued monopolisation. Although we did not pursue monopolisation, we contributed to this process by establishing a social movement against slot machines. (Lill-Tove Bergmo, self-help group/interest group, see Borch 2015, p. 41)

Although the grassroots movement in Norway was not connected to the monopolisation process, it contributed to creating a cultural climate critical of EGMs (Borch 2006, 2012) that might have triggered the government's work for an independent gambling policy. Another factor that might have triggered the monopolisation process is EU resistance met by the Ministry.

EU law on gambling monopolies seemed clear, so, together with my colleges from other countries, I began lobbying the EU for the opportunity to have an independent gambling policy in Norway. I travelled to Brussels on several occasions, where I met our EEC ambassador and the EEC secretariat which, for the most part, comprised young, self-confident Nordic men in black suits who told me it was totally unrealistic to monopolise the slot machine market. (Valgerd Svarstad Haugland, political minister, see Borch 2015, p. 14)

Non-supported Explanations

Two of seven explanations addressing the Norwegian state's EGM-market monopolisation were not supported by this sample. One is that monopolisation was caused by decisions made in the 1990s, implying the state no longer had tax revenue from—and therefore no fiscal interests in—the EGMs. This research indicates the state *did* have fiscal interests in the EGMs. However, the economic reason was not caused by a disinterest due to a lack of tax revenue, but rather by an interest to get revenue from the state's EGMs to distribute to the sports and cultural sector.

The other explanation lacking support is that the state's oil wealth made it possible to forego the extra money liberalisation might have generated. It cannot, however, be ruled out that the Oil Fund, by virtue of representing an economic buffer in hard times, may have influenced the government to stay with the 'social-democratic solution' of putting the EGM market under governmental control rather than following the political trend of liberalising the gambling market.

Conclusion

This analysis indicates that the state monopolised the EGM market to increase its regulatory power and thereby enable itself to reduce the harm of problem gambling and, simultaneously, generate gambling revenue for distribution to the sports and cultural sectors. Although not explicitly confirmed in the research, it cannot be ruled out that monopolisation also was motivated by the state's oil wealth, which made it possible to forego the extra gambling revenue EGM-market liberalisation might have generated. Nor can it be ruled out that monopolisation was influenced by an increasingly negative attitude towards EGMs amongst Norwegians and resistance the government met in the EU system when it tried to convince the EEC ambassador and secretariat that monopolization was exclusively motivated by the government's concern for problem gamblers and others affected by gambling.

Since the monopoly's establishment in 2007, the Norwegian government has passed a new law making it illegal for banks in Norway to process transactions to unregistered gambling businesses (which mostly includes online gambling businesses registered outside Norway). In the same period, Norsk Tipping has developed and launched new online games in the national market (Borch 2015). The state's policy makes the state unimpeachable because it creates a paradoxical situation whereby launching new games can be justified as harm reduction. If registered games are safer than unregistered games, the policy can be justified. Monitoring national markets is, however, necessary, as strong pressure from the Sports Association and other organisations financed by Norsk

Tipping's surplus may escalate and, in an unattended moment, rock the fragile balance between harm reduction and fiscal interests—at the expense of problem gamblers, their families and society.

Declaration of Conflicts of Interest Anita Borch has obtained funding from the Academy of Finland for this research.

Notes

1. In addition, Norsk Tipping now offers the lottery “Extra” (NOK, 0.5 billion) (Meld. St. 12, 2016–2017).
2. This was not the first time monopolisation of EGMs was suggested in Norway. In 1994, Parliament rejected a law proposing that the Red Cross should have a monopoly on EGMs (NTB 1994). The proposal must have been initiated by the Red Cross as early as 1993.
3. ESA monitors compliance with EEA rules in Iceland, Liechtenstein and Norway.

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11

The Future Swedish Gambling Market: Challenges in Law and Public Policies

Jenny Cisneros Örnberg and Jörgen Hettne

Introduction

Swedish gambling regulation has been discussed and politically investigated for more than a decade without any major changes in legislation (SOU 2006:11, 2006:64, 2008:124, 2015:34). During this period, increased online gambling on sites which are unlicensed in Sweden has led to what has been described as a ‘wild west’ of uncontrolled markets with limited possibilities for regulation and taxation. While unlicensed companies are not allowed to conduct business in

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M. Egerer et al. (eds.), *Gambling Policies in European Welfare States*,
Work and Welfare in Europe, https://doi.org/10.1007/978-3-319-90620-1_11

197

Sweden, several are already listed on the Swedish stock exchange, with Betsson, Kinred, and Mr Green estimated to have the largest turnovers.

The current regulatory framework draws on prohibitive legislation proceeding from the physical handling of gambling activities in order to secure gambling surplus for central government, non-profit organisations and the equestrian sector. Today, all surplus of the state-owned Svenska Spel goes directly to the treasury, while the surplus of the state-controlled company ATG (the Swedish Horse Racing Totalisator Board) benefits the equestrian sport. The present system has been found partial and inadequate, leading to the appointment of a governmental inquiry in 2015. The committee was tasked with presenting proposals for a new regulatory framework based on a licensing system, extensive consumer protection and limits on the negative consequences of gambling. The task was also, as far as possible, to preserve the conditions for financing central government and public interest activities. Another aspect was the aim to limit the extensive and largely illegal marketing by toughening the ban on advertising and promotion. The inquiry submitted a proposal for a substantial reform of the Swedish gambling market at the beginning of 2017 (SOU 2017:30).

The proposed new regulatory system would divide the Swedish market into three sections; one where the state still has exclusive rights; a second, competitive section open for all gambling companies that meet the requirements; and a third section for the non-profit sector, without any major regulatory changes. As a result, the competitive arm of Svenska Spel and the ATG, which currently represent 40 and 18%, respectively, of the Swedish market, will compete with licensed private online gambling companies in the competitive section. The types of gambling that may be offered in this section are online casino, online betting, online poker, and online bingo as well as land-based sports betting and land-based horse race betting. The actors in this section will pay a tax of 18% calculated on the net gambling revenue, i.e. the company's profit after paid winnings. Svenska Spel will however retain exclusive rights on electronic gambling machines (EGMs) and the four land-based international casinos, and will continue to compete with the public interest organisations in online and land-based lotteries (the non-profit sector).

Several public interest organisations in Sweden, often connected to a popular movement such as the temperance movement (IOGT-NTO)

and the social democratic party, obtain a significant part of their financing through games and lotteries, as do sport organisations. About 16–18% of the total market is occupied by organisations having charitable and non-commercial purposes (Henrekson and Einarsson 2016; SOU 2017:30; Lotteriinspektionen 2017). The market share can be explained by the structure of the Swedish gambling market. The only way for a non-public entity to legally access the Swedish gambling market has for a long time been to act for non-profit public interest purposes. The traditional non-profit sector in which *all surpluses* are transferred to the non-profit organisations' own charitable activities has lately been penetrated by a new type of non-profit actor promising to invest *a certain portion of their gross revenue* in other well-known organisations with public interest activities. They have thus managed to obtain the same type of lottery licence as the 'proper' non-profit organisations. The newcomers are typically run by special service companies as limited companies (this is also normally the case with public interest organisations connected to a popular movement). As a consequence, the part of the market open for non-profit organisations has grown (SOU 2017:30), mainly because the new kinds of non-profit organisations have won new customers through powerful marketing and the development of attractive games, such as the postcode lottery.

The inquiry proposes that the non-profit organisations continue to be able to conduct lottery activities, both land-based and online, as well as land-based bingo in that segment of the market reserved for these kinds of organisations. The non-profit organisations are also proposed to remain tax exempt. This is somewhat controversial, given the inquiry's awareness that the exemption may conflict with EU state aid law.

The inquiry recognises that it cannot be guaranteed that a new licensing system will not lead to increased gambling or more problem gambling. Enhanced consumer protection is therefore argued to be a cornerstone of the new regulatory framework. The proposal includes mandatory measures such as registration of players, Player Behavioural Tracking systems, game limits (with optional time limits), and a national self-exclusion register.

In summary, the intention of the reform is to legalise gambling competition under a licensing system, impose a tax of 18% on the online companies currently unregulated in Sweden (including Svenska

Spel when they act in the competitive sector) and at the same time be competition-neutral. The new Gambling Act, designed as framework legislation, would also establish a system of sanctions for controlling the activities of licensees and keep out those outside the licensing system which unlawfully target the Swedish market. Heavy penalties and a ban on payment transfers are proposed for those targeting the Swedish gambling market without a licence. IP blocking is not included in the proposal, but warning messages are suggested to be required when a visitor attempts to play on unlicensed sites. The inquiry's objective is for at least 90% of the total market to be licensed. The new regulatory system is suggested to be in place on 1 January 2019.

While EU member states are in principle free to set the objectives of their policy on games of chance and to define in detail the level of protection sought, national regulatory frameworks have to comply with EU law and be compatible with the internal market. We seek to highlight the potential challenges and opportunities that the new proposal poses for the reorganised Swedish gambling market. We approach these questions through four major themes: the legal scope for reform, differences in taxation, marketing and consumer protection.

EU Legal Challenges: Legal Scope for Reform

National gambling regulations have been scrutinised by the Court of Justice of the European Union (CJEU) on numerous occasions, and many EU member states have been requested to demonstrate why their protective and restrictive domestic regimes are justifiable in light of EU law (Hettne 2012; Casabona 2014).

The Swedish gambling regulation has been criticised by the Commission more than once. The Commission has argued that Svenska Spel's exclusive right to provide EGMs does not comply with EU law (formal notification in 2004). More general infringement proceedings were initiated against several member states, including Sweden, regarding sport-related betting services and poker in 2006. The Commission also launched an investigation on casino services in 2008 (SOU 2017:30), but has not—while not satisfied with

the Swedish replies—brought any action before CJEU. However, the Swedish regulation has been assessed by the CJEU after a request for a preliminary ruling from a national court. In the case of Sjöberg and Gerdin (2010), the Court pointed out that the Swedish restrictions on the freedom to provide services for organisers of gambling services could be justified because the legislation prevents *private profits* motives on the gambling market. In accordance with the values held by each member state, the Court accepted that Sweden may restrict the operation of gambling *by entrusting it to public or charitable bodies*. According to the CJEU, it is therefore permissible, at least within the framework of the current Swedish system, to reserve for public companies and public interest non-profit organisations the right to organise certain types of gambling and keep companies with a clearer profit motive outside.

The court thus seems to accept that a member state can control the activities of public companies and non-profit organisations more easily than private operators pursuing an economic interest, and that such a system may serve to ensure better consumer protection and more effective preservation of public order. This also implies that some games, such as EGMs and land-based casinos, can be placed under the exclusive control of the state-owned company Svenska Spel, because a higher risk of addiction is generally considered to be connected with these types of games (SOU 2017:30, 2008:124).

The re-regulation nevertheless triggers the question if Sweden is entitled to introduce different licensing requirements for different segments of the market, such as one set of rules for non-profit organisations and another for commercial gambling companies, and to uphold a special position for Svenska Spel, which will be present in both segments.

A similar question was examined by the CJEU in the case of Stoß (2010) concerning the German gambling market, where some types of games of chance were subject to a public monopoly while others were subject to a system of licences issued to private operators (Stoß 2010). In the Stoß case, the way the regulation of the market was constructed was not accepted by the court, but the reason for this was not that it was unacceptable to regulate different parts of the market in different ways, but that the division of the market could not be justified by legitimate

aims, because the overall regime did not appear to be consistent and systematic. The reason for the German state to monopolise certain types of games appeared mainly to be based on economic considerations.

It can therefore be questioned if the proposed new Swedish gambling market is grounded in a policy which can be considered *consistent and systematic* in the light of EU law (Hettne 2017). The answer is not obvious, as the proposed division of the market is not solely based on a risk calculation where the state controls games with higher risk of addiction. One important objective is also to safeguard the present position of the non-profit organisations. In fact, the Swedish policy in the gambling sector has long considered the need of non-profit organisations to finance their activity. There is therefore a specific policy reason why a certain part of the gambling market should generate a surplus for public interest purposes. The CJEU has however stated that such a motive can only constitute *an ancillary beneficial consequence of, and not the substantive justification for, the restrictive policy* (di Verona 1999). This statement appears problematic in the new Swedish context, but if a large part of the gambling market is actually opened up to competition and the state withdraws some of its previous monopoly rights, this reasoning of the CJEU does not seem to have the same force as in previous rulings. If the reform of the Swedish market takes place, it is not a situation where a member state seizes income from the national gambling market by monopolising a part of it, but a situation where public interest non-profit organisations are allowed to compete in a specific segment of the market. It is therefore crucial that the intended re-regulation of the Swedish gambling market does not imply that foreign actors are excluded from the market, but simply that a segment of the market is mainly reserved for a *certain type of actor*, that is, public interest non-profit organisations. The regulation would clearly be considered discriminatory otherwise. A specific problem in this regard is the presence of Svenska Spel in all the segments of the market, implying that outside the area of exclusive rights, Svenska Spel will obtain different licences for different segments of the market. Even if Svenska Spel is divided in different parts, as suggested by the inquiry, this overall presence of the former Svenska Spel in all segments of a liberalised market may raise competition policy concerns if the division is not clear-cut (NAO 2012).

Differences in Taxation

The lottery business that has been run by public interest non-profit organisations in Sweden has so far been exempted from tax. However, it is an important objective of the proposed reform that private operators who gain access to the Swedish market through a licence should pay a lottery tax of 18%. If the non-profit organisations continue to be tax-exempt, this will give cause for concern from the point of view of taxation and may lead to a legal problem: the freedom of establishment and free movement of services in the EU may be considered to be violated also through differential tax treatment (Commission of the European Communities 1999).

However, the situation on the Swedish gambling market does not need to be problematic from the perspective of free movement. In fact, the CJEU has declared that the freedom of establishment or the free movement of services due to tax differences is restricted only when the different situations are *objectively comparable* (Her Majesty's Revenue & Customs 2011). In the future Swedish gambling market, different tax requirements would be imposed on operators conducting business under different conditions. Most importantly, a certain percentage of the surplus of the non-profit organisations must go entirely to public interest purposes (about 15–30% of the gross revenue). The tax exemption is therefore justified, as surpluses from the lottery business go to public interest non-profit organisations whose work is considered a contribution to the society.

One last, and probably the most important, problem relating to EU law is whether a differential tax treatment may be considered as constituting illegal *state aid* for the public interest non-profit organisations. They can be argued to benefit from a competitive advantage in the Swedish gambling market, as they pay no tax.

Articles 107–109 TFEU contain provisions regarding state aid which aim to ensure that competition in the internal market is not distorted. The member states must guarantee that there are no distortions of competition in the market caused by different tax treatment

of economic actors in competition with each other. State aid claims based on differential taxation may arise if a state taxes two groups of undertakings at different rates, or taxes one group of undertakings but imposes no tax on another group (Bacon 2013). However, a requirement for the state aid rules to apply is that the specific conditions for public interest non-profit organisations may constitute *a selective economic advantage*: the difference in taxation shall entail a real advantage for the public interest non-profit organisation compared with the commercial gambling companies.

The tax exemption of public interest non-profit organisations in the Swedish tax system is historically grounded and arguably also constitutes an inherent part of Swedish tax law (cf. Tiercé 1997). The following statement was made in the 2016 budget bill (2015/16:1, p. 254):

[A] public interest non-profit organisation or a registered religious group is not obliged to pay tax on income from an independent business activity, among other things, if the income derives for the most part from activity which is naturally linked to the public benefit purpose of the organisation, or which has traditionally been used as a source of financing for non-profit work.

There is no further clarification in the legislation as to the meaning of a traditionally used source of financing. Preparatory work on income tax regulations (Bill 1976/77:135, p. 84) has included in these sources the organisation of bingo and other lotteries, fairs, bazaars, flea markets, sales and collection campaigns. On the other hand, if for example a sports club runs a normal sports shop or a religious group runs a book shop, these activities are taxed.

Hence, there are arguably reasons for claiming that there is no comparable legal and factual case, and that the rules of state aid are therefore not applicable (the measure is *not selective*). Moreover, the Swedish tax exemption for public interest non-profit organisation can be justified *by the nature or general scheme of the Swedish tax system*. The tax relief accorded to non-profit organisations could be said to result directly from the basic and guiding principles of the Swedish tax system. According to settled case-law, a measure which creates an exception to

the application of the general tax system may be justified by the nature and overall structure of the tax system if the member state can show that this measure results directly from the basic or guiding principles of its tax system (Aldestam 2004, see also Case C-88/03).

This is a complex case with no certain answers. The inquiry has therefore concluded that its proposal for the re-regulation of the Swedish gambling market is dependent of notification to and approval from the European Commission as regards the state aid issue. However, the Government has decided not to notify, claiming that the re-regulation of the gambling market does not involve state aid (Bill 2017/18:220).

It should be added that the Danish gambling legislation, although substantially different from the Swedish one, has after notification been examined and approved by the Commission. The rationale, however, was different. The commission found that Denmark had not been able to show that the measure could be justified by the internal logic of the Danish tax system. Under Danish law, the difference in taxation was not based on the fact that there were different types of actors, from the organisational and factual points of view, which acted in different market segments. Quite the contrary, there were similar actors competing on the same market, where online gambling actors were taxed at a lower rate than those engaged in offline gambling. The difference in taxation was therefore, according to the Commission, selective and constituted state aid, but it was justified on the basis of the exemption provided for in Article 107.3 c TFEU (facilitating the development of certain economic activities). The Commission considered that the lower tax rate applicable to online gambling activities was an appropriate instrument to attain the liberalisation objectives of the new Gambling Act. Further, the aid measure would ensure that online operators wishing to provide gambling services for Danish residents would apply for a licence and comply with the applicable national regulations (Lycka 2012; see also Jensen 2017).

In the same way as in the Danish case, the Swedish tax difference may be accepted, but the final outcome is uncertain at this point. A change in the present tax system, forced by EU state aid rules, could threaten the way the public interest non-profit organisations are financed (not least the sport organisations) and could possibly hamper the intended re-regulation of the Swedish gambling market.

Marketing Requirements in the Old and Proposed Regime

Advertising for gambling services has increased in Sweden over the last 15 years and is now ubiquitous from the press to the social media and television. In 2014, the investment in gambling advertising in Sweden amounted to around 300 million euros. Most advertisements flag up Internet games by foreign-based gambling companies without permission to organise games in Sweden; about 70% of the advertisements come from these companies (Lotteriinspektionen 2015). Advertising for gambling should follow the general requirements in the Swedish Marketing Act, which implies, among other things, that marketing should not risk the consumers' ability to make informed purchase decisions. However, the present ban on promotion in the Lotteries Act has not been working in practice, and the question whether there should be more specific rules on the marketing of gambling services has been debated for a long time. Specific provisions have been considered necessary, especially as the European Commission has claimed that the marketing undertaken by Swedish state-owned and state-controlled companies as well as by larger non-profit-making associations does not comply with the requirements of EU law (Hettne 2012).

The Court of Justice has in fact found that any advertising issued by the holder of a public monopoly must remain measured and strictly limited to what is necessary in order to channel consumers towards authorised gambling networks. Such advertising cannot, in particular, aim to encourage consumers' natural propensity to gamble by stimulating their active participation in it, such as by trivialising gambling or giving it a positive image just because gambling-based revenues are used for activities in the public interest, or by increasing the attractiveness of gambling by means of enticing advertising messages depicting major winnings in glowing colours (Joined cases C-316/07, C-358/07–C-360/07, C-409/07 and C-410/07).

Until 1 January 2017, the Swedish Lotteries Act did not have any specific provisions regarding the way in which games and lotteries may be marketed. Today the Act stipulates that moderation shall be observed

in the marketing of games and lotteries, and that marketing may not be directed specifically at children or adolescents under 18 (sections 47a and 48a). These changes can be seen as a response to criticism from the European Commission and also as stemming from increased pressure from the general public.

