



# Justifications of national gambling policies in France and Finland

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## ABSTRACT

**AIMS** – The principles of free trade and free circulation of services within the European Union have created pressures to make the strictly controlled European gambling markets more open. According to the Court of Justice of the European Union, restrictions on gambling are only allowed if they are justified in admissible terms of consumer protection, prevention of criminal activity and protection of public order. This study compares the gambling laws of two European societies, France and Finland, to analyse how their legal frames of gambling have been adjusted to these principles. **DESIGN** – The data consists of up-to-date legislation on gambling in Finland and France. A qualitative analysis was conducted to study whether new ways of justifying have been included in legislative texts and if these are substantiated by measures related to consumer protection or crime prevention. **RESULTS** – France has mainly justified its restrictive policies on gambling in terms of preventing criminal activities while the Finnish legislation highlights the charitable causes funded by gambling proceeds, a claim not accepted by the Court of Justice of the European Union. Consumer protection is increasingly stressed in both countries, and the range of rationales has also grown notably since 2007. **CONCLUSION** – While the vocabularies of justification accepted by the CJEU have expanded since 2007, these have not been substantiated by many new legislative measures. This is not attributed to political ill will but rather to the difficulty of changing existing legislative traditions.

**KEYWORDS** – gambling, comparative studies, policy, regulation, sociology, Finland, France, European Union

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## Introduction

Strong state monopolies have been the preferred model of gambling provision in European societies since the provision of games started to be deregulated in the early twentieth century. Questions on the validity of this model have only recently surfaced due to the European Union (EU) principle of a single European market. In the wake of European unification, convergence has also taken place at the level of gambling policies. The legitimacy of national monopolies has been increasingly

challenged by outside providers looking to penetrate the European market, and questions on the limits of gambling offer have reappeared in several court cases brought to the Court of Justice of the European Union (CJEU). These proceedings have found their basis in article 49 on the freedom of establishment and article 56 on the free movement of services of the Treaty on the Functioning of the European Union (TFEU) (see <http://eur-lex.europa.eu/>), aiming at creating a unified internal market in which goods and services can be

freely exchanged between member states. Although gambling has formed an exception to this rule in light of the controversial nature of the activity as well as the national interests involved, some outside providers have maintained that the restrictions they face are not consistent with those of national operators (see also Kingma, 2008).

CJEU rulings have become the yardstick in defining acceptable reasons for limiting the provision of gambling in member states or restricting the operation to national monopolies. The CJEU holds that the provision of gambling can be limited if an objective justification is provided. Such acceptable justifications include preventing fraud or criminal activities (C-275/92; C-124/97; C-67/98; C-6/01), including money laundering (C-64/08), consumer protection by limiting the negative individual and social consequences of gambling (C-124/97; C-6/01), maintaining social (C-275/92), moral (C-275/92) and public order (C-124/97; C-447/08 and C-448/08) and preventing gambling provision from becoming a source of private profit (C-275/92). The CJEU has expressly excluded raising public revenue from the list of valid justifications by maintaining that financing social and charitable activities can only be an incidental consequence of gambling and not a justification in its own right (see also Planzer, 2014).

European countries are facing a new situation in which they have to justify their national provision of gambling in order to maintain the existing monopoly system. This is also apparent in legislative texts which have had to be modified accordingly. This study focuses on these dynamics by comparing how the contemporary legislation in two European countries, France

and Finland, has been adjusted to reflect the new requirements. Using up-to-date legislative texts in these two countries, the study compares which, if any, vocabularies of justification have been adopted and how the expressions employed have changed since the countries have been required to justify their gambling policies.

## **The cases of France and Finland**

What makes comparing these two countries interesting is that France is one of the most influential countries in Europe with a strongly institutionalised state presence, whereas Finland is a small European nation with a special interest in maintaining a Nordic welfare state model, partly funded by proceeds derived from gambling operation. These political differences are also reflected in the gambling policies of the two countries. France has been forced to open up its gambling markets but still continues to exercise strong state control on providers, while Finland has opted for strengthening its national monopolies to better justify their existence (Cisneros Örnberg & Tammi, 2011; Sénat, 2007).

