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Nordic gambling markets and the possibilities for state-level control¹

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Abstract

Gambling has gone through considerable changes during recent decades with new forms of gambling, increased turnover, and increasingly extensive marketing of different modes of gambling. At the same time, the monopolistic structure of state-controlled gambling has

been questioned by media and private actors on national and European Union (EU) levels. The focus has increasingly ended up on legal interpretations of the possibilities of and the obstacles for state regulation, which has recently placed Nordic gambling monopolies under scrutiny.

The purpose of this article is to clarify the legal arrangements for gambling in the Nordic countries and also how the different countries have chosen to react to increased pressure for deregulation of this area. The article describes how gambling is regulated in the five different countries and analyses what parts of the legal framework of the EU are a threat to the existing gambling systems in these countries.

Introduction

Gambling has gone through considerable changes during recent decades: it has gone from being regarded as a phenomenon on the outskirts of society to a phenomenon that is totally accepted and well integrated in social life ([Dixon, 1991](#)). The recent growth of the gambling market is manifested in new forms of gambling, an increased turnover, and increasingly extensive marketing of different modes of gambling. The ever-expanding accessibility to the Internet has led to increasing opportunities for gambling and, in particular, cross-border gambling, facilitating the development of a global gambling market beyond state control.

As in many other unharmonised areas within the European Union (EU), there exist different views about how the market should be regulated. Great Britain and Austria have a fairly open gambling market with many operators, and both countries are showing an interest in extending this market structure in the future. The Nordic countries, among others, on the other hand, want to preserve a state-controlled market with one, or a few, state-controlled gambling companies. In comparison to the case with alcohol, for example, there are far more countries that have some kind of regulated gambling

market with the stated purpose of protecting citizens from harm, restricting criminal behaviour, and collecting money for charity. Furthermore, independent of where a state stands on controlling the market, different types of gambling are offered by the state in many countries. This means that, in many countries, the same hand that is supplying gambling is the one regulating it.

At the same time, the monopolistic structure of state-controlled gambling is being questioned on both the national and the international level, due to the increased pressure of general deregulation and harmonisation in the EU and a decrease in state interference in what is increasingly regarded as citizens' personal business. The focus has increasingly ended up on legal interpretations of the possibilities of and the obstacles for state regulation, which has recently placed Nordic gambling monopolies under scrutiny. Most of the Nordic countries are indeed under pressure, as private operators have objected to the state monopolies in several jurisdictions.

The purpose of this article is to clarify the legal arrangements for gambling in the Nordic countries and also how the different countries have chosen to react to increased pressure for deregulation of this area. The article will describe how gambling is regulated in the five different countries and analyse what parts of the legal framework of the EU are a threat to the existing gambling system in these countries. I will also give a brief explanation of the main relevant principles of European Community law and the gambling jurisprudence of the European Court of Justice (ECJ). The article will highlight the crucial role played not only by the European Commission but also by European Community law and the ECJ as well as European gambling operators.

EU and legal considerations

European law is to a great extent directly applicable in the member countries and is supposed to be used in a direct manner by national courts and authorities. European Community law has, furthermore, a general precedence over national law in the case of a conflict

between the legal systems. International agreements that the EU has made, for example, the European Economic Agreement (EEA), are also tied to European Community law ([Bernitz & Kjellgren, 2002](#)).²

The common market is defined as an area without inner borders, where free movement of goods, people, services, and capital is guaranteed. These are usually referred to as the four freedoms, with the right to establishment often described as a fifth freedom. To be able to decide if European Community law can be applied, one has to determine which one of the freedoms there is a conflict with. Gambling can in some cases be related to the free movement of goods, but it is mainly the freedom of services that applies. Services, in the meaning of the Treaty of Rome, are considered to be work normally performed in exchange for compensation that does not fall within the regulations for goods, capital, or people. According to the Treaty, a person or company supplying a service temporarily can do so according to the same conditions that a country has set up for its own citizens.