As regards foreign-based gambling companies without permission to organise games in Sweden, marketing through television broadcasting is particularly frequent and problematic. These practices are covered by the Audiovisual Media Services Directive (2010). The Directive is based on the country-of-origin principle in that the member state from which a TV programme is transmitted is responsible for setting the requirements on advertising to be complied with. Advertisements of games which are not allowed in Sweden can thus be marketed to Swedish consumers through television transmissions that originate in, for example, the UK. The fact that certain marketing is prohibited in Sweden is therefore not sufficient to prevent the transmission containing it, but the country of origin must be contacted in accordance with a specific procedure prescribed by the Audiovisual Media Services Directive. The originating state may, after a request from Swedish authorities, urge the broadcaster to respect Swedish law, but this has not stopped unauthorised advertising. Negotiations are currently underway on a revised Audiovisual Media Services Directive, but as the law stands today, foreign advertisement is highly difficult to stop.

The inquiry suggests that the new Gambling Act should contain basic marketing rules. The chances of winning should be presented correctly; games must not convey the image of gambling as socially attractive nor target children or adolescents under 18. Marketing may not portray gambling as socially attractive or contain endorsements by well-known personalities or celebrities that suggest gambling contributes to social success or convey the impression that participation in gambling is a solution to financial problems or may improve the player's social status. Nor may the marketing convey the image that an offer of gambling is free of charge if this is not the case. Furthermore, marketing may not directly target customers who have excluded themselves at their own request or have been excluded by the gambling company. Marketing of EGMs to consumers will not be allowed.

The inquiry also points out that the principle of free movement of services in the EU must be taken into account: the application of marketing restrictions must not lead to disproportionate intervention in a traders' right to market their products (SOU 2017:30). A total advertising ban is proposed on gambling companies that are not licensed in a future re-regulated Swedish gambling market, including television transmissions, sponsorship and product placement. This proposal appears to draw on the notion that such advertising through foreign television transmissions can be prevented despite the failed procedure provided for in the Audiovisual Media Services Directive. The inquiry does admit however that difficulties can occur in practice (SOU 2017:30). Everything considered, it is likely that this change would have very limited effects in practice.

Given that illegal marketing by foreign gambling companies is likely to occur, one would have expected proposals of efficient sanctions on gambling companies which illegally market themselves towards Swedish consumers. For example, IP blockages are used by some member states and are considered compatible with EU law. The inquiry is satisfied with suggesting that an Internet service provider be required to issue a warning message for domain addresses offering non-licensed games in Sweden upon request by the proposed gambling authority. The inquiry finds that the measures taken to shut out those gambling companies that do not have a license in Sweden must be proportionate, legal and balanced with regard to the protection of integrity. Compulsory provisions requiring Internet service providers to block certain web pages imply, according to the inquiry, the risk of restricting freedom of speech (SOU 2017:30). The new gambling authority is nevertheless suggested to have the power to request a payment service provider to block electronic payment transactions from certain account numbers (SOU 2017:30), and players will be required to pay taxes on winnings from unlicensed gambling companies.

It seems therefore that Sweden will choose less powerful tools against illegal gambling providers, not because of the requirement of EU law, but because of the risk of restricting the freedom of speech in light of the Swedish Constitution. Freedom of speech is considered to be a fundamental part of the Swedish Constitution and an important value in

the Swedish society, covering to some extent freedom of expression as related to commercial messages. Some enforcement actions taken by the present gambling authority has in fact been successfully challenged for restricting the freedom of speech (Bernitz 2011).

Consumer Protection

Following the 2012 Action plan, the European Commission released a non-binding recommendation on consumer protection of online gambling in 2014 (Commission Recommendation 2014). In particular, the Commission set out a series of principles which it invites member states to follow in drafting or updating their gambling regulation, including appropriate risk information, responsible advertisement, special rules regarding minors, problem gambling identification systems, self-restraining measures and help lines.

Enhanced consumer protection is argued to be a cornerstone of the new Swedish regulation of gambling. The inquiry proposes that gambling companies be required to register and analyse information from each player, as divergent patterns in gambling behaviour can lead to early detection of problem gambling. One may not offer games to a player who does not have a satisfactory player profile with the game provider. The gambling companies will be required to actively alert the player when the gambling pattern is assessed to be risky, and offer information on what help is available and how to contact this help. The gambling companies should also offer players the opportunity to set limits for their gambling in terms of game time and amount of bets. Online gambling companies are to provide an opportunity for immediate exclusion—a panic button—easily visible on their websites. The inquiry proposes that a new gambling authority creates and maintains a national register of players who temporarily or permanently want to exclude themselves from gambling with all gambling companies. However, the inquiry recognises the need for a specific regulation on the processing of personal data in the gambling area, which would result in some deviations from the main rules of the General Data Protection Regulation (GDPR). The gambling age limit of 18 years and the ban

on granting credit for gambling will be kept. The inquiry suggests that if a gambling company with a Swedish gambling licence violates the Gambling Act, regulations or conditions issued by virtue of the Act, a sanction charge shall be imposed which may not exceed 10% of the company's turnover in Sweden (SOU 2017:30).

Most of the inquiry's proposals are aimed at online companies and follow the recommendations of the European Commission. The proposals provide a framework that opens up for increased state control over previously unlicensed companies and an opportunity for enhanced consumer protection for problem players. However, the development depends on the way in which inspections, enforcement and penalties are implemented. Unless all of these pieces work, consumer protection will be a dead letter. It is also easy to note that many of the measures recommended by the Commission and proposed in the inquiry are to be classified as responsible gambling measures, where the responsibility is on the gambler rather than the operator (Kingma 2015). To be able to evaluate if the gambling companies fulfil their duties, gambling companies are proposed to submit monthly data to the gambling authority on game patterns and the use of different protective measures. These will be used as the basis for the gambling authority's risk assessment and continuous evaluation of different gambling types (SOU 2017:30). This clearly calls for a political decision on a budget that is commensurate with the size of duties.

Discussion: A Coherent Framework?

This chapter has discussed different aspects and challenges of gambling regulation and has focused on the reform of the Swedish gambling market in the light of EU law.

A feature of the Swedish gambling market which stands out is the link to the financing of civic activities, such as financing of the non-profit organisations. Sweden has some of the highest rates of civic engagement in the world (Eliasoph 2013). Gambling is a dubious source of financing the public good, but Sweden is far from unique in doing this. Indeed, money derived from gambling has become a major

source of funding for community and other public good organisations in many parts of the world. This is problematic, and essential ethical considerations are raised when, for instance, public interest non-profit organisations that claim to serve the good of a community receive the major part of their incomes from sources that are known to cause harm to that same community (Adams and Rossen 2006).

An obvious reason for accepting this inconsistency in objectives is the lack of present alternatives. In many countries, including Sweden, it is possible to discern a process of deprivation as a result of the retreat of political authorities, the downgrading of public services, and a narrowing of their ambitions. A telling example is the commercialisation of local public cultural institutions in the context of shrinking public support and the need to operate in a more business-like manner (Evers 2005).

Such commercialisation of the non-profit sector is also present in Sweden and has also changed the structure of the gambling market, as non-profit public interest purposes provide a legitimate way to access the present gambling market. The non-profit sector that finances much of its work through gambling revenues is getting more difficult to distinguish from the commercial sector. As a result, it is hard in the reorganisation of the Swedish gambling market to distinguish the non-profit sector from the commercial sector in the light of EU internal market and state aid rules. Different taxation of non-profit and for-profit actors can thus be particularly cumbersome to uphold. Overall, highly important societal values are at stake in the intended liberalisation of the Swedish gambling market. As the Swedish government stated in 2016 (Bill 2015/16:1):

Non-profit activity has a long tradition in Sweden. The activity has strong popular support and it makes a substantial contribution to democracy, welfare, security, health and quality of life in Swedish society. The reason why civil society must be able to play an active role in democracy, both in its voting function and in its dialogue with the state, is that there are good, long-term conditions for the organisations to operate both their activity and develop their organisation. A strong, multi-faceted and committed civil society is essential in a democracy.

A change in the present tax system would therefore threaten the way the public interest non-profit organisations are financed and possibly hamper the intended liberalisation of the Swedish gambling market.

To counter this, it can be argued that it is not fair, from an EU law perspective, to treat public interest non-profit organisations and commercial gambling companies equally when their legal and factual situations are not equal. *Equal* treatment of *different* situations constitutes discrimination in EU law (Hettne 2017). Hence, even if the commercialisation of the non-profit sector has made it less distinct from the profit-driven sector, there are fundamental differences: for example, as mentioned above, a sizeable share of the gross revenue must go to a public interest activity, and a lower repayment percentage is required to the players on games available to non-profit organisations (50% instead of approximately 95% in the competitive sector which has no cap on repayment). A higher repayment percentage makes a game more attractive to the consumers, which is a commercial advantage. Moreover, it should be recalled that the member states should in principle be free to decide which events should be taxed and how to set the tax base and the tax rate (Schön 2016).

The European Commission could therefore legitimately consider that the different treatment of the non-profit and for-profit actors does not create any distortions of competition. EU state aid rules would hence not stand in the way of Sweden's reforming its gambling market. Still, as neither the present system (with a large portion of unlicensed gambling described as 'the wild west') nor the proposed system are ideal, the details of the reform should be further analysed and discussed politically in Sweden and not solely be assessed in the light of EU law.

Conclusions

The Swedish proposal for reform raises some doubts: can the re-regulated Swedish gambling market be said to be based on a policy which is consistent and systematic in the light of EU law? Also, a change in the present tax system, forced by EU state aid rules, could threaten the way the public interest non-profit organisations are financed and

possibly hamper the intended re-regulation of the Swedish gambling market. Regarding marketing, the inquiry seems to presume that advertising in foreign television transmissions can be prevented despite the proven failure of the procedure provided for in the Audiovisual Media Services Directive. In not introducing IP blocking, Sweden will choose less powerful tools against illegal gambling providers, not as a result of EU law, but because of national political and constitutional reasons. Regarding consumer protection, the inquiry's proposals are in line with the European Commission's previous recommendations. However, the development depends on the way in which inspections, enforcement and penalties are implemented and on the extent of government funds available for that purpose. Hence, the Swedish reform is highly influenced by EU law requirements, but the proposed structure of the new gambling market (a division in three parts) can rather be explained by the strong position held by public interest non-profit organisations in the Swedish society.

Declaration of Conflicts of Interest None to declare.

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12

After the Storm: An Analysis of Gambling Legislation in Poland and Its Effects

Łukasz Wiczorek and Michał Bujalski

Introduction

Gambling issues in Poland were absent from public debate for decades. Media discourse was focused on traditional alcohol and drug-related problems, which to some extent mirrored the policy of the state (Bujalski et al. 2018). Scientific accounts on gambling occurred relatively late. Since the early 2000s, studies on gambling issues were conducted in the field of psychology and psychiatry (Woronowicz 2003; Dzik 2009; Niewiadomska et al. 2005; Tucholska 2008; Lelonek-Kuleta 2010).

The event that triggered the gambling debate was not a public health issue. On the 1 October 2009, the gambling scandal broke when an article published in the popular Polish broadsheet newspaper *Rzeczpospolita* (Gmyz and Zawadka 2009) informed about actions of

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Central Anti-Corruption Bureau against two politicians from the ruling party Civic Platform (PO), including the head of the Ministry of Sport and the chief of parliamentary club, who it was claimed were involved in unofficial lobbying and serving the vested interests of the gambling industry. Stenographic records from private discussions between politicians and industry representatives were disclosed and published in the Internet, revealing their personal relations and interest in preventing extra tax on gambling, which could have impacted their businesses. A supplementary tax 20% had been levied in 1994 on number games under state control and then extended 2003 to lotteries and telebingo (at 25%) to raise funds for sport initiatives. In 2009, it was planned to extend the tax also to Electronic Gambling Machines (EGMs) to increase budget revenues during the preparations for the organisation of the EURO 2012 football championships.

The political stakes of the scandal was high and could have brought severe consequences for key policy makers. The affair hit the government hard and has often been mentioned as one of the biggest political scandals in contemporary domestic policy. In its aftermath, the chief of parliamentary club of the ruling party and the Head of Central Anti-Corruption Bureau were dismissed. The Minister of Sport, the Minister of Justice, the Deputy Minister of Economy and the Deputy Prime Minister resigned from their positions (*Newsweek* 2009). A special parliamentary commission was established to investigate the matter. Several ministries were controlled and the lobbying law were amended. Eventually, the commission as well as the prosecutor's office ended up with nothing after several months of investigations.

Media coverage of the affair was extensive, exposing not only the issue of controversial lobbying in favour of private stakeholders but also the need to curb Internet gambling which had increasing extensively at that time without any legal regulations as the previous law from 1992 was outdated (Wrabec 2009). The attention of public opinion was particularly focused on easy available EGMs in pubs, bars, kiosks and gas stations, threatening minors and offering high profits for operators. In both public and expert opinion, EGMs were considered as the most harmful form of gambling, which should be covered by restrictive solutions (Egerer et al. 2016). It was also claimed that this specific gambling sector had been controlled by criminal groups since the early 1990s (Wrabec 2009).

Table 12.1 Definitions of particular gambling games

Games of chance	Games, including those conducted on the Internet, where the prize is either cash or material prize and where the outcome is notably conditional on chance. Games of chance like number games, cash and raffle lotteries, telebingo, cylindrical games, cash and raffle bingo and promotion and audiototele lotteries
Number games	Games where the prize is won by choosing correct numbers, signs or other marks and where the prize depends on the total stakes paid
Cylindrical games	Participation is conditioned by choosing numbers, signs or other marks, also conducted in the Internet, and where the prize is conditional on the predefined stake-to-winnings ratio with the result determined by means of a rotary device, i.e., roulette
Cash bingo	Participation is conditional upon purchasing random sets of numbers from a predefined set of numbers and where the entity organising the game offers cash prizes only, the level of which depends on the total stakes paid
Raffle lotteries	Participation is conditioned by purchasing a lottery coupon or another game ticket and where the entity organising the lottery offers material prizes only
Promotional lotteries	Participation is conditioned by purchasing goods, services or another game ticket, whereby participation in the lottery is free and where the entity organising the game offers cash or material prizes
Betting	Betting for cash or material prizes determined by guessing the results of a sports competition or the occurrence of different events, including virtual events
Electronic gambling machine	Games on gaming machines that are played with the use of mechanical, electromechanical or electronic devices, computer hardware included and conducted in the internet, where the prizes are either cash or material prizes. In 2003, specific category of low-prize EGMs was introduced. Contrary to other EGMs, which could be only placed in casinos or in gaming arcades, these low-prize EGMs, with the maximum winning prize of 15 EUR, could be placed virtually everywhere. In practice, these low-prize devices often offering higher winning prizes (Szybisty 2009). Since the law was changed in 2009 there has been no distinction between these two

The aim of this chapter is to analyse the legislative changes introduced in 2009 and later, as a response to the political scandal, their impact on the extension of state monopoly, restrictions of availability of gambling and advertising practices, on the prevention of problem gambling including the limitation of gambling prevalence. The proceedings on new regulations on gambling were conducted at a rapid rate, and a month later after the scandal broke out, the Act of November 19th 2009 on Gambling (The Act Gambling Law of November 19th 2009) was drafted. The Act set out the conditions of the organisation and conduct of business rules in the field of games of chance, betting and EGMs (see Table 12.1). The Act regulated many areas of gambling in a very detailed manner: availability, monopoly of the state, regulations establishing and running a business in this field, taxation of entrepreneurs, rules of offering games in the Internet, advertising, prevention practices and penalties for breaking the law (The Act Gambling Law of November 19th 2009). Yet, in 2016, after a few years of the Act being established, an amendment was introduced that increased the availability of gambling forms—mainly those in the state monopoly (The Amendment to the Gambling Law of December 13th 2016).

Methodology

The analysis of legislative changes was conducted using the Internet Legal Act System which contains bibliographic descriptions and texts of legal acts published in Journal of Laws and the Polish Monitor which contains both valid and unenforceable legal acts issued after 1918. The acts ($n = 7$) were searched using keywords ‘games of chance and mutual betting.’ Data on number of patients and costs of treatment derived from National Health Found cover the period 2008–2015. Previous data are not comparable due to inadequate mechanisms for verifying the reports received from treatment facilities.

Data on gambling sector, comprising numbers of licenses, operators, gambling venues as well as revenues from gambling cover the period of 2006–2015 were taken from the official webpage of Polish Ministry of Finance.

Results

State Monopoly on Gambling

From the beginning, when the issue of gambling was regulated first in 1920s, the State established a monopoly on particular games, initially on lotteries, and during the communist regime with a centrally controlled economy, the regulations were extended on games of chance, cash and raffle lotteries, EGMs and on mutual betting limited to horse racing (The Act in Subject of Lotteries and Establishing the Polish State Lottery Class of 26th March 1920; The Act in Subject of State Monopoly on Lottery of July 9th 1936; The Act on Games of Chance and Totalizators of 20th May 1976). In 1992, a new act was introduced two years after the political transition to the free market economy. The gambling monopoly was limited and covered only number games and cash lotteries. The possibility of doing business in the fields exempt from state monopoly such as games of chance, EGM and mutual betting was opened for private entrepreneurs (The Act on Games of Chance and Mutual Betting of 29th July 1992). Since 1992, further amendments consequently extended the monopoly on particular games. In turn, the amendment from the end of 2016 extended the state control once again by introducing EGMs as well as all online gambling games in the state monopoly (The Amendment to the Gambling Law of December 13th 2016).

Currently, the state has control on a number of games and cash lotteries, on the opening and running of EGM arcades as well as for the organisation of particular gambling games on the Internet. However, besides the state monopoly, there is still the possibility of placing EGMs in the private casinos. Similarly, sport betting and promotion lotteries remain open to private operators.

The state has also control of the major gambling company in Poland offering several types of lotteries—*Totalizator sportowy*. The company was established in 1955 as a state monopoly. After the political and economic transformation of 1989, it has become a state-owned limited liability company. Currently, it has a network of more than 15,000

points of sale across the country, which makes one point of sale per 2500 inhabitants. In 2016, the company had 2754 employees, and its net revenues reached ca. 1147 million EUR. Between 1994 and 2016, the company contributed 3.16 billion EUR to the special purpose funds (ca. 243 million EUR per year) (Totalizator Sportowy, n.d.).

The company plays an important role in financing Polish sport and culture. *Totalizator Sportowy* has been contributing to the creation of new sport facilities since the very beginning of the company. It has sponsored the Polish Olympic Games team since 2002. The company is active in the field of Corporate Social Responsibility (CSR). In 2009, *Totalizator sportowy* established the foundation *LOTTO Milion marzeń* (*A million dreams LOTTO Foundation*) and has been carrying out CSR activities in the field of public partnerships and sport events for young people. Supervision over the Foundation is conducted by the Ministry of Social Policy (Fundacja Lotto 2017).

Availability of Gambling

The political and economic changes of 1989 affected several areas of social and economic activity. Gambling games became more prevalent, more visible and more desirable. Private companies started to cover all types of games with the exception of the most popular and the most profitable—the number games that remained under control of the state. Gambling legislation has always focused on restricting the physical availability of games by limiting the number of gambling points in a particular area. The role of economic state control, which can be understood as a proportion of price for participation in games to income of population, was marginal. Participants were only charged for entry to the casinos and cash bingo halls. The regulations from 2009 abolished this last economic instrument of control, and favoured instruments influencing physical availability of gambling such as licenses and permits, rules related to localisation of gambling venues and their numbers and rules of access to particular venues (Announcement of the Marshal of the Sejm of 19th December 2003; The Act Gambling Law of November 19th 2009; The Amendment to the Gambling Law of December 13th 2016).

Licenses and Permits

The major instruments for limiting the physical availability of gambling venues are licenses and permits granted to entrepreneurs conducting business in this field. The Gambling Law from 2009 introduced two types of documents for operators of gambling games—licenses and permits (The Act Gambling Law of November 19th 2009). Before November 2009, only permits were in force (Announcement of the Marshal of the Sejm of 19th December 2003). The difference between them is that in the case of licenses, the issuing authority has a right to refuse, while in the case of permits, if the entrepreneur meets all the conditions, the authority cannot refuse issue. A license is required to run a casino. In turn, to run bingo halls, mutual betting points and cash and raffle lotteries, permits are required (The Act Gambling Law of November 19th 2009; The Amendment to the Gambling Law of December 13th 2016). The decision to provide licenses or permits for conducting casino, cash bingo hall and mutual betting points is decided on the governmental level by the Ministry of Finance.