The Finnish gambling field is currently organised around three national monopolies: the national lottery company (Veikkaus), the national horse betting company (Fintoto) and the slot machine association (Raha-automaattiyhdistys or RAY). In France, the national lottery company (La Française des Jeux, FDJ) offers lotteries, and the national horse betting company (Pari Mutuel Urbain, PMU) does horse betting while the casino sector is historically private. Online sports betting and poker markets were opened to competition at the beginning of 2010 as a result of an explicit demand from the European Commis-

sion. The Finnish and the French legislations have also tended to favour different types of games and gambling cultures. In France, casino gambling is very popular: France counts the highest number of casinos in Europe (196 in 2010, compared to only one currently in Finland). According to an official report from 2008 (INSERM, 2008), the annual turnover of the French casino sector is about twice that of the FDJ and PMU combined. In Finland, annual reports of national gambling operators show that non-casino slot machines are the most popular form of gambling ([www.ray.fi](http://www.ray.fi)). Slot machine operation has a long tradition of collecting revenues for various charitable purposes in Finland (see Matilainen, 2010) and as such their wide availability has not been considered problematic.

Proceedings regarding the legitimacy of the restrictions on gambling in both Finland and France have also been brought before the CJEU. In the so-called Läärä case (case number C-124/97) in 1999, private slot machine entrepreneur Markku Läärä challenged the legitimacy of the Finnish monopoly on slot machines. The European Court rejected the challenge, but also pointed out that the Finnish government needs to better justify its monopoly system in other than financial terms. In 2005, the French monopoly holder on online horse race betting, PMU, initiated proceedings against a Maltese online bookmaker Zeturf Ltd for offering betting services in France. Initially, the Regional Court of Paris found in favour of the PMU, but as Zeturf had requested for a repeal of the rules before court, the French *Conseil d'Etat* needed to request the CJEU to give a preliminary ruling. Based on this investigation (case

number C-212/08), the European Commission instructed the French government to modify its law on online gambling to allow outside operators (see Verbiest, 2007; European Commission, 2011).

Following the CJEU's rulings, both countries have had to rethink the terms under which their legislation on gambling is justified. Historically, raising public funds has been highlighted as the main justification for all gambling provision in both France and Finland since the first lotteries (Luoto & Wickström, 2008; Reith, 1999). In the French case, funds raised by the national lottery company FDJ are no longer earmarked for any specific charitable causes but rather constitute a part of the state budget, while in Finland sports, arts and youth work have been the main causes supported. Horse betting is also justified in charitable terms in both countries, as the funds obtained are directed to supporting horse breeding. In Finland, the provision of casino and slot machine gambling is based on the same rationale, and the proceeds fund a variety of social causes. The private French casinos have more traditionally been justified in terms of tourism and economic development of the areas in which they are implanted (Bégin, 2001). However, as the traditional vocabularies need to be replaced with ones compatible with the CJEU requirements, the question arises how the Finnish and French legislations have been modified accordingly.

## Justifications and gambling policies

The concept of justification is highlighted in this study for practical and theoretical reasons. On a practical level, the CJEU uses the term when prompting member

states to clarify their national gambling legislation. On a more theoretical level, discussing justifications instead of motivations behind legislative decisions emphasises the social processes of legitimating. In social theory, the concept of “justification” can be separated from the notion of “motivation”. While motivations refer to inherent reasons for actions, what can be termed as justifications tend to take place *after* the action and are therefore rather ways of legitimating decisions that have already been taken (see also Boltanski & Thévenot, 2006; Mills, 1940; also Majamäki & Pöysti, 2012). This idea can also be applied to gambling legislation. Legislation on gambling is shaped by various vested interests, including those of the state. However, studying justifications does not tap into these motivating dynamics but rather reveals which kinds of vocabularies are used to make decisions socially acceptable in a particular society, or in the face of the demands put forward by the CJEU. The changing vocabularies employed to legitimise gambling policies are an excellent example of the process of justification, since existing practices of gambling provision are now being explained under new terms to make them more acceptable.