The judgements of the ECJ are based on a few important legal principles. The main principles concern subsidiarity, discrimination, proportionality, and necessity ([Bernitz & Kjellgren, 2002](#)). The subsidiarity principle was first introduced in the Treaty of Maastricht as a general principle applicable to all areas where both the European Court and the member states have legislative competence: so-called shared competence. According to Article 3b (2) in the Treaty on the European Communities, the subsidiarity principle means that the Community shall take action only 'if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the member states and can therefore, by reason of the scale or effect of the proposed action, be better achieved by the Community'. In short, the EU should only have responsibility for what it can do better than the member state acting separately. The Edinburgh European Council of 1992 decided not to regulate gambling at the EU level, since it found that, according to the principle of subsidiarity, it was better dealt with at a

national level ([European Lotteries, 2004](#)).

A fundamental principle of almost constitutional nature and with special meaning for the realisation of the common market is the equality of rights principle, also called the nondiscrimination principle, forbidding every form of discrimination based on nationality within the European Union. The prohibition against discrimination means that a natural or juridical person from another member state should be treated in the same way as the citizens and companies of the country. The principle prohibits not only open, direct discrimination but also indirect discrimination, such as unjustified residence or language demands. There is, however, nothing in European Community law that prevents a member country from having less advantageous rules and conditions for its own citizens than for other EU citizens, a so-called reverse discrimination ([Bernitz & Kjellgren, 2002](#)).

The proportionality principle means that the measures used for a certain purpose cannot be more burdensome or far-reaching than the minimum necessary for the desired purpose with the measure. 'Appropriate' and 'necessary' are terms frequently used by the court. If you are choosing between several effective measures, you have to choose the least burdensome one. There are in principle three different points that have to be fulfilled in order for a measure to be considered proportional. Firstly, the measure must be suited to the purpose. Secondly, the measure must be necessary to attain its objective without there being any less burdensome alternative. Finally, the benefit of the measure must be in reasonable proportion to the harm that can occur to the concerned parties ([Bernitz & Kjellgren, 2002](#)). From the ECJ's judgements, it can be concluded that this principle is also used to establish if a ban is too far-reaching. It is important to note that a measure is also not allowed to be ineffective. The ECJ has often recently left the proportionality judgement to the national courts, which has resulted in the same measure being judged differently in different member states. However, one of the purposes of the proportionality principle is to allow

room for national solutions ([Allroth, 2005](#)).

The service directive

The draft directive from the European Commission to create a true internal market in services is probably one of the most controversial pieces of legislation before the European Parliament ([COM, 2004](#)). The proposal is part of the so-called Lisbon agenda, aiming at making the EU the most competitive economy in the world by 2010. The Commission has pointed out that the services affected by the proposal account for half of all economic activity in the EU and could provide a significant boost to economic growth ([Vallières, 2004](#)). The services directive proposal has, however, been so wide ranging in its earlier versions that it has disturbed many interest groups and opponents, leading to a temporary withdrawal of the proposition in February 2005.

After extensive changes to the Commission's original proposal, the country-of origin principle, meaning that once a service provider is operating legally in one member state, it can market its service in other countries without having to comply with further rules of the host member state, has been substituted by a principle about freedom to provide services. This principle states that the member states are obliged to guarantee the right to exercise services within their territory but are at the same time able to apply national regulations if they are motivated by public order, safety, health or environmental protection reasons.

In the revised proposal, the Commission makes it clear that the directive is not dealing with either the liberalization of services of public economical interest or the abolishment of national monopolies. Furthermore, the Commission has limited the areas applicable in the directive, opting out for example financial, electronic communication, transport, public and private health care, and gambling services. Gambling services, including lotteries, casinos and betting, are opted out in the proposal because they are considered to be activities with such distinctive features, that the member states

have developed policies based on public order and consumer protection (www.eu-upplysningen.se).