Less restrictive regulations apply to entrepreneurs conducting raffle lotteries and raffle bingo as well as promotional lotteries. Permits are granted by the governmental administration at the municipal level (The Act Gambling Law of November 19th 2009).

One license is granted to run one casino and one permit to run one cash bingo hall. In the case of mutual betting, the number of points or websites is specified in the permit but is not limited to one venue (The Act Gambling Law of November 19th 2009). The changes in the number of licenses and permits in the period 2006–2015¹ show the effects of new regulation implementations. The permits of private operators on EGMs began to expire in 2009 from 287 EGM venues to six venues in 2015. The licenses on EGM expired as the government considered organising EGM gambling in the state monopoly. The number of licenses on casinos increased consequently since 2009 from 27 to 49 in 2015. New permits for bingo halls vanished after 2009, which could have been to some extent substituted by on-line bingo websites.

Location and Number of Gambling Venues

The Act on gambling defines gambling venues by distinguishing them between game centres and betting venues. Gambling centres comprise of casinos and bingo halls. In turn, betting venues are defined as separated places for Totalizator system or bookmaking. Prior to 2009, EGM arcades were legally designated as separate gambling points apart from low-prize EGMs, which were treated fairly liberally. In 2009, the definition of EGM arcade was removed, as EGM was allowed only in casinos (Announcement of the Marshal of the Sejm of 19th December 2003; The Act Gambling Law of November 19th 2009). The amendment from December 2016 re-established the EGM arcades as places operating outside the casinos (The amendment to the Gambling Law of December 13th 2016).

Currently the number of venues depends on the number of inhabitants living in a particular city and in the province (voivodship). One casino can be located in towns with more than 250 thousand inhabitants. The number of casinos permitted increase by 1 per each new group of 250 thousand inhabitants. Nevertheless, the total number of casinos per province cannot exceed the ratio of one casino per each complete group of 650 thousand inhabitants per province. In turn, one cash bingo hall can be located in towns of 100 thousand inhabitants, and for each additional 100 thousand inhabitants, the number increases by 1, but as in the case of casinos, the province level is 1 in 300 thousand inhabitants (The Act Gambling Law of November 19th 2009). In the case of number games and cash lottery venues as well as mutual betting Gambling Law never limited the maximum number nor regulate the methods of its establishing.

The physical availability of EGMs was regulated separately. Strict regulations were implemented as prior to 2009, the number of EGM arcades was calculated in the same way as in the case of cash bingo halls. In turn, the number of points with low-prize EGMs was not limited in any way. It was only stated they can be located in the restaurants, in trade or service points, and at a distance of at least 100 meters from schools, other educational institutions, welfare institutions and from churches (Announcement of the Marshal of the Sejm of 19th December 2003).

The amendment from 2016 allowed 1 EGM device per 1000 county inhabitants. Under the new amendment, the location of EGMs is limited by the distance from educational institutions, churches and also other gambling sites. Moreover, the need to reduce the negative socio-economic impact of gambling had to be considered.

The overall changes in number of licensed gambling venues show the dynamics of the gambling sector in Poland and stress the issue of gambling availability.² The number of gambling venues increased until 2009 but just a year later, it decreased by nearly a half, from 31,168 to 16,308 venues. The major contribution in gambling availability was shared by low-prize EGM venues with more than 25,000 low-prize EGM venues operating in 2009. Between 2006 and 2009, the number of low-prize EGM devices across the country increased up to 40-fold, reaching a peak of 52,561 devices in 2009 (one low-prize EGM per ca. 700 inhabitants). As a result of legislative changes, the number of low-prize EGM venues and devices consequently decreased in the following years and in 2015 reached zero.³ The same trends occurred in bookmaking venues. The availability of betting venues increased up to 2009, then decreased but eventually has been increasing again since 2014. The only type of gambling venues that have been rising continuously are casinos, which almost doubled in number in the period 2006–2015.

Rules of Access

Access to casinos, cash bingo halls and betting venues and online betting is restricted to minors. Only the persons who are over 18 years old are allowed to participate in games of chance (not including raffle lotteries and promotion lotteries). In case of doubt, employees have the right to verify the age of the participant. In the case of games conducted on the Internet, the age of player should be verified before entering to the website (The Act Gambling Law of November 19th 2009).

The Act of 2009 required the necessity of registration of guests at the cash bingo halls, not only in the casino as it had been previously (Announcement of the Marshal of the Sejm of 19th December 2003; The Act Gambling Law of November 19th 2009). Registration

of each player is a condition of access to the venue. The registration includes the date and time the guest entered and detailed personal data (Announcement of the Marshal of the Sejm of 19th December 2003; The Act Gambling Law of November 19th 2009).

Offer and Participation in On-Line Gambling

The issue of gambling games offered in the Internet was regulated in the Act separately and appeared in 2009 (The Act Gambling Law of November 19th 2009). At the very beginning, the ban on arranging and participation in online gambling games was implemented with the exception of betting. The ability to conduct online betting was possible for private entrepreneurs who obtained the appropriate permits. These could be received by those who operated and paid taxes in Poland. Participation in online betting conducted by a foreign bookmaker operating without permits was prohibited. The amendment from December 2016 opened the market of online gambling to new games (sports betting and promotional lotteries). To maintain the control over online market, the government decided to include it in the state monopoly (The amendment to the Gambling Law of December 13th 2016).

Regulations on Gambling Advertising

Regulations on gambling advertising were introduced for the first time in 1992 (The Act on Games of Chance and Mutual Betting of 29th July 1992). The ban did not cover all types of games, and was imposed on games of chance such as cylindrical games, card games, EGM games and cash bingo game as well as on mutual betting. Number games, cash and raffle lotteries and raffle bingo games were not covered by the ban. Further amendments extended the ban to dice games and low-prize EGM games. At the same time, cash bingo games were excluded from the ban (Announcement of the Marshal of the Sejm of 19th December 2003).

The new law of 2009 tightened provisions in the area of advertising. Apart from the ban on advertising of mentioned games that stayed in force, a ban on promotion of gambling games and communication

about sponsoring activity was introduced. These regulations did not include advertising and promotion conducted in casinos, betting venues and websites (The Act Gambling Law of November 19th 2009).

The amendment from December 2016 relaxed regulations on advertising by delivering the opportunity to advertise mutual betting, at the same time introducing strict rules like a ban on advertising in media between 6 a.m. and 10 p.m. unless during sport events sponsored by the gambling operator, as well as in public places, in youth press and on the cover of newspapers. Moreover, advertising of mutual betting would have to include information on the consequences of participation in illegal gambling, the risks related to gambling and about the license for mutual betting (The amendment to the Gambling Law of December 13th 2016).

Prevention of Problem Gambling

To a certain extent, Polish gambling law includes measures to prevent problem gambling and reduce the harm resulting from gambling. The Act on Gambling obliged gambling operators to create regulations of participation that must protect players' interests arising from winning. Regulation of participation in a game has to be approved by the Ministry of Finance and is a condition for granting a license or permit (Announcement of the Marshal of the Sejm of 19th December 2003; The Act Gambling Law of November 19th 2009).

The amendment from the end of 2016 imposed additional obligations for EGM operators and online gambling operators to implement the Responsible Gambling Rules. These rules oblige operators to deliver certain information to gambling participants. Operators must place in a visible manner the information about themselves, contact details, information about the license for a device, regulations of participation in the game, information about the ban on gambling for minors, information about the risk associated with gambling and names of institutions providing help to people with gambling disorders, including addresses of websites of these institutions. The Responsible Gambling Rules must also include described player's age verification procedure as well as the procedure of registration. In addition, the rules also describe

mechanisms enabling players to control their activity and prevent the continuation of game after running out of funds as well as the procedure for the protection of minors against the exposure to business information on gambling (The amendment to the Gambling Law of December 13th 2016).

Another instrument that can be considered a gambling prevention measure is special purposed funds supporting diversified actions in the field of sport activities among children, youth and people with disabilities, culture and solving gambling problems. Financial resources for their activities come from taxes, from games which are under the monopoly of the state: number games, cash lotteries, telebingo game and since 2017 from EGMs. The Physical Education Fund and The Fund of the Promotion of Culture were established in 1994, and are managed by the Minister responsible for sport and the Minister responsible for culture. In 2009, after the 'gambling scandal', the Fund for Solving Gambling-related Problems was established at the disposal of the Minister of Health. The amendment from 2016 established another fund (Fund for Support of the Development of Civil Society) remaining at the disposal of the Prime Minister (Announcement of the Marshal of the Sejm of 19th December 2003; The Act Gambling Law of November 19th 2009; The amendment to the Gambling Law of December 13th 2016). The financial resources for funds come from taxes from games under the monopoly of the state including number games, cash lotteries, telebingo games and EGMs. Over the past ten years, the revenues from gambling tax increased, and in 2015 were 70% higher than in 2006, when first reported by Ministry of Finance. In 2015, the financial resources of special purposed funds constituted about 0.3% of the state budget.

Prevalence of Gambling and Gambling Disorders

The gambling problem was neglected in epidemiological studies for several years. The first survey solely dedicated to assess the prevalence of gambling and other behavioural addictions in the general population was conducted in 2012 and another in 2014 employing the Canadian Problem Gambling Index (CPGI) screening test (CBOS 2012, 2015b).

The results of the 2014 survey show that in the last 12 months before the study every third Pole aged 15 years old and older had gambled at least once (34.2%), while 7.1% gambled every day or few times a week. Compared to the results from 2012, the prevalence of gambling increased within two years by about 10%, however, the structure of popularity of particular gambling games has not changed. In Poland, most popular gambling games are lotteries, followed by scratch cards, SMS lotteries and EGM gambling (CBOS 2012, 2015b).

In 2012, 3.7% of Poles aged 15+ gambled in a way that might lead to addiction, of which 0.2% already had a severe problem with gambling. In 2014, these numbers increased: symptoms of addiction occurred in 5.3% of Poles, and problematic gambling has occurred in 0.7% of population (15 years and older). Based on the benchmark method, the number of pathological gamblers in 2014 was estimated on 27,955 people which is 0.09% of the population over the age of 15 (CBOS 2015b).

In very limited way, the official medical statistics on the number of patients diagnosed as people with gambling disorders can provide information about the prevalence of gambling. Taking into account the data from National Health Fund, the number of people treated for gambling disorders has been growing steadily for years. In 2015, there were 4.5 times more patients treated than in 2008 (4775 and 1050, respectively). The largest increase in patients—more than double—was recorded in 2009. The systematic increase in patients triggered the need to increase the funds for treatment of gambling disorders. In 2008, the cost of treatment was estimated at the level of approximately 100,000 EUR. Over seven years, this has increased nearly tenfold, and in 2015 it amounted to almost one million EUR. At that time, the cost of treatment of one patient doubled from 105 EUR in 2008 to 209 EUR in 2015 (National Health Fund 2016).

Discussion

The regulations introduced in 2009 in the atmosphere of political scandal and elevated media attention delivered relatively restrictive solutions. In particular, EGM games were marginalised by eliminating the

possibility of gambling outside casinos and license issuing was suspended. This case was the subject of a Court of Justice of the European Union ruling (Case C-303/15 2016). The EGMs operators claimed that Polish parliament should have informed European Commission about ongoing work on changes in gambling law and consulted particular issues included in the amendment introduced in 2009. Under EU law, the EU Commission must be informed when legislation includes changes to technical regulations. However, in October 2016, the Court of Justice of the European Union ruled that these provisions do not fall within the scope of technical regulation and therefore policy towards EGMs in Poland was not altered.

Restrictive regulations also addressed online gambling as the Act gave the opportunity to provide only mutual online betting. Restrictive regulations also covered advertising practices by maintaining the ban on advertising on particular gambling games and extending the ban on promotion of gambling and communication about sponsoring activity. Only games that were covered by the state monopoly—number games and cash lotteries telebingo games, were excluded from the ban. The Act protected the state monopoly, focusing mostly on economic considerations. The public health agenda was emphasised in the creation of the Fund for Solving Gambling-related Problems but at the same time, the regulations on gambling treatment were profoundly neglected (Dąbrowska et al. 2017). Restrictive measures in gambling policy were introduced when the gambling problem played a marginal role and prevalence of gambling remained relatively low. Despite establishing restrictive law, the prevalence of gambling did not decline and the number of patients with gambling disorders systematically increased, creating a burden on limited treatment services. The amendment from 2016 delivered regulations relaxing the restrictions of the gambling availability. This restored the ability to establish EGM arcades and allowed the organisation of the Internet gambling. Establishing EGM arcades and the provision of online gambling, except betting, was in the state monopoly.

In 2017, about 35 thousand new EGMs have been installed under the new law. The rationale for this action was to tackle the grey market and secure the revenue for state budget estimated at the level of ca.

125 million EUR (Duszczuk 2017), which comprised less than 0.2% of the state budget revenues in 2015. Until 2009, the revenues from gambling activities were consequently on the rise. Since then revenues have started to decline. Revenues dropped partly because of the withdrawal of low-prize EGMs that accounted for a considerable contribution to the budget, e.g., in 2006, low-prize EGMs accounted for 12.6% of gambling tax. In 2015, after a few years of decline, gambling revenues increased again, partly due to tax revenue from gambling games in the state monopoly and the increased number of licenses for betting operators (Figs. 12.1 and 12.2).

The public health aspect has once again been marginalised in the amendment. The Fund for Solving Gambling-related Problems was reduced and the advertising ban relaxed. However, in order to protect players interests, EGMs and online gambling operators were obliged to implement Responsible Gambling Rules. These rules included providing regulations of participation in the games in a visible manner, information about ban on underage gambling, information about risk related to gambling, and information on institutions providing assistance to people with gambling disorders.

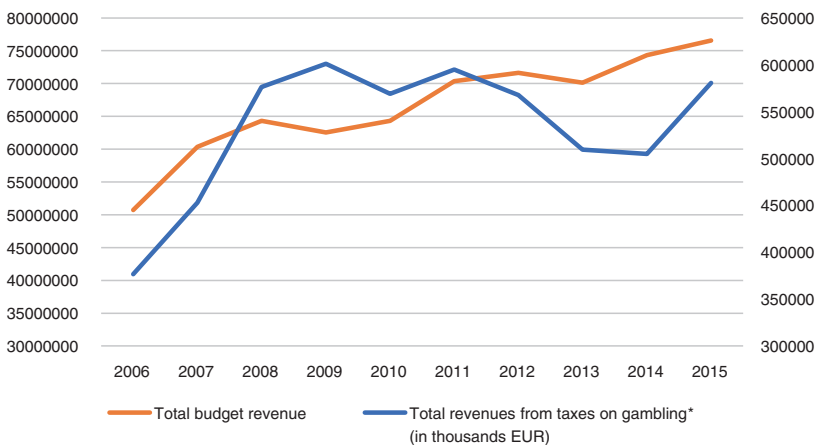


Fig. 12.1 Total budget revenue & revenues from taxes on gambling

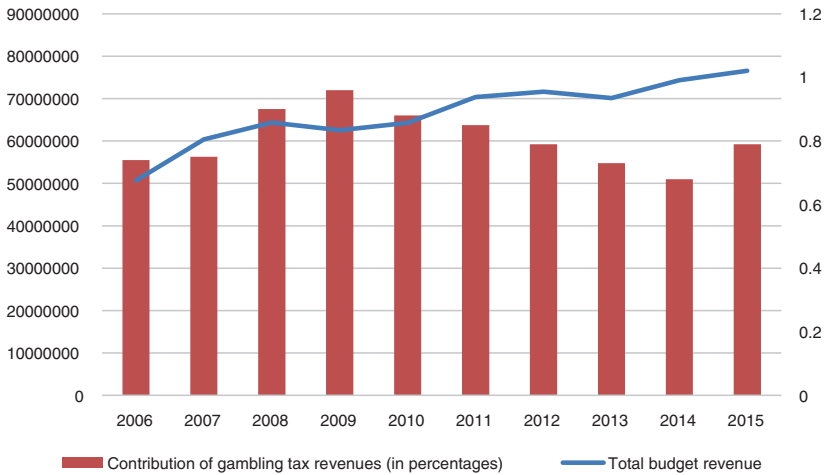


Fig. 12.2 Total budget revenue and contribution of gambling tax revenues

Conclusions

The problem of gambling arose accidentally in public debate during the gambling scandal in 2009. However, gambling is still considered a marginal issue. Restrictive changes in gambling law introduced after the political scandal mostly affected private operators as the state monopoly was extended to establishing EGM arcades and conducting the bulk of gambling games on the Internet. Yet, legal solutions limiting the physical availability of gambling did not affect its prevalence nor seem to have decreased the number of people treated with gambling problems in the light of statistics. However, gambling problems develop gradually, so treatment-seeking problem gamblers may appear in the statistics only in future years. Moreover, the enforcement of legal changes may have an impact on illegal gambling and affect data on the prevalence of gambling in the general population. It should also be stressed that prevalence rates are only comparable to a certain extent.

Limiting the number of EGMs to those that are placed in casinos and the complete elimination of low-prize EGMs resulted in the decrease of revenues to the state budget. In 2016, gambling law was

changed and restrictions to the availability of gambling games in the state monopoly have been relaxed. Recent developments of the gambling market have been beneficial for the state budget but also increased the range of gambling opportunities for a consumer for whom the issue of gambling sector ownership is of lesser importance.

Declaration of Conflicts of Interest Nothing to declare.

Notes

1. Data on internet betting were not included in the official statistics of Polish Ministry of Finance until 2012.
2. The data from the Polish Ministry of Finance comprising separate numbers for bookmaking services and totalizator systems cover only the period of 2006–2011. Since 2012 these data were presented in indiscrete form, the authors decided to use aggregated numbers for bookmaking services and totalizator systems for all years.
3. The trend in EGM devices (allowed in casinos and in gambling arcades only, no maximum limit of winning prize) was similar, however the number of devices was much lower. The number of EGM devices in arcades increased from 501 in 2003 to 7623 in 2009, but eventually dropped to 2721 in 2015.

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Part IV

Theoretical Perspectives



13

The Regulation of Gambling in Early Twenty-First Century Britain: Liberalisation and Its Consequences

Jim Orford

How Gambling Was Liberalised in Britain¹

The twentieth century saw two distinct periods of gambling liberalisation in Britain (Dixon 1991; Reith 1999; Orford 2011). The first occurred before and after World War II, climaxing with the Betting and Gaming Act of 1960. Betting houses had been illegal in Britain since 1853 and the Street Betting Act of 1906 had made illegal the acceptance of bets on the street or in other public places as well. For over half a century until 1960 Britain experienced an era during which gambling was largely prohibited although betting on horse races at the race courses themselves was never banned. The 1960 Act allowed bookmakers to accept cash bets in 'licensed premises', the 'betting shops' or 'bookies' that have been such a familiar feature of the British urban landscape ever since. Meanwhile, new forms of gambling had appeared on the scene, such as football pools, fruit machines and betting on dog races.

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M. Egerer et al. (eds.), *Gambling Policies in European Welfare States*,

Work and Welfare in Europe, https://doi.org/10.1007/978-3-319-90620-1_13

There then followed an era of tolerance of gambling. As well as licensed betting offices, the 1960 Act had also legalised commercial gambling clubs and casinos and gambling machines in a wide variety of venues. But gambling was to be tolerated only and not positively encouraged. So, for example, betting shops were not allowed to invite custom, and the interior of the shop should not be visible from the street. Gambling was, at least in the early part of this period, '...most emphatically not regarded as performing any desirable or any productive economic function' (Miers 2004). A key principle of government regulation during this period was the so-called 'demand test'. Gambling promoters were allowed to meet existing demand but not to stimulate it. Casinos, almost all small by modern international standards, were members-only clubs and only allowed in 52 permitted areas of the country.