Chambers (2011) has argued similarly in his historically comparative study of gambling legislation in different social contexts. According to Chambers (2011), the deregulation of gambling cannot be legitimate without a favourable political, economic, social and cultural environment. Therefore, economic or political interests do not suffice if the sociocultural context is not favourable to gambling. Political power may restrict or increase social acceptance, but only in terms of culturally

acceptable reasoning. Indeed, the justifications given to legislative decisions on gambling have varied depending on phases of partial or total prohibition, tolerance and even promotion of gambling (see, e.g., Reith, 1999; Room, 2005). Previous research on the rationales behind gambling policies have recognised financing sports, arts and social programmes, directing consumption from illegal to legalised games and the need for revenue as the most common vocabularies governments use in legitimising gambling provision (Chambers, 2011; Eadington, 2008; Kingma, 2008). According to Chambers (2011), and as has already been noted regarding the cases of France and Finland, these rationales also differ between games. While horse betting is typically justified in terms of financing the historical heritage of horse racing, the lottery is more often legitimised in terms of financing public projects, and casinos in terms of increasing tourism. Collins (2003) has further added the impossibility of controlling the gambling business as a reason behind legislative decisions. As to restrictive policies, Orford (2011) maintains that moral grounds and the protection of public order have been the most common lines of argumentation.

Some comparative analyses have also been drawn on the historically differing rationales behind gambling policies (see Kingma, 2004; 2008; Orford, 2011). In a comparison of the 1968 and 2005 Lotteries Acts in the United Kingdom, Jim Orford (2011) found a shift in gambling policy rhetoric from a principle of meeting unstimulated demand, typical of the 1960s, toward a free-market rationale and governmental encouragement of gambling by the 2000s. Kingma (2004) has obtained

similar results in his empirical analysis of Dutch gambling policies, terming the receding policy model *the alibi model* and the impending model *the risk model*. In the alibi model, gambling is seen as an intrinsically controversial activity that can only be legalised to avoid illegal markets or to fund benevolent purposes. This model has been increasingly replaced by the risk model since the 1980s. The risk model is characterised by market orientation and more flexible policies, but forms a vacuum of valid legitimation, or as Cosgrave and Klassen (2011) call it, a new consumer culture in which traditional values are replaced by those of consumerism. According to Kingma (2004), arguments of customer service and consumer protection have only partially been able to fill the void.

The lack of justifications beyond mere market rationale has become even more problematic in the face of the demands of the CJEU to justify the increasingly more deregulated national monopolies of gambling provision. For Kingma (2008), EU legislation has also been an important factor in a new development in which the risk model has been challenged by the re-introduction of regulative means and a turn back towards alibi-type restrictions in European countries. The new model only differs from the alibi model in the sense that the re-introduced restraints on gambling are justified in terms of the negative side effects of problem gambling and criminality rather than those of moral orthodoxy.

## Methods and data

In order to research how Finland and France have accommodated the require-

ment to justify national gambling provision, up-to-date legislative texts were collected from official online legal databases ([www.legifrance.gouv.fr](http://www.legifrance.gouv.fr); [www.finlex.fi](http://www.finlex.fi)) with the help of gambling-related keywords in French and in Finnish. The data collected covers current legislation valid in 2013 as well as the original documents of these laws. In both countries, only legislation on mainland gambling was considered. In the case of France, this excluded legislation on gambling in French overseas departments and in the case of Finland, legislation on gambling in the autonomous Åland islands. Furthermore, only the major actors of the Finnish and the French gambling fields were considered, excluding small-scale raffles, games at fairs and gaming circles that have a limited scope of activity.

The historical differences in legislation between the two countries posed some problems to data collection. In France, the oldest codes that are still in force date back to the nineteenth century, but no explicit Lotteries Act has been introduced. In Finland, a first comprehensive Lotteries Act was passed in 1965, and an updated version, still in force with some modifications, was passed in 2002. As the legal documents that were analysed varied in nature between the two countries, clear criteria for their selection were needed. First, the legislative text needed to ordain on the legality of gambling in society, and second, the act needed to be in force in 2013. This excluded legislations that had later been overturned by a new law. The final data consists of laws and acts which are further subdivided into sections or *articles* as they are more commonly called in Europe. The French data consists of a