The Directive on Electronic Commerce

In June 2000, the European Parliament adopted a Directive on Electronic Commerce (2000/31/EC). This directive has as its purpose harmonising EU member state legislation on the establishment of e-commerce business and commercial communication with on-line users. The country-of-origin principle is also applicable in this directive. However, the E-Commerce Directive does not currently cover on-line gambling services. The Commission has announced that it will launch a study to determine the need for and scope of a possible new EU initiative to harmonise on-line gambling and betting law ([EU Services Directive, 2004](#)). This is in view of recent European Court judgements and an increasing number of complaints from operators wishing to undertake cross-border activities (<http://www.cr-law.co.uk>). Legal experts are of the opinion that an initiative by the European Commission to establish an EU regulatory framework for on-line gambling services is becoming more and more inevitable, considering the borderless nature of e-gambling services ([Keuleers, 2003a](#); [Verbiest & Keuleers, 2004](#))

Gambling-related court decisions

During the 1990s, the gambling market both grew and went through considerable change. Different national restrictions and gambling monopolies were questioned in the name of a free market, and the legal possibilities to prevent foreign actors entering the market were of great interest for many member states. Lotteries and gambling are in principle prohibited in the legal system of all EU member states. The main reason for this is that lotteries and gambling involve a high risk of fraud and abuse for criminal activities. At the same time, most member countries permit exceptions to this prohibition to a varying extent ([European Lotteries, 2004](#)). Within the EU, gambling is regulated, in the absence of European Community legislation, at the national level. All member

states have imposed strict limitations on gambling activities in order to control and limit the supply of gambling in their territory and to ensure that the revenue of gambling to a certain extent is used for public benefit. This section will summarise the gambling jurisprudence of the ECJ. The legitimacy of restrictions in the area of gambling has been examined by the ECJ in a number of cases. In its gambling jurisprudence, it has examined to what extent national authorities can impose restrictions on the cross-border provision of gambling services and whether these restrictions are compatible with the Treaties of the European Community.

The ECJ has so far tried six cases involving gambling in which the freedom of establishment (article 43) and the freedom of services (article 49) were adjudicated. These cases are the Schindler case concerning U.K. legislation on lotteries, the Läärä case concerning Finnish legislation on gambling machines, the Zenatti case concerning Italian legislation on sports betting, the Anomar case regarding Portuguese legislation on casino games, the Gambelli case concerning Italian law on sports betting, and the Lindman case regarding national taxation on winnings in foreign lotteries.

The Schindler verdict (C-275/92) from 1992 was the first case concerning gambling on which the ECJ announced a decision. The background of the case was a mailed invitation to British citizens from the Schindler brothers to take part in a German lottery. The invitations were stopped at British customs. The case dealt with whether lotteries were considered to fall within the scope of the free movement of services, and if that service could be restricted when it comes to games and lotteries. The ECJ found that the restriction on the cross-border provision of lottery services was compatible with the European Community Treaty. In the verdict, the ECJ considered the particular nature of lotteries, including moral, religious, and cultural aspects. The ECJ acknowledged the general trend within the member states to regulate and even forbid gambling with the purpose of controlling private profit; the fact that lotteries in many cases increase the risk for different kinds of criminality, including fraud; and

the fact that lotteries give incentives to spend money with possible negative individual and social consequences. Finally, although it was not considered to be an objective justification as such, lotteries are an important contributor to the financing of good causes and public interest activities. The ECJ concluded that when a member state forbids advertisement in its territory for big lotteries organised in another member state, it does not constitute an illegitimate restriction of the principle of free movement of services. The ECJ emphasised that the legislation in Great Britain was in accordance with European Community law in light of social considerations and to prevent fraud. The ECJ was of the opinion that these special circumstances justify national authorities being given discretionary scope when it comes to deciding what measures are needed and proportional.