The second era of liberalisation, entered upon in the last years of the twentieth century, put paid to all that. An important event was the inauguration of a National Lottery (NL) which started to great acclaim in 1994 and was immediately highly popular and productive of funds for good causes. It is now firmly established as Britain's most popular form of gambling and a prominent part of national life. At first it was promoted by Government as being of a different nature than other kinds of gambling, in fact hardly constituting gambling at all. That fiction was necessary at the time in order to justify Government taking on the role of gambling provider, in addition to its roles as legislator and regulator. The fact that it is productive of funds for good causes provides what Kingma (2004) has referred to as an 'alibi' for Government involvement in gambling promotion. It has been organised ever since as a monopoly run by a single private company which wins the contract put out to competitive tender every few years. Although the NL is probably one of the most benign and least dangerous forms of gambling, it was undoubtedly an important factor in a general 'ratcheting-up' of gambling in all its forms (Creigh-Tyte 1997). The last few years of the twentieth century then witnessed a whole range of minor liberalising changes which did not require a change to primary legislation. They included the easing of restrictions on membership and opening times for casinos, increases in the numbers and types of gambling machines in bingo halls and betting offices, and a general acceptance of a greater variety of games, jackpots and rollovers.

Not surprisingly gambling flourished in the new climate. Gambling providers demonstrated their capacity for innovation. To the long-established practices of betting on horse and dog races and on private card games, and to the more recently legalised casino, bingo, lottery, pools and machine gambling, were now added new ways of gambling. This included: spread betting which originated as a form of financial speculation and is still regulated as a financial service; betting on a wider variety of sporting and non-sporting events; betting through a betting exchange rather than a bookmaker; playing tournament poker; playing virtual casino-style games on the new 'fixed odds' betting machines in betting offices; and accessing gambling or playing virtual gambling games of one kind or another online. What it amounted to was that the many former restraints on gambling were being quite rapidly eroded (Orford 2012).

That was the background to the announcement in December 1999 of the Labour Government's plans to establish a Gambling Review Body (GRB). It reported in 2001, not to the Home Office which had set it up, but to the Department for Culture, Media and Sport (DCMS), now to be the lead Government department for gambling, a move which illustrated the way Government thinking on gambling had changed. This highly significant change was scarcely noticed at the time and never received much media attention. A government department responsible for, among other things, leisure and sport, provides the industry with a more reliable governmental ally than a department concerned with crime and security. There has been little attempt since to formulate a cross-department government strategy. The Department of Health, for example, is notably absent from gambling policy discussions. It illustrates how gambling is seen by Government—principally as a matter of sport and leisure and not as a matter of public health.

Two of the basic principles underlying the review committee's recommendations were rejected. One was the idea of allowing local authorities greater say in what gambling would be provided in their areas. This interesting idea of local option was rejected by Government and the idea has not resurfaced since. As a consequence, local authorities are given the very considerable and highly frustrating task of licensing gambling premises but with little real power to control what gambling is offered in their communities. Even more controversial was rejection of one of the review report's most basic principles, that what they called 'ambient

gambling' should not be encouraged; in other words that by and large gambling should be restricted to premises where gambling was the main activity. Otherwise, the committee's overwhelmingly liberalising proposals for the future of gambling were incorporated into the Gambling Bill which subsequently became the Gambling Act 2005. The latter had come fully into operation by autumn 2007. Britain now has one of the world's more liberal gambling regimes (Sulkunen et al. 2018).

The UK now has a particularly large gambling market. Between April 2016 and March 2017, Britain's gambling industry generated a Gross Gambling Yield (GGY: the amount retained by operators after the payment of winnings but before the deduction of the costs of the operation) of £13.7 billion. Online gambling generated a GGY of £4.7 billion, making it now the largest gambling sector in Britain—over the same period £3.4 billion was generated by the National Lottery, £3.3 billion by the high street betting sector and £1 billion by traditional casinos (Gambling Commission 2018).

Globally, in terms of gross revenue, it was estimated that in 2013 Britain came in fifth after the USA, China, Japan and Italy. In terms of per capita gambling spend (i.e. losses), Britain (at a little under US\$400 per person) was in 11th place globally and in sixth place among European countries. Britain's gambling market is also very diverse. Among European countries it outstripped all others for betting and bingo but also had amongst the largest casino, lottery and gambling machine industries (H2 Gambling Capital 2016, cited by The Economist 2017).

The Gambling Industry Discourse

The liberalisation and expansion of gambling has been bolstered by a new way of thinking and talking about gambling. At least the following three elements make up the dominant discourse about legal, commercially provided gambling (Orford 2011). This hegemonic way of thinking about gambling in the liberalised era is promoted by the industry and largely accepted by Government and much of the non-government and academic sectors (Hancock and Smith 2017).

Gambling Is a Harmless Form of Leisure Activity and Entertainment, Just a Bit of Fun—The Harmless Entertainment Discourse

The Amusement Caterers' Association, giving evidence to the Betting, Lotteries, and Gaming Royal Commission of 1949–1951, was already in the business of using language effectively to control how modern gambling was to be thought of. Machine gambling was a 'wholesome entertainment that is perfectly innocuous', they claimed. To this day the gambling machine industry maintains the idea that their customers play electronic gambling machines (EGMs) for entertainment. Premises on town high streets that house banks of gambling machines are referred to as 'amusement arcades' and by the Gambling Commission, the official regulator, as 'adult entertainment centres'. British children, unlike children in other jurisdictions, are permitted to play EGMs, requiring low stakes and offering small prizes but in all other respects just like other EGMs. Tradition has been allowed to grow up that these machines, referred to in law as B4 machines, should hardly be seen as gambling at all but rather as 'amusements', a traditional part of the family day out, to be found in 'family entertainment centres'.

Forms of Gambling Are Products or Commodities Just Like Any Other and Their Provision Is Just Like Any Other Form of Legitimate Business—The Ordinary Business Discourse

The Business as Usual discourse was explicit in what the responsible Home Office minister said at the time when the Gambling Review Body was set up in Britain in December 1999:

Much of our current gambling legislation is over 30 years old. Social attitudes have changed and the law is fast being overtaken by technological developments. The Government wants to get rid of unnecessary burdens on business, while maintaining protections necessary in the public interest. (cited by the Gaming Board 2000)

In the subsequent Government proposals for legislation, set out in its document, *A Safe Bet for Success*, the discourse of ordinary, not-to-be-restricted business predominated. For example, ‘gambling products [would be] more visible and accessible’; gambling debts would for the first time be enforceable by law, ‘like other consumer contracts’; casino operators would be freed from the existing controls which, ‘unnecessarily discourage innovation and restrict customer choice’; and there was an aspiration that Britain would be a ‘world leader’ in online gambling. In summary the ideology that governs Britain’s gambling regulation, ‘... sits squarely within the neo-liberal mode of regulation that has been pursued in Great Britain since the 1980s’, which means that regulation, ‘... should not unduly hinder economic progress’ (Miers 2015).

Citizens Should be Free to Choose How to Use Their Leisure Time Including Being Free to Gamble as They Wish But Consumers Have a Responsibility to Protect Their Own Health and Well-Being, and That of Others Close to Them, by Gambling Responsibly—The Personal Responsibility Discourse

The most recent, and possibly most powerful, addition to the cluster of establishment gambling discourses speaks of ‘responsible gambling’. It sits well with notions of gambling supply and consumption as ordinary business, harmless amusement and free choice. The idea that consumers have an obligation to consume these products ‘responsibly’ is a concept now widely signed up to by, not only much of the gambling industry, but also governments, gambling regulators, and even by organisations whose aims are the treatment and prevention of gambling addiction. In Britain we have a Responsible Gambling Strategy Board and official pronouncements about gambling and reports and documents on the subject are peppered with the expression ‘responsible gambling’. Although this appears uncontentious, only a little reflection on the idea, plus observation of the way it is used in practice, are needed in order to see how this idea of responsible gambling, in conjunction with the other elements of the dominant discourse, serves the aims of promoting an expansionist gambling industry.

The Public Does Not Share the Establishment View of Gambling

While the UK Government was busy preparing for its major piece of liberalising gambling legislation, a survey carried out by National Opinion Poll, of nearly 1000 18-plus-year-olds in 2003, provided a strong hint that British public opinion was against further liberalisation. For example, 93% said Yes to the question *Do you think there are enough opportunities for people to gamble in Britain at the moment?* and 56% said No to the question *Would you be happy for a casino to open near to where you live?*

The 2007 British Gambling Prevalence Survey made a systematic study of national attitudes towards gambling for the first time. The results were clear-cut. Although most people were not in favour of prohibition of gambling, the weight of public opinion was on the side of believing that gambling is foolish and dangerous, that on balance it is bad rather than good for families, communities and society as a whole, and that it should not be encouraged. For example, 65% agreed that ‘Gambling is dangerous for family life’ (only 8% disagreed) and 55% disagreed that ‘On balance gambling is good for society’ (only 8% agreed). Although there were differences in attitudes between different groups—for example, men were more positive towards gambling than women, younger people were more positive than older, and frequent gamblers more positive than others—even the majority of gamblers were on balance negative in their attitudes and it was only the relatively small number of multiple-interest gamblers (those who engaged in a variety of forms of gambling) whose attitudes were on balance positive (Orford et al. 2009).

The 2010 British Gambling Prevalence Survey repeated the exercise and found that, although attitudes towards gambling had changed very slightly in a more positive direction, the general picture was the same (Wardle et al. 2011). The proportion of people who think that ‘in this country gambling is conducted fairly and can be trusted’ has declined in the last five years from just under 50% to only 35% (Gambling Commission 2017).

How Does Gambling Fit with Our Conception of a Good Society?

But there are bigger issues to consider. These are questions to do with the kind of society we want to live in. How does gambling fit in with our ideas of a good society? In the late nineteenth and early twentieth centuries, an era in which anti-gambling movements flourished, that question was often asked (Dixon 1991). Decades later, in the early years of the twenty-first century, the British people were being told by their Government that the issue of gambling was not now to be marred by any discussion of ethicality or values. For example, the Department for Culture Media and Sport made this quite clear when announcing its proposals for new liberalising legislation: ‘In the Government’s view the law should no longer incorporate or reflect any assumption that gambling is an activity which is objectionable and which people should have no encouragement to pursue’ (Department for Culture, Media and Sport [DCMS] 2002).

In fact the Government had not been totally successful in stifling discussion of values. In the week following the publication of the Gambling Review Report, on which the Government based its new Bill, Lord Hattersley, former Deputy Leader of the British Labour Party, wrote (Daily Mail, 18/07/2001):

It seems possible that Britain... will become the gambling capital of Europe... The problem now is... a gradual and corrosive destruction of the values on which our society is based. Nobody can be sure the casinos will not become easy territory for drug pushers, but we can be certain that, once the international gamblers move in, they will be fertile ground for men who want to take money from people who cannot afford it... We have to ask, is it worth it?

Gambling may be simply an example of a general trend, bemoaned by Skidelsky and Skidelsky (2013), when they say, ‘liberal thinkers have insisted on public neutrality between rival conceptions of the good. The state... should not throw its weight behind this or that ethical outlook...’ That, they think, is a fundamental misunderstanding

of liberalism which should not back off from making value judgements and used not to. Meanwhile there are some obvious beneficiaries of this value neutrality. The neutral state ‘simply hands power to the guardians of capital to manipulate public taste in their own interests’. Furthermore, insisting that the state should not interfere with individual choices, ‘inevitably and inescapably hands the choice of system and instruments to those with the greatest amount of wealth and power’.

The Infiltration of Research and Services by Vested Interests

One consequence of the new liberalisation and the accompanying establishment discourse surrounding commercial gambling is that the situation regarding the funding of research and treatment in Britain is very unsatisfactory. Funding dedicated to gambling is on a small scale and comes almost entirely directly from the gambling industry. It involves an arrangement whereby a self-acknowledged industry-led body known as the *Responsible Gambling Trust* (RGT, recently rebranded as GambleAware) is given the responsibility for raising funds from the gambling industry, through a levy which is currently voluntary, and then deciding how to allocate those funds for gambling research, education and treatment. Without a national structure for research and treatment which is independent of the powerful provider industry, conflicts of interests are endemic and scarcely recognised to be such by many in the field.

In 2014, Goldsmiths, University of London, launched an important report, *Fair Game: Producing Gambling Research* (Cassidy et al. 2014), which addressed the controversial issue of how gambling research is produced. It was based on interviews with over 100 gambling researchers, policy-makers and industry members, over half from the UK. There was much in the report about lack of research funding, the comparatively low status of gambling research, absence of cross-fertilisation between gambling studies and related fields, and difficulties in accessing data. The biggest theme, however, was the dependence of gambling research on industry support, a lack of transparency about this, and a poor understanding in the field about conflicts of interest. As the report put it,

The interests of funders are reproduced in diverse ways, including in the questions that are prioritised, ...the ways in which applications are assessed and the ways in which research is disseminated. Voluntary contributions... are conceptualised as gifts... This allows the industry to maintain a sense of ownership over research.

Two examples can be given here which illustrate the way in which the prevailing ideology surrounding gambling in Britain plus industry infiltration are affecting how research is conducted and evidence interpreted.

How British Research on High-Powered Gambling Machines Has Been Hijacked by the Gambling-Providing Industry

In November 2012, following publicity about the harms believed to be associated with the British variety of modern technologically sophisticated, fast and high-powered gambling machines—the so-called Fixed Odds Betting Terminals or FOBTs—RGT announced a half million pound research programme about machine gambling. However, unlike a proper public health programme of research which would also look at the danger to which people are exposed, and the environment in which exposure takes place, this research in practice focused on the behaviour of the people exposed to the danger. Central to this industry-funded research was betting transaction data provided by the five big British bookmaking companies. This was lauded by RGT as being the first of its kind in Britain, the largest set of such data yet assembled anywhere in the world, and as demonstrating industry goodwill and willingness to collaborate. The size of the database was indeed huge—more than 6.7 billion bets placed in over 32,000 gambling machines in over 8000 betting shops.

The first report (Responsible Gambling Trust [RGT] 2014) claimed that it had been shown to be possible to predict problem gambling and that there was therefore, 'a bright future for behavioural analytics' in the area of social responsibility and gambling. A detailed study of the findings shows that conclusion to be over-optimistic. Of course no one expects perfect prediction but the results were hardly impressive since

they showed, for example, that 50% of problem gamblers (screening positive on the Problem Gambling Severity Index) could be identified but only at a cost of a false positive rate of 25% amongst the larger group of non-problem gamblers. This represents an unacceptably high false-positive rate. In other words at even a modest level of sensitivity, specificity is unacceptably low.

A subsequent Department for Digital, Culture, Media and Sport consultation document, among other things seeking opinions about reducing the maximum allowed stake on FOBTs, says that the second phase of this research (GambleAware 2017), ‘found the industry could accurately detect problem gamblers using data held by operators today, with a refined set of 22 predictive markers used to create a customer specific risk score’ (Department for Digital, Culture, Media and Sport [DDCMS] 2017, Section 5.22). The Consultation document goes on to optimistically say that these markers could be used ‘to inform tailored interventions’ and that this is ‘a key area of opportunity for operators to strengthen their processes to identify and minimise gambling-related harm’. Unfortunately such statements are again greatly over-optimistic. In fact what it shows is that, even when all 22 indicators are put into the equation, the degree to which users of online gambling sites who have gambling problems could be identified was very far from perfect: for example, using a threshold which identified 7% as possibly having gambling problems resulted in a false positive rate of only 15% but a false negative rate of no less than about 84%).

The DDCMS consultation document accepts that large losses are being experienced by players of B2 machines, and that there has been no reduction in the prevalence of problem gambling. It concludes that the maximum stake on a single play on a B2 machine should indeed be reduced, as has been widely suggested, from the current £100. It is stated that evidence is lacking to inform their decision about what a new maximum stake should be. The document goes on to outline four illustrative alternatives: £50, £30, £20 and £2, although anything between £50 and £2 is possible. A reduction to £2, which would bring B2 machines into line with other categories of gambling machine, is what has been widely called for (by the Local Government Association and 93 local authorities across England and Wales, by

a variety of campaign groups, charities and faith groups, by the All-Party Parliamentary Group on FOBTs, and by the campaign group 38 degrees which submitted a petition with over 100,000 signatories), whereas £50 would scarcely alter the nature of B2 machines at all. The international evidence suggests that to be effective any such changes to machine design need to be substantial (Sulkunen et al. 2018).

Unsurprisingly the industry argued for maintaining the status quo on stake limits. But not content with defending abnormally high stakes on B2 machines, the industry had also made other proposals which clearly indicate their intention to press forward with further innovations which are likely to increase the risk potential of their products. For example, the industry proposed increases in maximum stakes and/or prizes for other categories of machine, and in casinos more machines plus a 500% increase in the maximum size of the progressive jackpot prize. The British Amusement Catering Trades Association (BACTA) also made a further extraordinary proposal for a new sub-category of machine in amusement arcades which would have a maximum stake of £10. They argued it would allow operators to offer more varied selection of products, including what they describe as 'low stake roulette'. So, not content with having turned betting shops into mini casinos in the high street, they have now set their sights on doing the same for amusement arcades. To their credit, DDCMS are not persuaded about the need for these changes at this time and propose maintaining the status quo, at least for now.

The Use of Evidence to Resist Calls for a 9 p.m. TV Gambling Advertising Watershed

A 2015 report from the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) in Britain acknowledged that the amount of gambling advertising had increased enormously since 2005 (CAP and BCAP 2015). There were then 90,000 spot adverts, mostly TV adverts, a figure that had risen to 1.4 million in 2012. Those figures equate to 5.8 billion person 'impacts' or viewings in 2005 rising to 30 billion in 2012. That is 630 per adult viewer. The figures for 4- to 15-year-olds were 0.5 billion impacts in

2005 rising to 1.8 billion in 2012. There has been widespread concern about children's exposure to gambling advertising, particularly in the form of television adverts and clear signs of sports sponsorship when viewing major sporting events before the 9 p.m. 'watershed', before which it is a generally accepted principle that material children should be protected from seeing should not be shown.

CAP and BCAP's general conclusion was that the present rules were more or less in the right place. On the specific issue of pre-watershed advertising the report concluded that there was no convincing evidence that this was harmful, and therefore, no change was required. In the process of reaching these highly contentious conclusions, the familiar establishment device of minimising was much in evidence. For example, the general consensus, the report said, was that advertising has little causal role in producing harm except possibly in the case of encouraging further gambling by people who already have gambling problems—a group referred to as a 'small minority'. The report acknowledged that there was some evidence of the effect of gambling advertising on young people, for example on their attitudes. But drawing on work on food advertising particularly, it concluded that there was only a modest direct effect of gambling advertising on children and young people. It was emphasised that, in any case, 55% of TV gambling adverts were shown after 9 p.m. and less than 10% (excluding lotteries and scratch-cards) between 5 and 9 p.m. The report's complacency is summed up in their conclusion that the existing rules met a key objective of the 2005 Gambling Act—to protect children and young people from harm.

In its recent consultation document DDCMS also proposes to leave gambling advertising largely unchanged, arguing that existing Advertising Codes and the industry voluntary code already restrict the content of gambling advertising. They repeatedly cite a review carried out by Binde (2014), published by RGT (now GambleAware), now several years old and much quoted by the industry, which came to the controversial conclusion that the impact of advertising on problem gambling prevalence was 'likely to be neither negligible nor considerable, but rather relatively small'. The DDCMS report refers to what they call a 'package of measures and initiatives... intended to address concerns about gambling advertising...', but this appears largely to

consist of making the existing regulations clear to everyone, tightening up on them a bit, welcoming the proposals of the CAP to produce new guidance, and supporting GambleAware, broadcasters and industry groups who have drawn up proposals for a major responsible gambling advertising campaign. Such education campaigns are of doubtful effectiveness (Sulkunen et al. 2018) and in the case of gambling may do as much to promote the normalisation of gambling as to reducing harm.

A particular focus of complaints to the Advertising Standards Authority about gambling advertisements—complaints increased four-fold between 2005 and 2012—had been about offers of ‘free bets’ and also ‘bet now’ messages. But a lot were about ‘advertising generally’. This links to what Binde (2014) recognised as the issue of societal values or what he called the ‘moral dimension’, including concern that advertising is contributing to the normalisation of gambling. But as the report so aptly put it, ‘a degree of “normalisation” was envisaged as an acceptable consequence of the [2005] Act by Parliament at the time’. The stimulation of demand was allowed for the first time and there was greater freedom to advertise. Therefore, in their view the issue was not whether normalisation was occurring since it was virtually written into the law when it was formulated. There was also a hint of something more fundamental in a section of the report on possible general consumer harm. It referred here specifically to Binde’s conclusion that gambling advertisements can be deceptive because they give a misleading impression of the likelihood of winning. But the report did not consider that this was something they should act on.