total of 19 laws, divided into 351 articles of which 43 were financial, 40 criminal, 14 related to responsible gambling and 5 to charitable causes funded by gambling. The remaining 249 articles deal with the general operation of games. The legal data found in Finland consists of a total of 28 different laws, divided into 213 articles. Of these articles, 40 dealt with charitable causes, 16 with measures against criminality and 7 with consumer protection; 24 articles were financial while the remainder dealt with the operation and organisation of games. The versions of these laws that were valid in 2013 were then compared to the original versions of the texts when such previous versions existed to study whether vocabularies of justification had been added in order to conform to the decisions of the CJEU.

The analysis was conducted with the help of Atlas.ti software for qualitative research by attributing codes to expressions. The coding was initially conducted to determine the types of articles that the laws and acts were divided into. However, since the type of an article could not be generalised into a justification, the data was re-coded based on the expressions that could be regarded as vocabularies of justification. These justifications were mainly found in the introductory and early articles of codes as they had typically been added in later modifications to the law. As such, the expressions served as a way of justifying the remainder of the legislative text. A total of 41 vocabularies of justification were found in the French data and 26 in the Finnish data. In the Finnish data, all these vocabularies of justification were found in the Lotteries Act; no other legislative texts included such expressions. In

the French data, justifications were found in a total of seven laws.

As with any study using qualitative coding, the question of researcher bias needs to be raised, as it is true that codes were attributed at the discretion of the researcher. To reduce researcher influence on the results, examples of the kind of vocabularies coded will be presented in the results. Unclear situations also existed in which it was not certain whether the legislator had meant a specific expression as a justification. For this reason, the guiding principle was to only code vocabularies that were clearly meant to justify a legislative decision by the French and Finnish equivalents of linguistic constructs such as “in order to”, “for the purpose of” or “for the benefit of”. Furthermore, the same researcher coded both sets of data to make them compatible.

## Results

For the purpose of this study, contemporary, up-to-date legislation was analysed to interpret how the increasing deregulation of gambling opportunities and restrictions on outside providers have been justified. It is notable that legislative texts contain very little in the way of justification, although such vocabularies have been increasing in more recent legislation. Out of the 19 French laws analysed, only seven included some forms of justification, and most expressions were found in the 2010 law on liberating the online gambling market. Out of the total of 28 Finnish laws analysed, only the modified 2002 Lotteries Act included such expressions, with the majority also added post-2007. The justifications employed are also changing. In a comparison of pre- and post-2007 legis-

**Table 1.** Vocabularies of justification in the French and the Finnish data.

Justification	France			Finland		
	Pre-2007	Post-2007	Total	Pre-2007	Post-2007	Total
Public order / preventing criminality	2	15	17	2	5	7
Consumer protection	0	6	6	2	7	9
Charitable causes	7	0	7	6	4	10
State finances	3	2	5	0	0	0
Tourism	1	4	5	0	0	0
Equality	0	1	1	0	0	0
<b>Total</b>	<b>13</b>	<b>26</b>	<b>41</b>	<b>10</b>	<b>16</b>	<b>26</b>

lative texts, a clear change of vocabulary seems to have taken place. While charitable or financial arguments were the most common ways of justifying gambling offer before 2007, these have since been overshadowed by expressions related to fighting criminality in France and consumer protection in Finland. The Swiss Institute of Comparative Law (2006) has noted the same development, pointing out that that vocabularies on public order and social preoccupations have made their way to legislative texts on gambling only recently.

A summary of the types of justification coded is available in Table 1. The table details the justifications employed in the Finnish and the French data and when they have appeared, with a dividing line drawn at 2007. This year was chosen because in 2007, the French government set an advisory committee on gambling and responsible gambling (*Comité consultatif pour la mise en œuvre de la politique d'encadrement des jeux et du jeu responsable*, COJER) to rethink gambling policies from the perspective of CJEU requirements. In the Finnish case, the European Commission gave an official note to Finland and to six other member states in 2006, questioning whether limitations on

the provision of sports betting constituted a breach of the principle of free circulation of goods and services. The Commission further criticised Finland for not having adequately justified national restrictions in terms of consumer protection and preventing criminal activity (Varvio, 2007). Consequently, the Finnish state set an advisory committee (*Rahapelifoorum*) in 2006 to rethink the Finnish policies.