A Finnish court requested in 1997 a preliminary ruling in the Läärä case (C-124/97), which concerned slot machines. According to Finnish law, only one actor can be offered a licence for operating games on slot machines. The background of the case was that a private person, Läärä, acting on behalf of a British citizen, offered gambling on slot machines, but without a licence. The Finnish court wanted to know if the ruling of the Schindler case could be applied to this case as well. Even if there were some differences between the cases—the Schindler case was about an international lottery with high prizes, while the Läärä case was about an entertainment game with small prizes—the ECJ ruled in this case as well that the Finnish law was consistent with European Community law, under the condition that the regulation has the purpose of limiting citizens' disposition for gambling and keeping gambling development under control ([Holmberg, 2004](#); C-124/97). The ECJ accepted that a 'closed' licensing system, with only one or a limited number of state-owned and state-controlled licensees, fulfils all the requirements necessary in order to obtain an exception to the Community freedoms. The ECJ also pointed out that 'given the risk of crime and fraud', there are no alternatives (such as taxation) to a non-profit-making

approach that are equally effective to ensure 'that strict limits are set to the lucrative nature of such activities'. The ECJ added that the mere fact that a member state has opted for a system of protection that differs from one adopted by another member state cannot affect the assessment of the need for, and proportionality of, the provisions enacted to that end. Those provisions must be assessed solely by reference to the objectives pursued by the national authorities of the member state concerned and the level of protection which they want to provide.

The ECJ established in the Schindler case that the national authorities were to be given a sufficient discretionary scope when it comes to deciding how far-reaching the protection within the national territory regarding lotteries and other games needs to be. It is up to the national court to assess, in proportion to the objective, if reasons exist to totally or partly forbid certain activities or only regulate and limit them, and for this purpose to prescribe more or less strict measures of control. The court concluded in the Läärä case that there were no disproportional regulations with respect to the objective, nor was there any discrimination.

In January 1998, the court of Verona in Italy directed a question for preruling to the ECJ. The Zenatti case (C-67/98) also applied the free movement of services, in this case the possibility of accepting betting on sports events. In Italy, the organisations CONI (sports events) and UNIRE (horses) have a monopoly on gambling within their markets. The revenue goes to secure support for sports in the country and to support the continued development of horse-breeding and horse-racing in Italy. The background of the case was that Zenatti in Italy acted on behalf of the British-licensed company SSP. Zenatti mediated the bets via fax and Internet. Zenatti proposed that the Schindler case should not apply in this case since it dealt with competence and skilfulness in predicting outcomes. By referring to skilfulness, Zenatti assumed that betting could be interpreted as a contest rather than gambling. Furthermore, the justifications in terms of social considerations and preventing fraud were,

according to Zenatti, not considered to be enough to restrict the free movement of services. The Italian court, however, wanted a confirmation of the possibility of drawing an analogy to the Schindler case. The ECJ was of the opinion that there existed two differences between the cases. In the Schindler case, Great Britain had a total prohibition against large-scale lotteries, while in the Italian case there was no total ban. Instead, the government let certain selected organisations handle gambling with special regulations. Furthermore, in the Zenatti case, the right to establishment could apply since SSP had the right to run a gambling business in another member state and wanted the same right in another country. The appeal for a preruling from the Italian court consisted, however, only of a question about free movement of services, which prevented the court from examining the case on the basis of establishment. The court verdict concluded that the free movement of services may be restricted, as in Italian law, if the restriction is motivated by social considerations and has the aim to prevent the harmful effects that can be caused by gambling ([Holmberg, 2004](#)).

The Anomar case (C-6/01) on gambling confirmed the right of the Portuguese government to establish a gambling monopoly for casinos. Anomar is the Portuguese national association of operators in the gambling machine sector. The association took action against the Portuguese government to obtain the right to develop gambling services outside the legally permissible areas in Portugal, i.e., casinos, and therefore put an end to the monopoly, which they saw as being in conflict with European Community law. The ECJ confirmed that national rules establishing a monopoly were a barrier, but this was justified by social policy and the prevention of fraud. The fact that other member states have less restrictive laws has no effect on the compatibility with European Community law of the stricter Portuguese law. Finally, the ECJ noted that if the national law was compatible with the Treaty, the organisation and control of gambling was a purely national issue.