A Government That Supports Gambling Growth and Is Committed to Taking a Backseat

The Executive Summary to the recent consultation document (DDCMS 2017) contains a clear statement of the overall position of the Government in relation to gambling regulation and its own responsibility in the matter. There are two statements in particular that stand out. First: ‘The objective of the review was to ensure that we have the right

balance between a sector that can grow and contribute to the economy, and one that is socially responsible and doing all it should to protect consumers and communities, including those who are just about managing'. That makes it abundantly clear that Government wants to encourage the growth of gambling in Britain. This is strange for a government that must be concerned about its public image, since survey evidence is quite clear that the majority of the public do not want more gambling, in fact most people think there is too much of it already. The second, equally revealing and worrying, statement makes it clear that Government intends to take a back seat, giving the industry a central position: '...we want to see industry, regulator and charities continue to drive the social responsibility agenda, to ensure that all is being done to protect players without the need for further Government intervention...'

It is Government's overall position on gambling in Britain that needs to change. We will not see serious reform while Government continues to support the growth of gambling and refuses to contemplate a proper national debate on the role of gambling in modern Britain and a proper national gambling strategy which mandates cross-Government department action on the prevention and treatment of gambling harm.

Declaration of Conflicts of Interest The author has no conflicts of interest to declare.

Note

1. The chapter refers throughout to Britain rather than the UK since gambling regulation is dealt with separately in Northern Ireland.

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14

Conceptions of the Common Good

Johanna Järvinen-Tassopoulos and Risto Eräsaari

Introduction

Historically, gambling has been associated with chance, fate and moral issues in Western societies (Reith 1999). Access to games with commodities or money as prizes, as well as their availability, depended on the prevailing religious beliefs, social norms, cultural values, and of course, on the prohibition of gambling. Lotteries were the first form of gambling that was promoted in Europe as a means to collect funds for charitable causes and public purposes, and the early European settlers even brought this funding custom with them to colonial America (Kingma 1996; Selby 1996). In many European countries, lotteries represented an acceptable financial substitute for taxation. States, municipalities and communities needed financial resources in order to prosper and maintain public order.

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M. Egerer et al. (eds.), *Gambling Policies in European Welfare States*,
Work and Welfare in Europe, https://doi.org/10.1007/978-3-319-90620-1_14

In previous studies, concepts such as ‘the common good’, ‘the public good’, ‘good causes’ and ‘the public interest’ have been used to analyse the relation between gambling operations and the funding of collective purposes (e.g. Nikkinen and Marionneau 2014; Järvinen-Tassopoulos 2012; Matilainen 2017; Kingma 1996; Clotfelter and Cook 2009; Owens 2009). This chapter focuses on the concept of ‘the common good’ by emphasising its philosophical and societal background (cf. conceptions of commonness, community and solidarity). The interest of the analysis is in how social norms, cultural values and political reasoning may have influenced the conceptions of the common good in relation to gambling and gambling operations.

At least two viewpoints seem to emerge from the above-mentioned concepts: on one hand, the relation between gambling and collective purposes has been analysed through a socio-historical lens; and on the other hand, it has been mostly analysed as a socio-economic phenomenon. As seen through the socio-historical lens, the idea of the common good has transformed individual and collective attitudes towards gambling. The idea itself has given respectability to gambling, and the state’s role as the guarantor of the operation has made it safer for citizens to participate in money games (Matilainen 2017). Various societal changes, consumption, welfare and ethical views are also factors that have influenced the conceptions of the common good in European history (Matilainen 2017; Nikkinen and Marionneau 2014). The common good can be thus interpreted as something that benefits everyone (at least somehow) and enhances people’s general wellbeing. The term of good causes refers to the objects, projects and organisations that are funded with gambling revenues (e.g. Casey 2008; Raento 2011; Binde 2013).

As states need revenues and gambling operations are seen as an efficient way to produce them, the common good is often understood as synonymous with the public good or even the public interest. This viewpoint of the common good emphasises the socio-economic benefits and costs of gambling operations. The benefits include economic growth, government revenues and support for public services; and the costs can be related to problem gambling (e.g. the need for social and health services), debts (e.g. incurring debt, bankruptcy) and crime (e.g. fraud, embezzlement) (Anielski and Braaten 2008; Collins 2003; Järvinen-Tassopoulos 2012; Clotfelter and Cook 2009; Nikkinen 2014).

The purpose of this chapter is to examine conceptions of the common good in different gambling-related situations that involve public purposes, charity and welfare. It asks: (1) What makes a common good 'common' and seen as good?; (2) what kind of good can be pursued and enjoyed together in a community?; and (3) what kind of appeal (e.g. monetary prize) is needed to promote the good of the community? Altogether, the interest is in what makes the common good social, a shared value and goal, and whether there is a place for solidarity in the idea of the common good (Rehg 2007; Duke 2016).

The chapter starts with a brief historical overview of some of the reasons for allowing the use of lotteries in Europe as a means to collect funds instead of taxes. In the second part, Marcel Mauss's (2002) gift theory is applied to find an analytic interpretation for charity and charitable work. Gift means social reciprocity, which is more or less absent in the gambling field. Charity can also be seen as a form of solidarity, which does not require reciprocity. In the third part, the chapter examines the contemporary rationale of financing good causes with gambling proceeds in welfare states within the European Union. In the fourth part, the analysis focuses on the social and cultural habits, historical events, medical findings and other social phenomena have had an impact on attitudes towards gambling in European societies. The conclusion answers the research questions according to the themes elaborated in this chapter.

Raising Money for Public Purposes

The idea of the common good, in relation to gambling operations, originated from the need to raise money for public works and charitable causes. In other words, resources were needed to fight wars, to build and renovate public buildings and churches and to take care of the less fortunate individuals of the community (e.g. Kingma 1996; Owens 2009). In various parts of Europe and at different times in European history, lotteries have been organised to collect money for different purposes by exploiting people's desire to wager and play. As gambling was considered an immoral activity for centuries (Reith 1999), it was important to create social situations in which participating in lotteries would be tolerated and even encouraged.

In some cases, gambling was legalised. In France, the royal lottery was used as a form of 'voluntary tax', while in Denmark the taxation proceeds of a gambling licence were used towards the poor and the needy (Valleur 2009; Linnet 2009). In seventeenth century Italy, gambling was legalised in Venice within a specific free zone during Carnival. The Great Council of Venice opened a state-sanctioned public gambling house: the government sought to legitimise gambling for the purposes of public order and revenue enhancement (Schwartz 2007). In the United Kingdom, the state had established a monopoly over lotteries in 1694. Throughout the eighteenth century, lotteries were organised to secure loans and to raise general revenue (Muntig 1998). Much later, the first lottery with monetary prizes was permitted in Finland (1926) in order to fund public cultural institutions (the Finnish National Opera and the Finnish National Theatre) (Matilainen 2010; Järvinen-Tassopoulos 2012).

If public purposes or charitable causes have been the major reasons why gambling operation has been allowed in Europe in the past, lotteries have also been organised by institutions other than the state. In London, several lotteries were organised to finance Westminster Bridge and the British Library in the British Museum. And in Paris, the church of Saint-Sulpice, the Hôpital des Enfants-Trouvés (a hospice for abandoned children) and École Militaire (a royal military school) were allowed to organise their own lotteries (Casey 2008; Harouel 2011). In the Netherlands, during the seventeenth century, lotteries provided much needed resources for churches, almshouses and hospices (Kingma 1996).

In order to fund various public purposes through lotteries, individuals from different social backgrounds had to be encouraged (and enticed) to participate in an activity that was generally forbidden. Without doubt, many gamblers participated in lotteries because of the alluring prizes (e.g. silver), financial gain and individual greed (Kingma 1996). Charity preceded social welfare in many European countries, especially in Catholic countries. It can be seen as an early conception of the common good, which had its roots in religious beliefs and in altruism. As Luc Boltanski and Laurent Thévenot (2006, p. 76) put it, 'The common good is opposed to the self-centred pleasure that has to be sacrificed to reach a higher state of worth'. As to reach a feeling

of worthiness, the organisers of the lotteries had to rally members of various communities (e.g. noblemen, workers, settlers, priests, parishioners) around a specific cause. The justification of the participation in lotteries had to be related to social and cultural values and to concepts that were easy to share either through public opinion or by repeating them in political rhetoric.

The pious (e.g. poor relief, churches) and civic (e.g. wars, public buildings) purposes that prevailed a few centuries ago have been replaced by different projects in contemporary Europe. For example, in the Nordic countries (Denmark, Finland, Iceland, Sweden and Norway), various charitable associations and non-governmental organisations are entitled to get funding from gambling revenues (Linnet 2009; Marionneau 2015; Olason and Gretarsson 2009; Binde 2013; Rossow and Hansen 2016). Gambling revenues may still benefit individuals who suffer from poverty and exclusion, but the current collecting purposes are usually very different, depending of the country's gambling policy and its social interests (Nikkinen 2014; Kingma 2004; and other chapters in this volume).

The Gift of Charity

As shown above, the advancement of charity has been one of the reasons for the increased acceptance and tolerance of gambling in the past. Helping the poor and needy, saving neglected children and giving them a chance to be educated have become causes to raise money, which have been accepted as common and beneficial (e.g. Kingma 1996; Harouel 2011; Owens 2009). Although the concept of good causes is not synonymous with the common good, its idea aspires to something that can be accepted as a common goal by many, and it inspires goodness in people.

The charitable aspect of gambling comes close to the gift theory. As Mary Douglas (2002) puts it, 'Charity is meant to be a free gift, a voluntary, unrequited surrender of resources'. In archaic societies, the idea of the gift was intertwined with the concepts of freedom and obligation. The gift started an affair between two parties, which in order to be completed needed a gift in return. If the returned gift was not

appropriate, the affair remained open and the donor became a creditor (Mauss 2002). Mutual exchanges and services were conceived as gifts because they were based on mutual social understanding performed by rituals. Since 'total' (see contractual law and system of total economic services in Mauss 2002) is one of the key ideas of the gift relationship, this may be one of the stumbling blocks for its applicability in the modern context.

In modern societies, gambling companies seem to be those who make a gift to the state, which then distributes the gambling proceeds to so-called beneficiaries. The difference in the modern gift of gambling proceeds is that the state may play the role of the creditor by defining in advance the profit target to which the gambling companies must submit or it may define the level of taxation of (online) gambling. Thus the gift of the gambling proceeds does not include freedom. Charity has been given a new face of solidarity: As is the case in some countries, instead of including gambling proceeds in the state budget, they were distributed to serve good causes. Solidarity (in the form of charity) was no longer the privilege of the upper classes towards the lower classes and the proletariat.

According to Marcel Mauss (2002), a gift creates a debt, a gift-debt that places the donor above the recipient. This is why charity as the common good or as collective help, just like any unreciprocated gift, wounds the receiver. Charity should be avoided, and at least some sort of reciprocity, exchange or symmetry should be brought on the spot. On the other hand, the common good should not be placed higher, isolated, sterilised or sacralised because at the same time it sets aside communication and democratic participation. For example, assistance and relief to bring help to the excluded is deprived of the charity characteristic by appreciating it as something based on the status of the benefactor or as the gift-debt delivered to the obedient citizen. All of these are formal criteria, and the actual situation may include deep politicisation or supervision and control of assistance based on principles and conduct that diminish the agency of the benefactor and the position of the citizen. Therefore, it is possible to view the gift-debt as a command for obedience or even as payment of a security ransom to the assisting body, even if its representatives regard the assistance as socio-cultural bridging capital.

There is another way to look at the role of the gift in the differentiated context of a gambling operation. Michel de Certeau (1984) points out that ‘the loss that was voluntary in a gift economy is transformed into a transgression in the profit economy: it appears as an excess (a waste), a challenge (a rejection of profit), or a crime (an attack on property)’. The loss mentioned by de Certeau refers to the ritual of mutual giving and receiving. The loss in the contemporary gambling context may mean several things: States are not comfortable with losses of proceeds and neither are the beneficiaries. Gamblers may lose a lot due to a specific gambling ritual and never profit from it. Excess in gambling can refer to the big spenders that gamble even if it means wasting their money; but it can also refer to the excessive gamblers who have lost control of their gambling behaviour. The challenge in the case of a state-owned gambling company is to make profit for the state, but not too much. Crimes can be connected with excessive gambling; some gamblers have recourse to stealing and embezzling when they keep chasing their losses. What is left as voluntary in this gambling-related profit economy seems to be the choice that individuals make when they decide to gamble. Nevertheless, this choice is adequate only if it is an informed choice: In other words, individuals are aware of the risks of gambling.

Financing Welfare with Good Causes

Within EU legislation, ‘the financing of social, benevolent activities or good causes, such as horse breeding and rural development, cannot be the fundamental justification but must be nothing more than an incidental beneficial consequence’ (Planzer 2014, p. 65). This is a dilemma especially in states where gambling proceeds are distributed to NGOs acting in the social and health sector or where lotteries can be run by NGOs (e.g. Linnet 2009; Olason and Gretarsson 2009; Binde 2013; Marionneau 2015). When changes occur in the gambling system, states and beneficiaries often fear that gambling proceeds may decrease or flow abroad. In Norway, the banning of slot machines in 2007 was expected to have an impact on humanitarian and health organisations. Some of these

organisations, which represented sports, culture and humanitarian work, were compensated due to the reduction in gambling revenues (Rossow and Hansen 2016; Borch in this volume). On the other hand, in France the controlled liberalisation of the online gambling market was politically successful because government revenues increased and new markets created additional demand (Marionneau and Järvinen-Tassopoulos 2017).

The common good is still widely linked to approval and support for the welfare state, even if the welfare state is not often grasped as a companion to the common good. It is difficult for modern politics to shelve generally accepted standards of the common good while doing away with space for new public agenda. The unavoidably necessary solidarity, trust, confidence and legitimation among actors and agents specialised in different areas start to oscillate between dynamic and undetermined compromising of the common good (Boltanski and Thévenot 2006).

Yet the latent solidarity hidden in the good causes seldom becomes apparent other than in projects or voluntary work. The outcome of the organisation of the common good depends on how social equality and welfare are comprehended in the (near) future. We do not really know what sort of common and what sort of public framework of will be ahead. Will it be an arrival at the place of punctum where deliberation, reflexion and a certain kind of bewilderment makes its context, or will it rather become an achievement of stadium where the dilemma is understood as a knowledge problem.

The dilemma mentioned above seems to lie in the (continuous) need for revenue on the behalf of the states and in the attempt to guarantee the functioning of the welfare state. Previous studies have indicated that the good causes would not have an effect on lottery ticket sales (Clotfelter and Cook 2009; Owens 2009). In other words, gamblers would be more interested in personal gain than in good causes. In the Finnish case, as gambling proceeds have been distributed to charities and for the public good for decades and most of the population accept the gambling monopoly system, it could be said that gambling 'for public health' among many Finns seems to be true (cf. Salonen et al. 2014).

Riitta Matilainen (2016) binds the Finnish welfare state and consumer society together. After the Continuation war (1941–1944), the

regulation of gambling took on a more visible role in Finnish society, and the democratisation of gambling guaranteed access to money games among women and different age groups. For a long time, gambling was accessible to Finnish underage youth. The risks of problem gambling were not acknowledged, and young people were seen as independent individuals and potential consumers (Järvinen-Tassopoulos 2012). Nowadays much more is known about the development of problem gambling, vulnerable gamblers and gambling harms, but recreational gambling is still popular in Finland.

Good causes have been criticised for not being the most efficient way to fund public services (Smith 2008). For example, problem gambling can be related to lower socio-economic groups and to neighbourhood disadvantage (Barnes et al. 2013). Problem gamblers' financial difficulties are often related to life-course risk factors (Heiskanen 2017). A deep sense of marginalisation and provincialisation are perhaps the most complicated combination of obstacles hindering the efforts of the common good policies because they appear together with severe exclusion tendencies and ideas of perfect societal participation. Inclusion is thus presented as an understanding of successful solidarity. Social analysts know that there is no social hydraulics that would construct all this. Rather it too—as so many other things—seems to be a reflection of the historically contingent division between common and public things and goods through exclusivity and competition.

Conceptual Transformations of the Common Good

Looking back at the attitudes towards gambling in European societies, it is possible to trace different periods of the common good that have prevailed. It is not possible to study separately every country as a case because it would need deeper analysis and more space to write about it. Our aim is to provoke thoughts by addressing social and cultural changes and conceptual transformations of the common good in this very brief general analysis.

The first period can be called ‘the establishment of the common good’: the idea of collecting money for different public projects emerged from the need of resources by exploiting people’s good will and belief in a common and good cause. Gambling was still a morally ambivalent activity (if not a sinful act), which did not inspire trust in every citizen. This activity threatened the workforce, because it enticed workers into laziness and idleness (Caillois 2001). In addition, the first lotteries did not always have monetary prizes: the winnings could be goods or tools. Charity became one of the good causes in the name of which lotteries were organised to help to raise money for institutions that dealt with sick, poor and excluded people. Despite the good in all the public or charitable projects, gambling was already a means of speculation for some, a source of black economy for others and a passion for many.

The second period can be called ‘the disappearance of the common ground’. In modern European societies, gambling can still be a prohibited economic activity, but its operation has become subject to being licensed. Different EU member states may decide on the political and regulatory aims of their national gambling market. Social norms and cultural habits have shaped attitudes towards gambling, as well as have historical events (e.g. wars). Concepts such as ‘good causes’ and ‘just causes’ have become more indefinite (Kingma 2004; Nikkinen and Marionneau 2014). They may be associated with sports, welfare or youth work, but the good that used to be common has become more fragmentary and targeted to different kinds of communities.

The medicalisation of problem gambling has also changed the perception of the common good. At first, Freudian interpretation transformed gambling from sin into pathology (Järvinen-Tassopoulos 2014). Later, gambling addiction was officially diagnosed as an impulse-control disorder, but its categorisation and labelling have changed since the 1980s. The medicalisation of problem gambling has cast a shadow over the justification for the common good. The unambiguity of the common good was replaced by other explanations related to social entertainment, individual profit-seeking and to professional care and treatment. Despite its addictive nature, gambling has been banalised in many societies by its ubiquity. Gambling is seen as a pastime, a form of fun, and

sometimes even a form of work (e.g. professional poker). Celebrities are recruited to promote gambling, which has become so easily available on the Internet. At the same time, addicted gamblers need to be taken care of by health, mental health and substance abuse services. The initial idea of the common good has been lost because the narrative of the common good (Lyotard 1984) has become flat.

The current period could be called ‘the era of ideological separation’. As gambling is seen as a harmful activity that can lead to addiction, there is a need to reformulate the ideology of the common good. It is easy to dismantle the former ideology by redefining the common good as good causes or as public good. As values change and new conceptions emerge, it is vital to maintain a certain level of solidarity between citizens despite the source of the gambling revenues. The gambling industry has solved this particular problem by funding services that deal with problem gamblers and their significant others. NGOs that depend on gambling revenues have never been questioned over their funding until recently. Researchers have questioned the use of gambling proceeds in their studies: A conflict of interest has risen from the need to do independent research (Cassidy et al. 2013).

Conclusion

The aim of this chapter was to study various conceptions of the common good in the context of European gambling. The common good is a complex research topic. It is often mistaken as synonymous with the concepts of the public good or the public interest, especially in gambling studies because gambling is tightly connected to the public economy and other important financial interests, such as funding of NGOs. This chapter has highlighted more philosophical and social meanings of the concept.

According to Murphy and Parkey (2016), the word ‘common’ has the same etymology as ‘community’, and it means something general or shared. The general idea of the common good is that it is something that ‘more than one individual can pursue, achieve, possess, benefit from, value, or enjoy’ (Rehg 2007, pp. 8–9). Nevertheless, in the

case of the common good, common may refer not only to the general good of a community, but also to the good of a smaller group of people (cf. welfare vs. charity). In addition, the common good may not be accessible to everyone, especially to those who are marginalised from a community or are outsiders (Murphy and Parkey 2016).