It is important to point out that the statistical overview of the justifications is not meant to serve as quantitative data in its own right but rather as a summary of the qualitative results which will be more thoroughly discussed. However, the figures do show the main differences between the vocabularies employed and adopted by the Finnish and the French legislator as well as the general directions towards which the vocabularies of the two countries have evolved.

The category of public order or criminality refers to vocabularies which highlight the role of legalised gambling in stifling illegal gambling opportunities. Expressions emphasising consumer protection stress the importance of national providers in protecting players from the dangers of excessive gambling. The code on charitable



causes is related to emphasising the social programmes that could be financed by state provided gambling. Vocabularies on the state budget are similar to those of charitable causes with the exception that specific causes have not been earmarked but rather the importance of raising funds has been emphasised. Finally, justifications related to tourism stress the importance of casino gambling in attracting visitors to the country or to specific regions. The justification coded as equality is closely linked with tourism as it emphasises the importance of developing gambling opportunities evenly across the territory to provide equal access to games.

#### *Public order and preventing criminality*

Preventing criminality was the most common type of justification found in contemporary French legislation, and even more so in the post-2007 texts that have been drawn in line with the CJEU requirements. In France, the provision of gambling is considered to entail a high risk of criminality and fraud. According to Bégin (2001), this has also been the case historically, as state-operated gambling opportunities have been offered to stifle illegal gambling such as rigged lotteries and clandestine slot machines in bars. France has even maintained that the provision of new or additional games does not contradict a restrictive policy, as consumers are channelled away from the illegal gambling market (Swiss Institute of Comparative Law, 2006). While this argument may constitute a justification rather than an actual motivation, the 1985 decree on sports betting, modified in 2007, accordingly states that lotteries offered to the public must “channel the demand for games into a sys-

tem controlled by public authorities so as to prevent the risks of gambling provision for fraudulent or criminal purposes and to fight money laundering” (Article 1, decree 85-390 of April 1, 1985, modified on May 7, 2007). The theme of preventing criminal activities is also present in the 2007 law on casinos, decreeing on “fighting against money laundering by introducing a monitoring mechanism” (Article 67-1, law of May 14, 2007). This is a step forward from the previous law on casinos passed in 1959 (Decree 59-1489 of December 22, 1959), which had only focused on preventing cheating at games and maintaining the integrity of the personnel, with no reference to organised crime.

The law of 2010 on liberating online gambling is even more elaborate in the measures it introduces to prevent fraudulent or criminal activities. The justifications of “fighting against fraud and tax evasion” (Article 17, law of May 12, 2010) and “preventing fraudulent activities and criminality as well as money laundering and financing terrorism” (Article 3-I, law of May 12, 2010) are repeated throughout the law. These principles are not mere empty letters: the law introduces new means to accomplish these goals as well. The law dedicates full chapters to preventing fraud (chapter IV) and money laundering (chapter VI), promoting transparency of transactions in online gambling (chapter VIII), measures against illegal gambling sites (chapter XII) and measures against fraud and cheating in sports betting (chapter XIII), including a plethora of possible means to maintain the integrity of online gambling. Permissions to operate in the French online market are only granted for five years and are not renewable in cases



of dishonest conduct (Article 21). Supervision of legal sites is also enhanced by introducing a controlling authority and by requiring addresses to have the domain suffix .fr (Article 24). Unauthorised sites also face several sanctions (Articles 56-57). Furthermore, the law of 2010 extends the dispositions and restrictions to the traditional operators if they wish to provide online betting. This creates a situation in which the traditional operators face stricter conditions for their online than for their offline provision.