In all four of the cases mentioned above, the regulations

were not considered discriminatory since all actors were influenced to the same extent, independent of nationality, in spite of the fact that the restrictions undoubtedly constituted an obstacle to the right to supply services according to Article 49 in the European Community Treaty. A closer study of the national regulations showed that all the countries had the purpose of preventing crime and obstructing addictive gambling and that the surplus from the activity went to charity or to promote culture. The ECJ made an overall judgement of all the factors and came to the conclusion that the mentioned purposes gave the national authorities a large scope for discretionary judgement about the level of consumer protection and preservation of public order.

However, the Gambelli verdict (C-243/01) in 2003 signalled a new, more severe view on gambling monopolies, where the purpose of the monopoly had to be sincere and honest. The judgement emphasised that the economic interest of a member state does not constitute an acceptable reason (C-243/01; see also [Bernitz, 2004](#); [Allroth, 2005](#)). As before, the ECJ held that restrictions may not exceed what could be considered as necessary and had to be applied in a nondiscriminatory way. Furthermore, the court noted that a member state that encourages gambling with the purpose of gaining revenues cannot refer to public order in society to motivate restrictive measures. The ECJ ruled that the restrictions 'must serve to limit betting activities in a consistent and systematic manner' and 'In so far as the authorities of a member state incite and encourage consumers to participate in lotteries, games of chance and betting to the financial benefit of the public purse, the authorities of that State cannot invoke public order concerns relating to the need to reduce opportunities for betting in order to justify measures such as those at issue in the main proceedings' (C-243/01, §67-69).

The background of the Gambelli case was that the British betting company Stanleybet International was stopped from advertising in Italy since this was in conflict with the Italian gambling monopoly. The Italian court

consequently asked in 2001 for a preruling about the interpretation of the principle of free movement of services. The Italian court also asked if the Italian regulation was in conflict with the right to free establishment, a question that the ECJ had not been able to consider in the Zenatti case. In November 2003, the court confirmed that, in general, exclusive rights granted by national laws to certain companies providing gambling services do not necessarily breach the European Community Treaty, provided, however, that this is justified by objectives of social policy and consumer protection aimed at limiting the harmful effects of gambling activities. To be justifiable, a restriction should be genuine and should not be such as to exploit the social policy or consumer protection issues only to conceal real reasons that have nothing to do with such policies. The state-owned gambling company had been marketing their games aggressively and had further plans to introduce new types of games. The purpose of the policies pursued could then not be to limit gambling, and hence they did not have any right to limit the free movement of services. Purely economic motives can thus never serve as grounds for restrictions on free movement and can never restrict other member states' offers of gambling. The ECJ stressed that the financing of social activities may only constitute a secondary positive consequence and not the main justification for the regulation. Post-Gambelli case law has shown the decision to be hard to construe, which has been reflected in different views in various European jurisdictions.

The different ECJ rulings have been interpreted by some lawyers as a sign that the ECJ, especially in the area of services, seems to prefer to delegate sensitive judgements to the national courts. As long as the protective measures that the regulations refer to appear to be genuine, appropriate, and necessary, and the regulation is proportionate for the purpose, and as long as less far-reaching measures could not obtain the same goal, it is for the national courts to make the judgement ([Bernitz & Kjellgren, 2002](#); see also [Keuleers, 2003b](#)). The Gambelli verdict can, however, express a new turn

in the relatively accepting attitude vis-à-vis national regulations and claims of public interest ([Hettne, 2005](#)).

In November 2003, the ECJ returned to the issues with a verdict in the Lindman case (C-42/02). The case concerned where gambling winnings should be taxed. A Finnish woman named Lindman had, during a stay in Sweden, bought a lottery ticket on which she later won one million Swedish crowns. The Finnish government wanted Lindman to pay income tax on her winnings, although all prizes in Finnish lotteries are tax free since the organiser of the lottery pays the taxes. The ECJ came to the following conclusion:

Article 49 EC prohibits winnings from games of chance organised in other member states being treated as income of the winner chargeable to income tax, whereas winnings from games of chance conducted in the member state in question are not taxable.