Commonness of the common good can be nominal, which means that a group of individuals may enjoy the same kind of good or be focused on a thing, condition or state of affairs, which means that more than one individual shares it. The common good must also be defined by values and concepts that are understandable to the members of a community (Rehg 2007). Yet the common good is not always something that is similar to individual interests; that is why it must have something appealing that attracts people's attention (Beerbohm and Davis 2017).

Historically, lotteries were the first form of gambling that were promoted in the name of the common good in a community. The civic purpose of lotteries could be explained as investments or as matters of development for the common good of a society, whereas the pious or charitable purposes would benefit the poor and marginalised members of a community or even outsiders, and as such, the revenues were directed towards specific groups of individuals. The contemporary view of lotteries may not literally refer to these historical purposes. Winnings and other jackpots are not something that members of a community would enjoy together, but they can be seen as common objects of pursuit (Rehg 2007).

The question of welfare shows that the idea of the common good indicates many controversies on the political level. The EU legislation sees gambling revenues as an incidental beneficial consequence and not as the purpose of operating gambling in a member state. It is difficult not to surrender to the economic benefit of a gambling operation when the welfare system is at stake. Good causes are the vestiges of a more universal conception of the common good, but they are not always seen as beneficial for the community (cf. an efficient way to fund public services), and they do not represent an act of solidarity towards those who would need the most support from the public sector (cf. funding cultural projects instead of social and health-related projects).

This chapter has illustrated the different conceptions of the common good in gambling studies with references to social, cultural and political phenomena, events and changes that have modified Europeans' attitudes towards gambling, but also towards each other. Gambling was made common and especially good through purposes and ideas that were able to change individuals' perceptions of their community and their society. The whole idea of the common good in Europe has been possible in the gambling context through charity, solidarity and social practices. Of course, gambling is a specific activity permitted for political and economic reasons. But without the promise of worth, it would not have succeeded to promote the idea of the common good.

Declaration of Conflicts of Interest None. This study was funded by the Finnish Ministry of Social Affairs and Health (Lotteries Act 52§)

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15

The Public Interest Approach to Gambling Policy and Research

Pekka Sulkunen

Introduction

Gambling has been strictly regulated in most societies throughout the ages, and it still is. Regulation has reflected religious views, the moral value of work and entrepreneurship and social norms concerning acceptable uses of leisure time. It has nevertheless developed into a global industry of mass consumption, thereby provoking economic and fiscal arguments and highlighting issues such as crime prevention and consumer protection. The prevention of gambling-related harm including addiction and individual financial problems has emerged as relevant grounds for regulation as the activity has become more widespread (Sulkunen et al. 2018).

Questions and theories about gambling regulation tend to hinge on the notion of causality, as in other areas of research on

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M. Egerer et al. (eds.), *Gambling Policies in European Welfare States*,
Work and Welfare in Europe, https://doi.org/10.1007/978-3-319-90620-1_15

consumption-related harm. Research on public health represents the paradigm of the approach. Cause-specific measures of excess mortality and morbidity depend on complex data-sets and sophisticated analysis to determine the link between each disease or lifestyle pattern and the loss of a healthy life (World Health Organization 2017).

Causality is also involved in measuring the efficiency of prevention and treatment. The methods used include price and availability regulation, the restriction of licensing and trade, advertisement control, the use of warning labels, education and indirect measures to improve living conditions. Treatment, services and medication are costly, and assessment of their effectiveness must be based on evidence.

Evidence of causality may seem to be an obvious requirement to justify public policy. Arbitrary limitations on the freedom to choose and to operate on the market are, to some extent, in conflict with ethical and political principles in most societies, and emphatically so in liberal societies. Policies must be justified and based on reasonable evidence, although what counts as such is a matter of debate among the various interested parties (Cassidy et al. 2014).

My argument in this chapter is that the taken-for-granted requirement of causal proof in gambling regulation is inadequate and misleading. Some of the problems are technical or methodological, but more important issues concern a matter of principle: what is it that regulation is expected to achieve? The public or common good, and the public or common interest, are frequent formulations of these aims, which are often used interchangeably but in fact they cover underlying principles that are quite different and often contradictory. The following analysis of the different alternatives is based on key findings reported in a collective book (Sulkunen et al. 2018) that reviews available research evidence on the justifications of gambling policies in various parts of the world, and their empirical validity. This chapter shows that a public interest approach encompasses a wider agenda of policy justification than conventional notions such as public health, which singularly depend on evidence of causality. It is important to have a broad agenda for research and policy evaluation, not only because of the diversity of the related harm but also because of the complex way in which the burden is distributed in society.

Technical and Methodological Problems with Causality Requirements

Much work in health research has been devoted to developing standardised criteria for lifestyle-related diseases in the ICD and DSM international classifications. These criteria consist of lists of behavioural symptoms during the past year, with thresholds for behavioural and pathological problems. Such classifications are needed for diagnostic purposes, but they also serve to measure how much of the burden on the population's health can be attributed to specific risk behaviours such as alcohol and tobacco use, nutritional factors and now gambling. Similar screening instruments are used in population surveys to measure the prevalence of persons exceeding the thresholds. The problem is that the criteria are not, in fact, universally applied in clinical practice, and are differently understood in population surveys and other sources. Cultural definitions interfere too much to allow comparable statistics on health risks to justify regulation (Rehm and Room 2017). The same goes for gambling, its different forms and the related problems. The requirement of causal evidence is complicated by the wide scope of non-medical issues that may or may not be associated with gambling (Langham et al. 2016). Attempts to prove causality either way, from behaviour to problems or vice versa, even with large longitudinal samples and register data, are highly politicised and produce contradictory results. Moreover, distributional issues are always involved. The poor suffer more from risk behaviours, and therefore, become even more vulnerable, but it is difficult to determine whether a low income, health and other conditions are a cause or a consequence of such vicious cycles.

Other problems are more technical, and most of them relate to sampling and coverage. Gambling problems have low prevalence rates. Researchers usually come up with figures far below five per cent of problem gamblers, and much lower for pathological gamblers in general populations. Population surveys are vulnerable to so many sources of error concerning such low prevalence rates that cross-sectional comparisons between populations are very shaky, and conclusions on changes in time within the same population are almost useless for policy purposes (Sulkunen et al. 2018).

Policy effects are also very difficult to establish, as many things happen in society simultaneously, and very often a strict control policy only follows, rather than causes, behavioural change and attention to problems.

For these reasons, research that relies only on causal evidence is an easy target for the industry that has an interest in the way regulation is set-up and monitored.

Common Good—Common Interest; Public Good—Public Interest

The requirement for causal proof is problematic not only on the methodological and technical levels. The main difficulty, which is often passed over without further reflection, lies in loosely explicated notions of what it is in practice that public (health) policy and research aim to promote or advance, or to prevent and minimise.

‘Goods’ Versus Rights and Interests

Two types of justification of social actions are common in policy discourse: one draws on the notion of *‘goods’*, the other on *rights and interests*. A healthy life is a prime example of a good thing that everybody, or most people, consider desirable. On the other hand, health could also be understood as a right, which people have an interest in protecting. Policy approaches are commonly justified from both perspectives. At first sight, the difference appears to be slight—who would not be interested in good health? In fact, they are very different.

The distinction between the common good and rights (or interests) reflects two ways of evaluating what are just and fair goals in social policy. Health is a common good, and promoting it is acceptable if it does not unduly impinge on another common good, such as the freedom to choose one’s lifestyle. When these goods are in conflict, as they often are (Sulkunen 2011), one has to weigh them against each other.

On the other hand, promoting health serves a variety of interests, such as those of the health industry, patients and patient associations, health professionals and many other people engaged in health promotion or care for the sick. Health can be promoted as the right to and an interest in adequate services and protection against risks, as in research on health inequality (World Health Organization 2008). Rights and interests in relation to health are often contradictory, hence it is necessary to weigh the legitimacy of one interest or right against others.

Common Against Particular; Public Against Private

The grounds on which goodness and rights or interests are evaluated also oscillate between two possibilities. *First*, they can be assessed in terms of how *common* or how *particular* they are, in other words how widely they are shared in society. Most people value health as a good thing for everybody, whereas many pleasures such as gambling, smoking and drinking are considered good or acceptable for some but not allowed to others. The question is, to what extent policy justifications expect people to conform to similar values about what is good and bad, and for whom.

Second, a distinction between *private and public* good and interests may be drawn. People have different values, traditions and ways of life, and therefore not all forms of goods are shared by all. Policy justifications need to be limited to what could be considered the public good, leaving aside—and also undisturbed by public regulation—what should be considered private.

Making such a distinction in societies with significant cultural diversity and divergent consumer preferences is both important and necessary to avoid unacceptable authoritarian pressure towards uniformity and sameness.

Both goodness and interests (or rights) could be used to justify policy on the basis of being common and shared by all or most people, or of being public. Table 15.1 summarises these four different approaches.

Table 15.1 Principles of justifying (gambling) regulation

	Common	Public
Good	1. Acceptability of gambling: <ul style="list-style-type: none"> • religious • moral • normative <i>Criminalisation, prohibition, moral bans</i>	2. Abstract 'goods': <ul style="list-style-type: none"> • health • welfare • security <i>The ethics of not taking a stand, information, persuasion</i>
Interest	3. Collective utility in the long term: <ul style="list-style-type: none"> • health care costs • welfare and security losses • social and economic benefits <i>Cost-benefit analysis</i>	4. Extended concept of interest: <ul style="list-style-type: none"> • actors and agents • capabilities • processes • intentions <i>Public debate and negotiation</i>

Judgements of Gambling

The four principles exemplified in the Table 15.1 are applied next to prevalent justifications of gambling regulation. The first three cells are first assessed critically. A further definition of the fourth follows with a discussion of its implications.

Gambling as 'bad'

Gambling is considered in many countries to violate the common good (Cell 1), even today. Buddhism, Islam, Hinduism and Shintoism discourage or ban most forms of gambling (Warren 2013). Communist governments, including Maoist China (Lam 2014) and the early Soviet Union (Tarasov 2010), ban gambling for social and ideological reasons (Young and Markham 2017).

Even Western democracies have a long history of the normative condemnation of the act of gambling, and not only its consequences. The rising bourgeoisie in the nineteenth century disapproved of gambling as reflecting idleness and corruption among the nobility (Reith 2006). In fact, the growing casino tourism towards the end of the century was limited to border regions and was not accessible to locals, in particular to members of the industrial working class (Parvulesco 2008).

Most forms of gambling were made totally illegal in Western Europe and North America in the early twentieth century (Orford 2010). Such normative approaches tend to be replaced in contemporary consumer societies with an emphasis on individual and market freedom. Gambling is associated with leisure, tourism, sports and entertainment in many countries, and it is very difficult to distinguish between good and bad gambling. Other grounds are called for to justify regulation.

Abstracted Public Goods

One way to formulate policy targets as aspects of the public good on which there is general agreement is to use abstract terms: health is one, welfare and security are others (Cell 2). We all wish to lead a life that is adversely affected as little as possible by disease and other people's actions. Individuals and groups could be left to decide on the particular means that best suit them, supported by information and persuasive advice from experts and public bodies. This is a policy approach referred to elsewhere as 'The Ethics of Not Taking a Stand' (Sulkunen et al. 2004; Sulkunen 2016, pp. 145–163).

The abstract solution hardly solves the problem. Policy measures must be concrete and binding if they are to be effective. Solid evidence on alcohol policy supports the view that information and persuasion that leave the decision to consumers are not cost-effective (Babor et al. 2010). Some similar findings on gambling have been reported (Williams et al. 2012; Lemarié 2012). Effective regulatory methods involve limitations on individual freedoms, and thus raise the issue of whose good is a public issue and whose good should remain private. Gambling draws in various types of people who suffer from its consequences but are unable to participate in making decisions about it. Even gamblers seldom have sufficient knowledge about their chances of winning and losing. Abstract notions of responsible gambling, with voluntary limit-setting and prompt messages, respect the individual gambler's private good but do little to concretise responsibility for the public good.

Common Interest

Another approach, also with a long history in moral and political theory, is to refer to the *common interest* instead of the common good (Cell 3). One may not agree on the value of gambling, but one could still agree that it is in the common interest to minimise it because of the harm it causes to society. This is the logic behind the Total Consumption Model, well-known in the context of alcohol policy. It is not necessary to take a stand on the goodness or badness of drinking to agree that less consumption is better for the population (Sulkunen and Warsell 2012).

However, a consensus can be reached only if research findings convince us that less consumption reduces the burden of problems, which even affect those who do not cause them. Failure in this regard is probably one of the reasons why TCM has fared so badly in policy practice despite its wide acceptance among experts: consumers cannot directly observe the relationships between the total consumption of alcohol, alcohol-related harm and policy measures. This applies to gambling and is particularly problematic. The common-interest justification of gambling regulation requires evidence and calculations of the costs and benefits, which are very complex (Williams et al. 2011). As Adams (2016) points out, the collective gains and losses from gambling *profits* must be counted together with the balance of gains and harms from the consumption of gambling *products*. The activity creates investments and jobs, brings revenue into the public purse, and is a major source of funding for many legitimate social activities. Some of these elements are the same as in alcohol and tobacco policies, but the strong redistributive effects of gambling significantly complicate the assessment of common interests. Few of the economic benefits accrue to those who spend the most money and generate the largest proportion of the surplus used to fund public services. The industry has what researchers call ‘cannibalising’ effects, which undermine the economic outcomes by replacing other economic activities rather than adding to them (Marionneau and Nikkinen 2018). All these factors make the common interest approach to gambling policy vulnerable to bias and specific competing interests, hence it is practically useless in evaluating policy efficiency.

The Public Interest Approach

If the notions of the *common good* and the *common interest* are unsatisfactory, and the division of the *public* vs the *private good* is less than ideal to justify gambling regulation, would the notion of the *public interest* fare better? In my opinion it would indeed, but then one should broaden the idea of interest beyond its narrow conventional sense. *Common* interest, as described above, refers to little more than aggregated selfishness. It is, therefore, necessary to broaden the perspective to allow reference to the *public* interest.

Interest in the Happiness and Misfortune of Others

The issue of interest gained in importance and attracted attention in European social thought in the seventeenth and early eighteenth centuries. Authors took distance from what they called the ‘selfish theory’, especially that of Thomas Hobbes. He assumed that although people have different needs and desires, they have one thing in common: they want to live. Competition for the means of survival leads them into perpetual conflict and war. The only way to ascertain peace is to agree mutually to give away some of one’s individual rights to a sovereign ruler.

The ‘selfish theory’ was later turned upside down, the assumption being that in pursuing their own private good and rights people also advance the common interest if left undisturbed by state interference. The institution of the market is sufficient to assure this beneficial outcome.

The vast majority of social scientists nowadays agree that this view is not only unconvincing but also jaundiced in terms of understanding human motivation and social co-operation.

An alternative approach to interest incorporates other people in individuals’ evaluation of their own actions and the actions of others. Adam Smith formulated this view in the following way in the opening paragraph of his *Theory of Moral Sentiments*: ‘How selfish soever man may be supposed, there are evidently some principles in his nature,

which interest him in the fortune of others, and render their happiness necessary to him, though he derives nothing from it except the pleasure of having it....' (Smith 1984 [1789] I.i.I.1.-2., p. 9).

Consequently, when we judge the actions of ourselves or others we take into account other people's feelings, and we know that they do likewise when they judge us. Smith used the word 'sympathy' to characterise this mutuality of moral sentiments. We are angered when we experience injustice personally but we also 'participate' in the anger of others when we see injustice being done to them, and we also want to retaliate against the perpetrator on their behalf. I call this the *extended concept of interest*, which incorporates not only the interests of each actor, separately or in aggregation, but also the 'happiness of others'. Neither direct observance of what others feel, nor expectations of what they think of us is perfect but they suffice to generate a shared sense of justice. This sense alone assures co-operation in small societies, in which people know each other. They know, for example, that if they cheat, or are otherwise subject to negative judgements, retribution will follow. This is known as enlightened self-interest. Large societies, on the other hand, need judiciary systems setting out rules of conduct, mutual rights and procedures to guide them along the narrow path. To be acceptable and to engender a sense of justice, rules and judgements must account not only for the gravity of an action but also for the fact that people are different and have different resources and intentions, and that the consequences of their actions depend on such differences. A murder is more serious than an insult; a theft from a poor child is a more culpable act than a similar theft from a rich man. Intended harm causes stronger resentment than accidental damage.

Amartya Sen (2010) built his 'capabilities approach' on Smith's principle of sympathy. An act should not be judged solely on the basis of its estimated causal effects. It should also be considered from the point of view of the actors involved, accounting for their different positions, interests, capabilities and intentions.

The capabilities approach to justice could be applied to the justification of gambling policy. The role of research is thus to evaluate not only its effects but also the policy itself, and to make a critical assessment of how it is justified. This approach does not require policy-makers to take

a stand on the act of gambling as a common good (or bad) (Cell 1). It also avoids the need for definitions and measurements of (abstract) public goods (Cell 2) or common interests (Cell 3), and it does not depend on causal evidence of the policy's effects on them. Comparisons should be made between different possible courses of action rather than between a policy and an ideal or hypothetical situation. The public interest approach, in this sense, is not limited to recommending actions on assumed or weak causal evidence. It evaluates policies, including decisions by the main actors accounting for who the actors are, what their capabilities are and what kind of processes these actions are part of, and also critically examines their underlying intentions, explicit or otherwise.

Gambling Policy, Research and the Public Interest

These issues are important given that the social policy relevance of gambling extends far beyond the associated problem behaviour and the individuals who are directly involved.

Gambling generates a surplus of money over and above the costs of production and normal profits (Krueger 1974), which economists and political scientists refer to as 'rent'. Private companies, beneficiaries of good causes and states are interested in this surplus, which generates two accelerating mechanisms labelled Loop One and Loop Two in the Figs. 15.1 and 15.2.

More gambling generates more public revenue, but also incurs a cost as gambling-related harm increases (Loop One). As a result, public, private and civil society organisations may demand more funding for treatment and support services to help problem gamblers, instead of demanding limits on gambling supply.

Loop Two refers to the dependences and vested interests that emerge as states and lower levels of public administration, associations and other beneficiaries of good causes use the rent to provide public services. Any policy effort to reduce the total monetary volume will probably meet resistance for this reason.

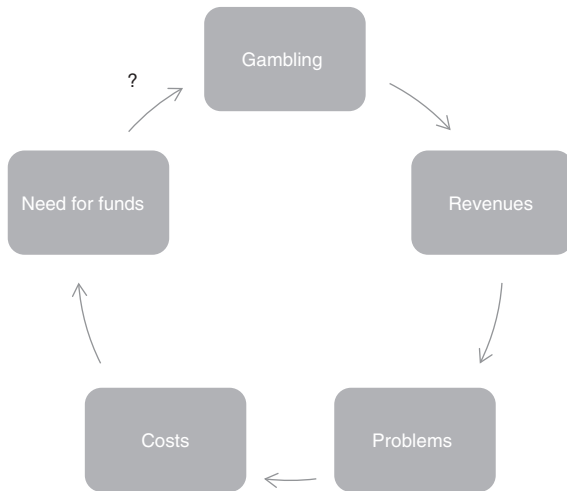


Fig. 15.1 Loop one: public revenue and public cost

Consequently, as shown in the collective book referred to above (Sulkunen et al. 2018), gambling policy should take into account the following four complexities that go beyond the individuals who are more or less directly concerned, and also beyond the abstract public good and the common interest of the population as a whole:

- The ‘rent’ from gambling disproportionately benefits the wealthy, but it makes the poor even poorer and the unhappy even unhappier.
- Gambling is even more highly concentrated within a very small group of heavy users than other forms of risk consumption. A very large proportion of heavy users are people who can least afford to support the good causes funded from the ‘rent’. Many heavy gamblers are themselves in need of help and support.
- Gambling consists of various types of activity with differential and well-known risk potential for different types of gamblers.
- Gambling contributes to harm and suffering even when it cannot be identified as causing them. Gambling problems co-occur with many other vulnerabilities, which affect large numbers of individuals who are not currently gambling. Policy considerations should recognise these aspects independently of the causal role of gambling in them.