In the Finnish case, measures to prevent illegal gambling offline or online are not as elaborate, and the justification of preventing criminal activities is also not as present as in France. The modifications to the 2002 Lotteries Act do include the objective “to guarantee the legal protection of those who engage in gambling, to prevent abuse and criminal activity...” (Article 1, Lotteries Act 1047/2001, modified June 24, 2010), but new measures to ensure these goals are not introduced. The same is true of the article 12 (modified May 20, 2011) of the same law, which maintains that the function of monopolies in addition to reducing social and health-related harms is “to prevent money laundering and the financing of terrorism”. The primary means of maintaining public order presented in the law existed already in the original 2002 version, which required that slot machines be placed in spaces under surveillance (Article 16). However, the availability of these machines in a variety of public spaces such as supermarkets and petrol stations raises the question whether the operation of slot machines is actually adequately overseen.

### *Consumer protection*

While the Finnish legislation has not incorporated many means of preventing criminal activities, the justification of consumer protection is increasingly evoked in the updated version of the 2002 Lotteries Act. In the spirit of safeguarding the Finnish system of gambling provision, monopolies have been considered the best way to prevent any possible harm caused by gambling. Market competition, on the other hand, has been deemed to be conducive to social problems although no research evidence is presented to support this claim (Rahapelifoorum, 2006). The objective “to reduce social problems created by gambling” (Article 1, Lotteries Act 1047/2001, modified June 24, 2010) has been added in the first article and is repeated throughout the Act. Furthermore, and unlike is the case for preventing criminality, the emphasis on consumer protection also translates to new means to ensure it. The updated Lotteries Act introduces an age limit of 18 years to all gambling for money (Article 14a, modified June 24, 2010), making identity verifications mandatory for all online gambling (Article 14, modified May 20, 2011) and limits marketing and advertisement. Marketing is only permitted if it “does not encourage social and health risks of gambling” by “depicting excessive gambling in a positive manner nor non-gambling or moderate gambling in a negative manner” (Article 14b, Lotteries Act 1047/2001, modified June 24, 2010). The Lotteries Act also charges gambling monopolies to fund research on gambling-related problems (Article 52), a measure that already existed in the original 2002 version.

In France, justifications based on consumer protection were non-existent before

2007, and similarly to Finland, have only started to appear recently with restrictions justified in terms of “framing the consumption of games in order to prevent the development of dependencies” (Decree 85-390 of April 1, 1985 modified on May 7, 2007). Some concrete measures have also been taken. The work of the COJER committee has resulted in raising the age limit for lottery participation to 18. Restrictions have also been introduced in casinos, as the law of May 14, 2007 makes it mandatory for casinos to display information on how to obtain a self-exclusion.

However, and similarly to preventing criminal activities, the law of 2010 on liberating the online gambling market is the most elaborate also in terms of consumer protection. The rights of the state to control online gambling are justified by “preventing excessive or pathological gambling and protecting minors” (Article 3, law of May 12, 2010), and several measures are also introduced to carry out these obligations. The law includes a chapter on the prevention of excessive or pathological gambling (Chapter VII), detailing various obligations to authorised sites. Sites need to offer the possibility of self-exclusion (Article 26) and provide information on how to get help for problem gambling (Articles 28 and 29). Gambling on credit is also forbidden (Article 30). Furthermore, advertisements of online gambling cannot be directed at minors, and all advertising has to include a warning on the dangers of gambling (Article 7). The regulating authority is also able to block access to any non-authorised sites from French IP addresses.

While the French and Finnish offline markets show little difference in how con-

sumer protection has been taken into account, the French online gambling market seems more controlled. The Finnish legislation on online gambling only reaches the legal monopolistic providers, but as France was forced to open its online market to outside competition it has also had to rethink familiar legislative measures. While allowing outside competition in the online market may have increased legal gambling provision in France, it has also made it safer for consumers. In the Finnish case, the legislator is not able to control foreign sites to a similar degree, and the increasing emphasis on consumer protection in Finland is applied only to customers of existing monopolistic providers.