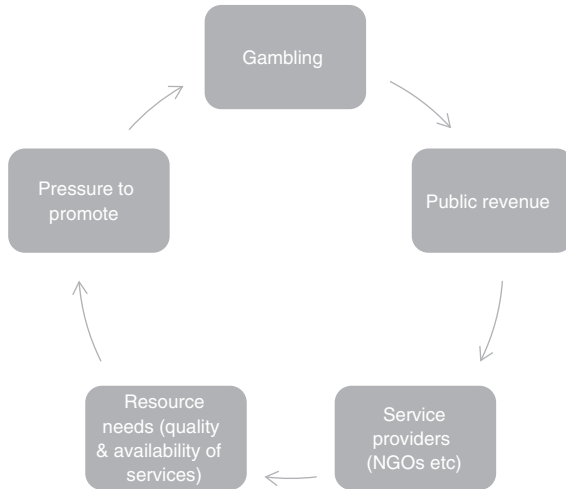


Fig. 15.2 Loop two: dependencies on the 'rent'

We summarise these aforementioned conclusions as follows in our collective book on gambling policy: *'Redistribution of wealth, concentration of the cost on a very small fragment of the population, and reinforcement of other vulnerabilities make gambling policy an issue of distributive justice.'* (Sulkunen et al. 2018, chapter 12).

This abstract conclusion should be broken down for the purpose of evaluating policies and their justification. The public interest approach highlights four issues that arise from the Smithian concept of sympathy and the 'capabilities approach' Amartya Sen developed from it: (1) actors and agencies; (2) their capabilities; (3) processes; and (4) intentions of actions. Actors and agencies in different positions are differently equipped with competences and resources, and they have different aspirations that also need to be taken into account. Policies, however, well-defined and delimited to specific measures, never occur in isolation: they depend on a web of circumstances and trigger other actions not necessarily controllable by those who initiate them. In so far as the task of research is not simply to measure and observe but also to evaluate and critically examine policy justifications, intentions must also be included.

Excessive emphasis on causal evidence has resulted in the following caveats in current gambling policy agendas as well as in related research, from the public interest perspective.

Actors and Agencies

Gambling policy and research modelled on the public health paradigm focuses on the effects of regulation and give little attention to the actors involved. In contrast, the public interest approach takes into consideration the essential fact that gambling has become a global industry with multinational corporations as the source of supply, whereas gamblers are more or less isolated individuals. A very small group of them, about five per cent of the population or less, spend most of the money, and generate the largest share of gambling profits. The number of other people affected by each overspending individual is high, estimates varying from seven to 15 (Kalischuk et al. 2006; Salonen et al. 2014). There is also high fluidity among heavy gamblers (Slutske et al. 2003), meaning that the prevalence of problem gambling at any one moment must be multiplied to account for the number of people who have experienced gambling problems.

A second issue concerns the actors responsible for the regulation. Most of these are nation states, whose responsibilities and interests are divided among the federal, state, regional and local levels, as well as between various governmental branches. Beneficiary ministries such as education, culture, health and social services are often involved, too. International regulation is mainly institutionalised in the European Union, but there is urgent need for world-wide responses to the rapidly growing global marketing and supply of gambling opportunities.

Third, it is essential to consider the web of good cause beneficiaries that are funded from gambling returns. No detailed studies assessing the importance of these funds have been published so far, but it is known that the major recipients are sports, culture and education, youth work and specific social and health services. Our estimates indicate that, in total, these sources commonly amount to as much as two or three per cent as compared to state budgets (Sulkunen et al. 2018, chapter 10).

From the public interest perspective, it is not sufficient to sum up the economic benefits and losses in cost-benefit analysis (CBA) balance tables, and efforts should be made to chart their distribution between different types of actors and agents.

A public interest approach should go beyond estimating problem prevalence to focus on the political economy of gambling: the flows of money from the gamblers and their environment to profits, public revenues and good uses of the returns. Knowledge about gambling as a funding source for these activities, as well as about the division of power in regulatory systems, is a prerequisite for developing reasonable gambling policies in the public interest. This is the research area that has attracted the least coverage in gambling studies.

Capabilities

Problem gambling frequently co-occurs with mental and physical health problems, substance use, smoking, poverty, family problems, suicide risk and having criminal record. The availability of gambling opportunities in the most deprived neighbourhoods (Wardle et al. 2014; Wheeler et al. 2006; Pearce et al. 2008) contributes to the co-occurrence of gambling with other vulnerabilities. Exposure to land-based opportunities is one of the easiest aspects that national and regional regulating authorities can control.

Online players tend to be more highly educated and to have higher incomes than gamblers who do not play on the Internet (Tovar et al. 2013). Given the rapid growth in online gambling, and as online technology becomes increasingly integrated with land-based gambling opportunities, these differences are likely to disappear.

On the one hand, digital technology enables developers to mix games, hide game features, reinforce false beliefs and offer unlimited availability, which are issues connected with consumer protection as well as problem prevention. On the other hand, the technology also enables the efficient early detection and blocking of risk behaviour.

Spending limits, warning alerts and limits on access to money should to be complemented with support services for problem gamblers.

Such services should offer assistance in terms of managing financial resources and improving risk awareness. These factors depend not only on treatment services but also on policies that regulate the provision of gambling opportunities.

From the public interest perspective, the key area of research and policy to be developed is that of regulation and technology to prevent the exploitation of ignorance and misperceptions due to social, cultural and mental vulnerability.

Processes

The public interest approach implies that policies and their justification must be evaluated as a process rather than as stable relationships between regulation, supply, behaviour and problem gambling. The expansion in gambling since the turn of the millennium has become an element in the growth of global inequalities. It should be understood as a recent historical phenomenon, and policy development should be framed in this context.

One essential fact is familiar from public health-oriented research: the volume of gambling is related to the volume of the harm it causes in the population (Grun and McKeigue 2000; Hansen and Rossow 2012). Growth in gambling is strongly cumulative, as the analysis of the two Loops show. When it happens it is difficult to reverse, and each additional growth impulse is likely to further accelerate the process. Online gambling is the fastest-growing aspect of the activity globally, especially in countries with a high coverage of mobile technology among the population. This leads to intense competition between (nationally) regulated and unregulated (unlicensed supply, usually by international operators) markets. Technological advances muddle the distinctions between gambling and social games, as well as the differences between land-based and online gambling.

One response by operators within the regulated market is to develop games that cover all consumer segments and gambling styles, including those that are the most exploitative. Consumer protection and crime

prevention are often used to justify this policy. The evidence so far rather supports the contrary view that more highly regulated gambling not only increases competition overall but also leads to more illegal activities, of which money laundering and match fixing are the fastest-growing forms (Sulkunen et al. 2018).

An alternative approach would be to set limits on unregulated markets. Experiences from Sweden, Switzerland, the USA, France and Norway indicate that online and mobile gambling can be regulated, but at a cost.

A public interest approach would focus efforts on developing stronger policies to stop rather than accelerate the growth of global gambling. More research is required on its impact on global inequalities and on the possibilities to regulate the online market without expanding it.

Intentions

The public interest approach does not offer ready solutions to be applied universally in the same way. At best, the focus should be on providing material to facilitate the critical evaluation and justification of policy options. Expanding the regulated market is often justified in terms of consumer protection and crime prevention, but the available evidence does not support this argument. Another source of justification is the extra money, or rent, to be used for good purposes. These arguments are not unknown in other areas related to public health, such as alcohol policy (Mäkelä et al. 1981). The global growth of the gambling industry, however, means that this is not only a side issue of the policy area. The disadvantages of collecting money from gamblers should be compared not with the benefits of funding social activities but with other ways of resourcing them.

More research is required on the distributional effects of the growing regulated markets, so as to assess the validity of the good intentions used to justify them.

Conclusion, Discussion and a Recommendation

The public interest approach sets goals and criteria for evaluating policy in the same terms as in studies on public health—to promote the health and well-being of the general population. The approach does not rest on judgements of the activity, nor is it limited to the consequences in terms of the common interest or the abstract public goods of health, welfare and security. The emphasis is rather on evaluating gambling and gambling policy as concrete processes involving many actors in different positions, with different capabilities, interests and intentions.

Our review of currently available research referred to above (Sulkunen et al. 2018) concludes that gambling not only causes health, welfare and security problems, but also transfers wealth from the poor to the rich and reinforces other vulnerabilities. This makes it an issue of distributive justice. As I have pointed out in this chapter, there are caveats in gambling policy and research agendas. The first concerns the political economy of gambling. Others focus on the need for technology and policies to prevent the exploitation of ignorance and misperception, thus reinforcing social, cultural and mental vulnerabilities. A further key task for research is to assess critically the validity of good intentions that are used to expand the regulated market. Such intentions include, above all, consumer protection and crime prevention as well as the allocation of extra profits for public use and good purposes.

The public interest approach widens the perspective on gambling policy from a focus on problem-prevalence estimates to policy-making in practice. It hinges on the extended concept of interest, drawing on Adam Smith's view on sympathy, and on Amartya Sen's capability approach to justice. An issue that needs further discussion concerns the process in which extended interest becomes public. Adam Smith's theory of social co-operation is founded on a sense of justice, but it does not assume that people agree on the terms of justice in each case. This is a matter of public debate and political decision-making. Amartya Sen's capabilities approach requires further that decisions should not be evaluated solely in terms of interests assumed to be commonly shared in society. Nor should evaluations rely on abstract goods to be protected

by public regulation. Judgements should consider actors and agents in various positions, including their different capabilities, interests and intentions. Such an approach in policy-making and research cannot offer ready solutions to be applied everywhere in the same way: it can only provide material for the critical evaluation and justification of policy options, which are and should be the key elements on its agenda.

The recommendation follows naturally from what is written above. Research findings consistently show that effective pre-commitment and limit-setting tools are those that are universally applied, mandatory, based on behaviour rather than personality and implemented by means of personalised registration across all accessible forms of gambling participation. The game features and environment characteristics that involve high risks are well known, and the redistributive effects of participation by vulnerable groups can be reduced if policy-makers so wish. Applying effective risk minimisation tools and restricting the use of high-intensity games and immersive environments will inevitably cut down heavy use and consequently the volume of commercial gambling. The recommendation is that policy-makers and researchers should not consider this only in the light of problem prevalence rates but should rather seek alternatives that are sensitive to the happiness and misfortune of gamblers and their families.

Declaration of Conflicts of Interest Pekka Sulkunen has received funding from the Academy of Finland project ‘Gambling in European Welfare Regimes’ (grant no. 277405). Sulkunen has also received funding from the Finnish Foundation of Alcohol Studies based on §52 of the Finnish Lotteries Act. The money stems from Finnish gambling operations but the gambling monopoly has no influence on how the money is distributed and imposes no restrictions on publications.

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16

Conclusion: Contradictions in Promoting Gambling for Good Causes

Virve Marionneau, Janne Nikkinen and Michael Egerer

Introduction

Gambling has been used for centuries to finance public projects in Europe and it continues to produce crucial funding for welfare states and welfare projects. Welfare benefits in a jurisdiction accrue either directly through taxation and state-run operation, or indirectly in promoting economic development. The funds collected via gambling operations may be directed to state coffers or to earmarked purposes, such as sports, culture and welfare projects organised by state actors or civil society organisations (CSOs).

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However, these profits are not without problems. Previous research has questioned of whether gambling is an ethical or even a cost-effective way to fund public projects (Nikkinen and Marionneau 2014; Adams 2016), and the case studies reported in this book raise similar concerns. Taxes collected through gambling have been declining in countries such as Italy (Rolando and Scavada, this volume) and Slovenia (Besednjak Valič and Macur, this volume), despite increased availability and participation. Vested interests in gambling proceeds have resulted in inconsistent regulatory practices in Germany (Loer, this volume), whereas in Austria and Britain (Bereiter and Storr; Orford, this volume) expansive policies are not in line with the aims of preventing gambling harm. A political scandal in Poland (Wieczorek and Bujalski, this volume) and concern over consumer protection in Norway (Borch, this volume) have recently led to restrictive legislative change.

In this final chapter, we raise the question of whether gambling is or can be consistent with the idea of the European welfare state and welfare production. To this end, we focus on three contradictions in existing ties between gambling and European welfare states.

The first contradiction relates to different justifications used in state-operated gambling. Justifications for gambling provision differ based on whom they are directed at. While European Union (EU) member states justify their gambling provision to EU institutions in terms of consumer protection and prevention of criminality, charitable causes and welfare projects are used to increase its legitimacy among local consumers. These discourses may even be counterproductive as they have the potential to divert from the actual motivations and vested financial interests behind gambling provision.

The second contradiction relates to how gambling is regulated. Gambling can be regulated and deregulated in a variety of ways, and governments take on many roles (cf. Adams 2008). However, the more restrictive models are not always the most effective. This is due to a narrow understanding of gambling harm as individual-level problem gambling that could be solved with 'responsible gambling' policies or 'consumer protection measures'. A wider understanding of gambling harm, including not only the individual but also societal and systemic issues is crucial. To this end, more important than the choice of a

regulatory regime appears to be the clarification of government's role: is it primarily to control, regulate, promote or facilitate commercial gambling (also Dombrink 2009).

The third contradiction suggests that gambling is not in line with the idea of welfare ethically or even financially. The contributions of Orford, Sulkunen and Järvinen-Tassopoulos and Eräsaari introduce conceptual tools to enhance understanding of the difference between the public good, which focuses on raising revenue for public projects, and the 'good society' the 'common good', or the 'public interest', which are related to the overall values and ethics of gambling provision. These ideas highlight the need to consider the risks and side-effects of gambling for the whole population. Attention should be paid to the institutions involved, instead of focusing merely on its financial benefits. However, even the financial benefit of gambling provision to societies should be questioned and not taken for granted.

Justifications

French sociologists Luc Boltanski and Laurent Thévenot (2006) have defined justifications as acceptable and meaningful principles that are used to explain action. Justifications can therefore differ based on whom they are directed at. In sociological theory, justifications are close to what Mills (1940) has called vocabularies of motive. Other theoretical approaches, including the neutralisations theory by Sykes and Matza (1957) or the Moral Disengagement model by Bandura (2002) have come to similar conclusions from a socio-psychological perspective. Previous research on the policy arguments behind gambling legislation has highlighted the financing of sport, the arts and social programmes, the directing of consumption away from illegal towards legalised gaming, and the need for revenue as the most common arguments governments use to justify gambling provision (Marionneau 2015; Chambers 2011; Clotfelter and Cook 2009; Eadington 2008; Kingma 2008).

In European gambling studies, the term 'justification' has been more specifically used to refer to the rulings of the Court of Justice of the European Union (CJEU), according to which member states must

provide an objective justification if they wish to restrict their gambling markets. These are the prevention of fraud and other criminal activities, consumer protection, maintaining social, moral and public order and preventing gambling provision from becoming a source of private profit. According to Planzer (2014), the CJEU has been very lenient in accepting justifications of the public interest as long as such interest is not economic, fiscal or protectionist. Raising public revenue is therefore expressly excluded as a valid justification, and the financing of social and charitable activities can only be an incidental consequence of gambling.

CJEU rulings constitute the basis of EU-wide regulations on gambling, but the European Commission can also influence national gambling policies through recommendations or by initiating infringement proceedings or sending out letters of formal notice. In 2014, the Commission announced common guidelines on consumer protection and the prevention of money laundering in online gambling (European Commission 2014). The countries discussed in this book are European Union member states (with an exception of Norway), and are therefore bound by these regulations. Norway is part of the European Economic Area (EEA) and is required to follow similar rulings of the EFTA Court (Planzer 2014). The future status of Britain is still open. EU member states have adjusted their legislative discourses to better adapt to CJEU requirements for a valid justification (Marionneau 2015). We call the justifications that member states direct at the European institutions *legal justifications*.

However, the power of the European Union over national legislation is not absolute. Gambling has been purposely excluded from EU laws such as the Services Directive, and the harmonisation of gambling legislation is currently off the European Commission's agenda (European Commission 2012; Littler 2011). Furthermore, both the CJEU and the non-binding nature of recommendations on consumer protection give considerable leeway to member states in terms of gambling policies. Some countries with a long monopolistic tradition of gambling provision, such as Sweden and Germany, are currently looking into introducing a licensing system in online gambling (Cisneros Örnberg and Hettne; Loer, this volume), whereas the process has already been accomplished in countries such as France, Italy and Spain (Marionneau and Berret; Rolando and Scavada; Becoña and Becoña, this volume).

However, as the cases of Norway and Poland (Borch; Wieczorek and Bujalski in this volume) show, EU and EEA states may also choose to restrict their gambling markets if the political will or societal pressure is strong enough. EU Member States may even use EU demands as a justification for regulatory change aimed at protecting their own interests despite the lack of pressure from the EU.

Justifications therefore differ depending on whether they are directed at the European Union or at local citizens. Although economic reasoning is excluded from legal justifications, gambling provision is tightly linked to economic interests in national contexts. Gambling revenues are used for a variety of public purposes and as a motor for economic development. These funds have played a significant role in making gambling socially more acceptable, which is why we call justifications used in national contexts *welfare justifications*. The chapters by Gidluck, Casey and Orford (this volume) use the term *alibi* to describe the same process. The term was introduced by Kingma (2004, 2008) in his empirical analysis of Dutch gambling policies. According to Kingma, *the alibi model* depicts gambling as an intrinsically controversial activity that can only be legalised to fund benevolent purposes or to avoid illegal markets.

Unlike legal justifications, welfare justifications differ depending on the type of game and offer. Casino operation tends to be legitimised in the context of tourism development, notably in Slovenia, France and Spain (Besednjak Valič and Macur; Marionneau and Berret; Becoña and Becoña, this volume). Lotteries are introduced to raise money for public projects (Gidluck, this volume), whereas bingo games help with charity fundraising (Casey, this volume), although the potential for either to create net additionality can be questioned (e.g., Gordon 2004; Marionneau and Nikkinen, 2017). Welfare justifications also differ depending on how gambling funds are redistributed. The need for legitimising gambling to consumers in terms of public proceeds may be less acute in jurisdictions in which most of the proceeds go to state budgets than in cases in which gambling money is earmarked for concrete, relatable causes or CSOs (see Marionneau 2015). Such projects may provide a welfare justification for gambling provision that anonymous state budgets cannot.

Theoretically, justifications differ from motivations. According to social theory, justifications are used to make the social order acceptable, rather than being the motivating force (Boltanski and Thévenot 2006). There may well be other motivating forces beyond them, and the use of legal and welfare justifications can divert discussion away from these realities. The production of gambling is more profitable than the production of other commodities, mainly for reasons concerning monopoly-production rights, addiction surpluses and low cost related to the sales price (Young and Markham 2017). This ‘rent’ (Krueger 1974) is a surplus of money over normal profits, for which beneficiaries and operators compete, creating path dependences and vested interests (Paldam 2008; Adams et al. 2009; Borrell 2008; Loer, this volume). European countries attempt to maximise their share and to protect established interests via a diversity of regulatory regimes that may or may not be optimal to the consumer or to citizens. This stifles the wider debate about the role of gambling in European societies (see also Sulkunen et al. 2018; Miller et al. 2014).

Regulations

Regulations are the combination of law, supervision and evaluation, and it can be organised under a variety of institutions and configurations. There are as many forms of gambling regulation as there are jurisdictions. Regulations differ at least in terms of how gambling is defined, the kind of administrative level on which it is governed, the kind of control structures that are in place, how the revenue is redistributed and the authorised regimes of gambling provision. These differences are a result of different understandings of the objects of regulation and the division of power and responsibility. Governments take on many roles in regard to gambling, ranging from law maker, law enforcer, provider, promoter, monitor and policymaker to revenue collector, harm alleviator and broker (Adams 2008), but some of these tasks can also be attributed to other actors or institutions.

How gambling is defined determines the conditions under which it can be provided. In Slovenia (Besednjak Valič and Macur, this volume), for example, the distinction between ‘classic games’ and ‘special games’ has

historically defined who can participate in gambling. Austria (Bereiter and Storr, this volume) and Poland (Wieczorek and Bujalski, this volume) do not define sports betting as a 'game of chance', resulting in its more liberal regulation. In Britain, different categorisations of EGMS allows underage players to gamble (Orford, this volume). Different definitions also affect regulations on marketing in Poland. In the case of online charity bingo, the definition that bingo enjoys as a charitable game has allowed charities to engage in increasingly commercial practices and to offer riskier games without much criticism (Casey, this volume).