#### *Charitable causes and state finances*

Despite the recent emphasis on consumer protection, the main justification found in the current Finnish gambling legislation remains the support for charitable causes. Indeed, when the second Lotteries Act of 2002 was drafted to update the 1965 Lotteries Act, the purpose of the bill was to leave less room for interpretation and to ensure that gambling revenues would be allocated to social and cultural purposes also in the future (see also Järvinen-Tassopoulos, 2012). The original version of the Act stipulates that gambling should only be permitted to “raise funds for non-profit purposes” but “not contrary to general interest” (Article 3, Lotteries Act 1047/2001). The importance of “promoting non-profit activities” continues to be repeated throughout the Lotteries Act. Furthermore, and despite the fact that it is not an acceptable justification according to the CJEU, vocabularies highlighting charities continue to be added in the Finnish

legislation. The Lotteries Act ordains for the causes funded by gambling proceeds of the three national monopolies. Funds generated by lotteries and sports betting are to be used “to promote sports, physical education, science, arts and youth work” (Article 12, Lotteries Act 1047/2001, updated May 20, 2011/575), while proceeds of the Slot Machine Association are to be used “to promote health and social welfare” (Article 13, Lotteries Act 1047/2001, updated May 20, 2011/575). The profits generated by horse racing are to “promote horse breeding and horse racing” (Article 13a, Lotteries Act 1047/2001, updated May 20, 2011/575).

As the CJEU has excluded charities as an acceptable justification, the continuing emphasis of charitable causes in the Finnish legislation seems out of place. However, it has to be noted that legislative texts need to be justifiable not only as regards the CJEU but also legitimate in their own country context. Indeed, previous research has found that the charities offer a strong justification for the Finnish gambling system in the eyes of gamblers (see Pöysti, 2014). Furthermore, the charities funded by monopolistic operators are public information and are often advertised by game providers (Matilainen, 2010).

The situation is very different in France. Unlike in Finland, the proceeds raised by French gambling operation do not contribute to earmarked charities, but mainly to the state budget. This makes it more difficult to emphasise the public good funded by gambling. Indeed, all justifications in the French data drawing on charitable causes had already been added before 2007. Furthermore, these expressions can only be found in the 1997 law on the func-

tioning of the PMU, justifying the existence of the company in terms of charitable arguments to “promote horse breeding” (Article 31, decree of May 5, 1997). Also, the French Consumption Act maintains that funds generated by sports betting are to be “allocated to the National Centre for the Development of Sport” (Article 1509 tricies, Code of Consumption). Indeed, in the case of horse race and sports betting, no other justifications are given besides financing these sports or merely public services. The law of 2010 on online gambling also extends this to online betting.

#### *Tourism and equality of access*

An interesting characteristic of the French legislation is that consumer protection is understood not only in terms of preventing gambling-related problems but also as a democratisation of offer, contributing to market balance and equal access to games. The law of 2010 mentions “ensuring a balanced and equitable development of different types of games to prevent any economic destabilisation” (Article 3, law of May 12, 2010) to justify state-controlled gambling provision. Although only one example of justifying gambling offer in these terms was found in the data, this “democratisation of gambling” has according to Coutant (2008) been replacing financial arguments as an acceptable way of legitimating the increasing offer of gambling opportunities among French consumers.

The democratisation process is also apparent in casino legislation. Since the law of 1987 authorised both slot machines and the implantation of casinos in large urban centres, casino gambling has become more accessible in France both geographically and socially. The law of April 14, 2006

has further extended the definition of “touristic locations” in which casinos are allowed. Nevertheless, the main justification of casino gambling provision remains tourism. The Tourism Code stipulates that casinos are taxed “in favour of promoting tourism” and “to improve tourist facilities” (Article L422-12, Tourism Code). Such emphasis on developing tourism was only found in the French data, but may become relevant also in the Finnish discussion in the near future, as the Finnish Slot Machine Association announced in 2012 that a second Finnish casino will be built in Eastern Finland to cater for Russian tourists. While tourism is not an acceptable justification in the eyes of the CJEU, its importance as a financial motivator seems to have remained strong enough for the legislator not to justify the existence of casinos in other terms.

## Discussion

Kingma (2008) has argued that the European Union pressures for a single market have had a paradoxical effect of pushing member states towards more restrictive rather than more liberal gambling policies. Although this may not apply to all European countries, a similar trend was found in the cases of France and Finland. In recent years, both countries have adapted their legislative rationales significantly in view of the CJEU criteria for acceptable justifications for national gambling provision.