Regulations take effect on many levels. Federal countries are free to regulate gambling either on the provincial level, as has been the case with gambling machines in Austria (Bereiter and Storr, this volume) or at the federal level, as in Germany (Loer, this volume). Other countries, such as France Spain and Slovenia (Marionneau and Berret; Becoña and Becoña; Besednjak Valič and Macur, this volume), have centralised gambling in state hands, but regions and municipalities enjoy significant power over licensing and taxing gambling. Federal or international regulation may prevent jurisdictions from competing for comparative advantage by introducing new games or reducing tax burdens on providers (Sulkunen et al. 2018). All jurisdictions, regardless of their regulatory structure, seem to face similar challenges related to balancing between safeguarding established interests in gambling revenue and maintaining consumer protection. The level of regulation does not appear to affect this, but tensions between regions and the central state may result in competition for gambling funds, as has been the case in Spain (Becoña and Becoña, this volume) and Britain (Orford, this volume).

Regulations also depend on the kind of control structures that have been put in place to secure these interests. Given its multifaceted nature, gambling relies on the competences of several administrative branches, including ministries that regulate it, benefit from it and seek to prevent gambling-related harm. Gambling is typically regulated by Ministries of Finance or their subsidiary departments. Previous research has shown that the choice of controlling body tends to depend on which arguments were used to legalise gambling, ranging from promoting tourism to financial concerns and preventing criminality (Polders 1997; Sulkunen et al. 2018). The ministries that deal with

the consequences, focusing mainly on problem gambling, may be the same as the control bodies, such as in Spain (Becoña and Becoña, this volume). More typically, however, consumer protection is organised under ministries responsible for health and social issues. The ministries that benefit may be the same as or separate from the controlling ministries, depending on the level of earmarking of gambling funds. Sometimes the interest in controlling actors seems to override concerns for public welfare, as exemplified in the case of who is allowed to offer a charity lottery in Spain (Lotnext 2016).

Finally, jurisdictions vary in the kind of regulatory regime they have in place. All or some gambling operations may be centralised around a state-operated monopoly, as has been the case in Norway and increasingly in Poland (Borch; Wieczorek and Bujalski, this volume) and with regard to national lotteries (Gidluck, this volume). Gambling provision may also be open to private operators via licensing or concessionary systems. These are becoming particularly popular in online environments, in which restricting competition is more difficult, but many casino and sports betting markets are organised under some form of licensing. In some cases, gambling is operated under a charity system, bingo being a good example (Casey, this volume). Countries such as Sweden, Britain and Spain also allow charity lotteries to operate (Gidluck, this volume).

It seems from the examples discussed in this book that none of these regimes are more or less effective in terms of consumer protection and preventing criminality. Even seemingly restrictive monopoly regimes, such as those in Austria and Poland (Bereiter and Storr; Wieczorek and Bujalski, this volume) may be expansive, or they may lack adequate tools to control the illegal market. On the other hand, analyses from Sweden and Germany (see Cisneros Örnberg and Hettne; Loer, this volume) show that opening online markets to licensing systems may help to control the illegal market, although the same does not seem to apply to land-based gambling (Svenska Spel 2014). What is more important than the choice of regulatory regime, appears to be the effective prevention of gambling harms and separately from mere fiscal interests.

The aims of gambling regulation should be to protect consumers and societies from gambling harms. However, due to the requirement to legally justify their policies in terms of consumer protection, European

countries have come to depend on the negative externalities of gambling to maintain their protectionist regulations (Littler 2011). Problem gambling, in particular, is used to justify the existence of national gambling monopolies, or to restrict cross-border offerings (Cisneros Örnberg and Tammi 2011; Kingma 2008), but it also overshadows the wider understanding of gambling harm that includes not only problem gambling, but also crime, health issues, family problems, economic difficulties and equality questions (Sulkunen et al. 2018). Gambling is a regressive tax that harms different populations than those it benefits. Overall, gambling participation is most prevalent among those who have a lower income, are unemployed and have a lower level of education than the general population (e.g., Costes et al. 2015; Orford et al. 2010; Kramer 2010). The benefits of gambling, on the other hand, tend to go in favour of the middle strata of society.

When the funds are used to subsidise sports, gambling proceeds tend to favour larger and more important entities, as described in the chapter on France (Marionneau and Berret, this volume). This not only privileges more affluent participants, but also diverts attention from the need to encourage grassroots participation. The subsidising of culture from gambling funds benefits only the small percentage of the population who go to the opera or the theatre, the kind of high culture that receives the bulk of the available resources. Even more problematically, when gambling funds are used to subsidise the treatment of problem gamblers, treatment professionals and researchers may have a financial interest in the existence of gambling problems (Sulkunen; Orford, this volume). This, again, raises questions regarding the efficiency of preventive policies.

Welfare

Defining gambling as a service that can be limited to protect consumers contrasts directly with the utilitarian understanding of the overall benefit of gambling to individuals or societies, and instead highlights the damage inflicted. Although government-sanctioned gambling could be considered acceptable in terms of the public good, it may prove to

be more problematic from the perspective of welfare. Modern welfare regimes in Europe were based on citizens' social as well as civil and political rights (e.g., Marshall 1950; Esping-Andersen 1990; Kaelble 2004). Although welfare states are political as much as ideological constructions, they have had a significant impact in reducing poverty, settling class conflicts and improving the quality of life in European countries. Limiting rather than promoting the consumption of gambling would therefore better reflect this ideological basis, particularly given that based on available research, the total-consumption model appears to apply to gambling: increases in the total consumption of gambling also seem to increase gambling harm (Sulkunen et al. 2018). National gambling regulations are justified in terms of protecting consumers, but the discourse remains mainly cosmetic, aimed at providing an acceptable justification to protect national markets and national revenues. A welfare approach would rather protect citizens by reducing gambling participation and thereby the associated problems.

Several terms have been put forward to describe such an approach, but also to separate it from financial motivations, including the common good (Järvinen-Tassopoulos and Eräsaari, this volume; also Nikkinen and Marionneau 2014), the public interest (Sulkunen, this volume) and good society (Orford, this volume). These concepts highlight the wellbeing of populations rather than the monetary benefit of societies in drawing on the idea of empathy and joint responsibilities, but they are not completely interchangeable. The common good as a concept seems to be more applicable in contexts in which gambling directly benefits charities or CSOs. Järvinen-Tassopoulos and Eräsaari (this volume) describe the common good as a 'gift' that assumes some return. The common good approach also expects the state to act morally (Nikkinen and Marionneau 2014) which may explain why the concept is seen by some as moralistic (Planzer 2014; Sulkunen, this volume).

The public-interest model is more political, and perhaps more appropriate in state-run welfare provision. Unlike the common good, it does not expect a moral position or absolute criteria that should be followed. This may run the risk of making it merely descriptive and less open to offering policy goals or models towards which policymakers could strive (see also Wright and Head 2009). 'The good society' argument is more

ethical, as it expects the government to take its duty to protect the well-being of its citizens seriously. These three concepts highlight the risks and side-effects of public-revenue collection, and to involve all relevant institutions in decision-making on gambling, not only those with fiscal interests based on the fiscal good. This would mean emphasising public health, crime prevention and welfare institutions instead of fiscal interests.

The fiscal interests in gambling are nevertheless manifold. They may be hidden, as in the case of legal justifications to European Union institutions, or they may be overt, as when they serve as welfare justifications for local citizens. They may also be implicit in terms of stabilising coalitions of beneficiaries, which may well not be obvious to the public. This connection between gambling and public finances could equate its provision to the idea of advancing the public good through its capacity to generate funds for societal purposes, but it also has the potential to create a vicious cycle we have called the welfare cycle (see Fig. 16.1, cf. Sulkunen, this volume).

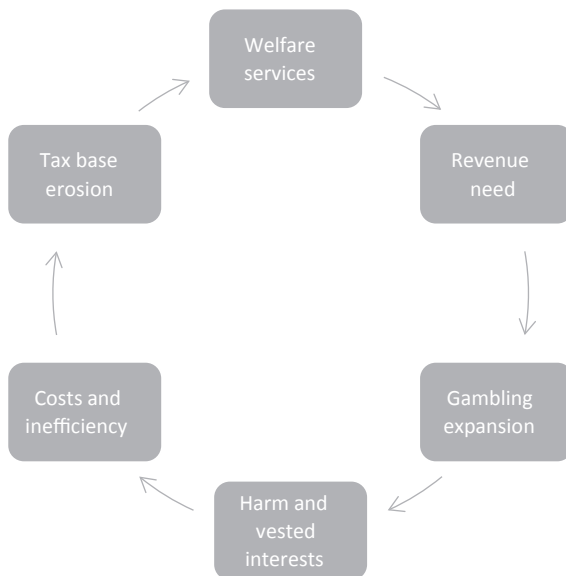


Fig. 16.1 The welfare cycle

Comprehensive European welfare services have been built on the premise that they tax their population and corporations operating in their territory efficiently. Welfare states have also taken on new roles beyond basic services, further increasing revenue needs. The expansion of gambling has been one solution to these revenue needs, alongside with increased sales and excise taxes (see Nikkinen, Egerer and Marionneau, this volume). Expanded gambling provision creates a variety of social and individual harm, but also broader systematic problems and vested interests (Orford 2013). When gambling is legalised and allowed to expand, it is more difficult to restrict it afterwards. There is always a demand for ‘more evidence’ when gambling-related harm is discussed (Cassidy et al. 2014).

Countries can direct gambling profits to state treasuries or to earmarked and designated purposes (Nikkinen, Egerer and Marionneau, this volume). Both models create different kinds of vested interests. On the one hand, the high-level dispersion of competences may result in benefit maximisation at the cost of increased problem gambling. This is particularly the case when associations and charities join state bodies as strong stakeholders as has been the case in Germany (Loer, this volume). On the other hand, centralising both the regulation and benefits of gambling under the same Ministry may create conflicts of interest, as illustrated in the chapter on France (Marionneau and Berret, this volume). However, given that the state budget relies on a number of other sources of revenue apart from gambling, interest in revenue maximisation through this channel may be weaker than in systems with stakeholders that depend on gambling for the majority of their revenue. Regardless of the model, vested interests risk turning into negative effects on the quality and efficiency of service production (see Loer; Orford; Gidluck; Rolando and Scavada, this volume).

Welfare services become increasingly costly to maintain, putting further pressure on taxation. This may in turn further erode the tax base as corporations choose to relocate to less costly jurisdictions, and unemployment increases, putting further pressure on welfare states to offer welfare services. These systemic processes have not been discussed in previous gambling literature and require further studies, but the welfare cycle does suggest that gambling is in fact contrary to the idea of welfare, not only socio-ethically, but also in a macro-economic sense.

Conclusions

This concluding chapter has focused on three contradictions related to justifications, regulations and the idea of welfare, topics with which European jurisdictions seem to be struggling to find the right balance between regulating and obtaining proceeds from gambling. Although the evidence remains limited, and conclusions should be drawn with caution, the analysis does imply that there may be some general guidelines that policymakers should follow to develop gambling policies that would be in line with welfare.

First, legal justifications should not be separated from the realities of the market. The need to justify national gambling policies under the terms set by the CJEU has had the unintended consequence of distancing the discourses utilised in gambling legislation from the real motivations as well as the welfare justifications used in national contexts. Kingma (2008) argues that the European Union's focus on the single market has had the paradoxical effect of pushing member states towards more restrictive rather than more liberal gambling policies. This appears to be true in terms of safeguarding national markets from outside competition. Consumer protection and criminality are cited as reasons for restricting gambling, or protecting the national offer. However, at the same time these very arguments are used to expand the markets of national providers in the name of channelling. This creates a confusing situation that could be resolved in two ways: The first option would be to allow financial justifications that appear to be the true reason behind protectionist gambling policies. A recent decision of the European Commission to close infringement and complaints procedures in the gambling sector may hint in this direction (European Commission 2017). The second option would be to follow the welfare argument and harmonise European regulatory frameworks based on common values and goals that already exist, and are apparent in the justifications that have been accepted in CJEU rulings. This could be accomplished by applying an instrument known as the *open method of coordination*, which is a commonly used tool in EU social policymaking. It involves agreeing on similar goals, but leaves the means of achieving them to the member states (e.g., Zeitlin et al. 2005; Heidenreich 2006).

Such a harmonisation would have the advantage of not only resolving the contradiction between different justifications, but also avoiding unfair competition in cross-border gambling and indirect pressure on member-state autonomy (cf. Leibfried and Pierson 2000).

Second, in terms of regulations, financial interests should be separated from the prevention of gambling harm, understood in the wide sense beyond problem gambling and the power of financial stakeholders should be reduced. Inherent in gambling provision are contradicting interests and monetary stakes. This creates conflicts of interest as well as moral inconsistency. None of the European models presented in this book seem to be free of this type of interest-group politics: the aim of gambling regulation should be to prevent harm rather than being subject to lobbying or even promoting its own interests over those of its citizens. There are a number of regulatory arrangements that could achieve this. The evidence presented in this book seems to indicate that both monopolistic and licensed markets may be effective or ineffective. Regulation is also effected at federal, state or local levels. More important than how regulation is organised is that it remains independent not only of beneficiaries and gambling providers, but also of state financial interests. The key is therefore to better define what the role of the government should be in gambling—beneficiary or regulator.

Third, gambling policies should be aligned with European welfare-state ideology, not only in providing funding for welfare projects, but also in promoting social welfare by protecting the whole population. This, again, only seems plausible if financial interests are separated from gambling policies and the prevention of harm. Good causes can be supported in other ways than through gambling. One option would be not to earmark gambling proceeds for beneficiaries in that jurisdiction, but for international relief operations or development aid. Such a configuration would break the welfare cycle in which money only circulates between the same stakeholders. For example, in Finland, funds used in development aid roughly equal profits from gambling (both approximately 1.1 billion euros within a year). This would allow states to use other, non-gambling-derived funds, to address gambling harms similarly to alcohol and tobacco, while reducing the importance of vested interests. By reducing the pressure to promote gambling participation, such

a separation between gambling and the welfare state might also reduce the total consumption of gambling in the population (Sulkunen et al. 2018) and align gambling provision with ideas of the common good or the public interest. This type of theoretical debate is crucial in terms of finding the right balance and best-practice policies in future gambling regulations.

Declaration of Conflicts of Interest Michael Egerer, Virve Marionneau, and Janne Nikkinen are researchers in the Academy of Finland funded project ‘Gambling in European Welfare Regimes’ (grant no. 277405). All three have previously received funding from the Finnish Foundation for Alcohol Studies based on §52 of the Lotteries Act; Marionneau and Nikkinen (travel grant) also from the Finnish Foundation for Gaming Research. Egerer is funded by the Finnish Ministry of Social Affairs and Health within the objectives of §52 of the Lotteries Act. The funds based on §52 stem from the gambling monopoly. The monopoly has no influence on how the money is distributed. There are no restrictions on publication.

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Index

A

Addiction. *See* Problem gambling
Austria 5, 7, 78, 119, 140, 143,
304

B

Beneficiaries 4–7, 9–10, 17–32,
39–41, 45–48, 78, 111, 113,
129, 131, 136, 140, 147,
249, 265, 285, 288, 302,
307, 310
Bingo 5, 8, 65, 67, 68, 84, 90–94,
120, 153–167, 178, 188,
198–199, 204, 233, 243, 244,
303, 304
Britain (UK) 9, 178, 207, 241–255,
298, 300, 304

C

Casinos 5, 7–8, 17–32, 43, 59–78,
84, 86, 89, 90, 91–95, 102–
103, 111, 113, 116, 119–131,
154, 158, 164–166, 177–178,
198, 200–201, 233, 244,
246–247, 248, 252, 280, 301,
304
Charity gambling 5, 7, 156, 163,
166, 261, 264
Common good 9, 259–271, 276–
280, 283–285, 299, 306, 311
Concession 4, 38–39, 42–43, 45–48,
50, 59–78, 107, 130, 304
Court of Justice of the European
Union (CJEU) 7, 43, 60, 159,
200–201, 230, 300
Crime 59, 70, 76, 78, 138, 243, 260,
265, 275, 290–292, 305, 307

E

- EGMs, electronic gambling machines
 5, 7–8, 9, 20, 22, 39, 41, 44,
 49, 52, 65, 66, 84–86, 89–91,
 93–94, 103–105, 107, 110,
 111, 114, 175–193, 198,
 200–201, 207, 233, 245,
 250–252, 303
- European Commission 8, 20, 131,
 155, 160, 205–207, 209–210,
 212–213, 230, 300, 309
- European Court of Justice (ECJ).
See Court of Justice of the
 European Union (CJEU)

F

- Fixed-odds betting terminals
 (FOBTs). *See* Electronic
 gambling machines, EGMs
- Football pools 84, 88, 103,
 241
- France 5, 6, 17–32, 32, 84, 140, 141,
 156, 262, 266, 291, 301, 303,
 305, 308

G

- Gambling addiction 47, 61, 70, 71,
 76, 78, 128, 165, 246, 268. *See*
also Problem gambling
- Gambling disorder 38, 231. *See also*
 Problem gambling
- Germany 5, 7, 101–114, 141, 178,
 298, 300, 304, 308
- Good causes 8, 31, 136, 138, 142,
 145, 148–149, 154, 156, 158,
 159–160, 242, 259–271,
 285–286

H

- Horse betting 177
- Horse racing 20–22, 30, 30–31, 88.
See also Horse betting

I

- Illegal gambling 47–51, 61, 77–78,
 209, 213, 227, 232
- Italy 4–7, 37–51, 119–121, 149,
 156, 244, 262, 298, 300

L

- Licencing 60, 106–107, 190, 198–
 200, 243, 276, 300, 304
- Lotteries 3, 5, 7–8, 17–20, 22, 25, 27–
 29, 39, 42–43, 50, 52, 59–78,
 79, 84, 87, 89, 94, 101–114,
 120, 130, 135–149, 153–167,
 175–180, 198–199, 203–204,
 206–207, 233, 243, 244–245,
 253, 259–271, 301, 304

M

- Monopolies 3–4, 7, 9, 18, 20, 23–25,
 37–39, 42, 46, 59–78, 101–
 114, 120, 135, 138, 146, 161,
 175–193, 201–202, 206, 233,
 242, 262, 266, 302, 305, 310

N

- National Lottery (UK) 144–145, 242
- National surveys. *See* Prevalence surveys
- Norway 5, 9, 140, 175–193, 263,
 266, 291, 298, 301, 304

O

Online gambling 22–24, 25, 29, 43, 45, 104, 106, 128, 153–167, 177, 179, 192, 197–198, 205, 209, 221, 226, 227, 231, 244, 246, 251, 266, 289–290, 300

P

Pathological gambling 43, 70–95, 102, 109, 115, 128, 229. *See also* Problem gambling

Poland 4–6, 9, 233, 298, 301, 304

Prevalence surveys 247

Problem gambling 2, 6, 8, 10, 38, 45, 46–47, 50–51, 61–93, 102, 105–107, 109–111, 114, 130, 143, 164–165, 179–181, 190–192, 199, 201–202, 220, 229, 232, 251, 254, 260, 267, 269, 277, 285, 290, 293, 299, 302, 304, 305, 307, 308, 310

Public good 10, 103, 108, 111, 210–211, 279–281, 284–286, 292, 299, 306, 307

Public interest 5, 10, 67, 146, 147–149, 175, 185, 245, 260, 269, 275–293, 300, 306, 311

S

Single European Market (SEM) 103–104, 106–107

Slovenia 5, 7, 119–131, 145, 149, 298, 303

Soccer pools. *See* Football pools

Spain 4–6, 18, 83–95, 155, 301, 303–304

Sports betting 9, 19, 22, 68–69, 84, 87–88, 94, 107, 114, 120, 177, 180, 198, 226, 303, 304

Sweden 5, 149, 154–155, 161, 166, 178, 197–213, 263, 291, 300, 304

T

Treatment 42, 43, 46–47, 70, 88, 93, 102, 181, 212, 220, 230, 246, 249, 255, 276, 285, 290, 305

V

Video-lottery terminal (VLT) 38–39, 43–44, 49, 65–68, 74–75.

See also Electronicgambling machines (EGMs)