In both France and Finland, consumer protection and the prevention of gambling-related criminal activities have been added as the primary legal justifications for restricted gambling provision. Despite these measures, the European Commission has not been convinced by the efforts of

either member state, and both France and Finland have been accused of continually breaching the principles of the Treaty on the Functioning of the European Union without valid justification. According to the Commission, the operation of external gambling providers has been restricted while games proposed by national providers have been increasingly promoted and diversified. In response, Finland has emphasised the role of national monopolies as a way of preventing social problems (Cisneros Örnberg & Tammi, 2011), while France has maintained that offering a wide variety of gambling opportunities does not contradict consumer protection, as this is a means of channelling demand away from illegal gambling markets (Swiss Institute of Comparative Law, 2006).

The question needs to be raised whether measures of consumer protection and crime prevention are actually motivated by political will or rather by obligation needs. Differentiating between the concepts of justification and motivation may be of use here, as many of the vocabularies added to the Finnish and French legislative texts seem cosmetic at best. As Eadington (2008) has pointed out, the requirements posed by the CJEU for member states to justify their existing gambling policies in new terms may seem hypocritical, and it has been argued that vocabularies to justify gambling provision have mainly been added to safeguard the Finnish monopolies against international competition (Cisneros Örnberg & Tammi, 2011) or to defend the financial needs of the French state (Coutant, 2008). A good example of this is the claim put forward by the Finnish Rahapelifoorumi commission (2006), emphasising the importance

of the monopoly system in preventing gambling-related harm while the national monopolies did little to protect consumers before they were obliged to do so by the CJEU. Indeed, the motivating force behind legislative change seems to be the CJEU rather than actual will to restrict gambling opportunities, although the justifications employed in legislative texts might claim otherwise.

Despite this mismatch between motivations and justifications, this study argues that the lack of legislative effort is not necessarily due to negligence or ill will but is rather a result of difficulties in rethinking existing traditions and policies in novel ways. As Chambers (2011) has shown, historical contexts have a crucial role in whether gambling policies are regarded as legitimate. Thus, the charitable *raison d'être* of the Finnish gambling supply remains strong even in the face of pressures to justify national monopolies in other terms. Similarly in France, the historical rationale of gambling policies to direct gamblers from illegal markets to legal (and taxed) gambling opportunities (Bégin, 2001) can still be seen in the emphasis put on preventing criminality at the cost of introducing measures of consumer protection. These habits are hard to change, especially as they are considered legitimate among consumers (Pöysti, 2014).

Justifications highlighting the importance of consumer protection and prevention of criminality are highlighted in the early articles of laws, but the remaining content has remained largely the same. The only exception to this rule seems to be the French law of 2010 on online gambling. France was obliged to open up this market to European competition in 2010,

not because the French state willed so but because it was unable to control online gambling and maintain the monopoly system. However, the new situation has forced the French legislator to reconsider the existing national habits and to come up with some innovative measures to protect consumers and to block criminal game provision. The analysis has shown that the French 2010 law is not only justified in these terms, but it also introduces the most measures to both ensure consumer protection and to block criminal gambling provision. This was easier to accomplish since the legislation did not build on existing traditions. The contexts of long historical traditions of gambling laws and regulations have had a strong influence on contemporary legislation on gambling, restricting the possibilities to build novel approaches to organising gambling in a way that would be in line with consumer protection and prevention of illegal provision not only in name, but also in practice.

This study has been limited to analysing two European contexts, and as such, further research should expand the consideration to other countries. Furthermore, while the legal documents have been an excellent source of data to understand how the CJEU criteria of acceptable justifications have been adapted in national legislations, further studies could benefit from considering preparatory documents and political debates in addition to laws and codes to gain a better understanding of the vested interests beyond the vocabularies of justification utilised to legitimise decisions. Legislative texts alone are not a sufficient source to conclusively distinguish between justifications and motivations for legislative decisions. The study also

shares the limitations of any qualitative study in terms of problems of generalisation. Nonetheless, the analysis has shown that both France and Finland have had to accommodate their national gambling legislation to legitimately justify them in the face of the CJEU rulings and as such it offers new perspectives to understanding

the pressures under which national legislators operate in the European Union.

**Declaration of interest** None.

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