This indicates that, in the area of taxation, the development goes towards a European homogeneous regulated gambling market ([Holmberg, 2004](#)), and EU and EFTA countries are now forced to change their tax legislation in accordance with the ruling. A problem with future harmonisation among the member states in the gambling area is the lack of political will among the member states to establish a borderless gambling market with free competition. One of the main reasons for this is that gambling monopolies are frequent among the member states and bring in considerable tax revenues ([Hettne, 2005](#)).

Gambling in the Nordic countries

The Nordic countries have a lot of similarities when it comes to gambling and gambling regulations. All the Nordic countries are strong advocates of a nationally regulated market based on a licensing system, strong control, and social protection considerations ([Nordiska Rådet, 2005](#)). All Nordic countries have furthermore received formal letters from the Commission or the EFTA

Surveillance Authority (ESA) questioning different parts of their national legislation. At the same time, the Nordic countries have chosen somewhat different solutions to these new circumstances.

Sweden

Lotteries in Sweden fall under two acts of parliament: the Lotteries Act (1994:1000) and the Casinos Act (1999:335). The Lotteries Act is prohibitive legislation which makes it possible only for those with a licence to arrange lotteries within the country, and all such permits are subject to governmental scrutiny (<http://www.lotteriinspektionen.se>). It is also prohibited, in commercial activity or with the purposes of making money, to promote a lottery arranged outside the country. The ban on promotion has resulted in lawsuits against several big Swedish newspapers that have admitted ads from foreign betting companies. TV commercials for foreign betting companies are only shown on channels that broadcast in Swedish from Great Britain. These commercials have been considered to fall under British law, according to European Community law (the TV directive 89/552/EEG), and therefore Swedish law is not applicable. The ECJ has come to the conclusion in other court decisions that a member state can intervene against misleading advertisements, but whether the TV directive allows other protective measures has not yet been tried by the ECJ. The prohibition on promotion in Swedish law has been considered by several lawyers as ineffective since the TV broadcasts in many cases come from other countries ([Hettne, 2005](#); [Allroth, 2005](#)). The Inspection Board for Radio and TV decided in January 2005 that the Swedish part of the TV company should be held responsible for the broadcasting and therefore be subject to Swedish law (SOU 2005:21). However, this decision will hardly have an effect on the possibilities for Swedish authorities to intervene against broadcasting outside Swedish jurisdictions.

The biggest actor on the Swedish market is the state-owned company Svenska Spel. Svenska Spel has a monopoly on arranging lotteries and number games,

betting on sport events and dog racing, and slot machine gambling. The company also has the licence to operate the four established international casinos in Stockholm, Gothenburg, Malmö, and Sundsvall. The surplus from Svenska Spel's activities goes to the state via the Treasury department, except when it comes to the slot machines, called Jack Vegas and Miss Vegas, whose profit is earmarked for children and youth and distributed by the Swedish Sports Confederation and the Swedish National Board for Youth. Gambling on slot machines is the form of gambling in Sweden with the highest turnover at the moment. The total turnover for the Swedish gambling market during 2005 was approximately 35.6 billion SEK (3.84 billion Euro). Quite half of the total turnover was connected to the activity of Svenska Spel ([Lotteriinspektionen, 2005](#)).

The second-largest actor in the Swedish market is Aktiebolaget Trav och Galopp (ATG). ATG arranges betting on horse racing. ATG is a state-controlled company owned by the horse-racing associations. An agreement between the state and the owners regulates the activities, and four board members are selected by the government. ATG gives its profit to the promotion of research, education, and development in equestrian sports (Loor, n.d.).

Various public benefit organisations (in Swedish: Folkrörelserna) arrange lotteries through their company Folkspel. Folkspel was founded in 1989 and consists of approximately 70 voluntary organisations that carry out work for the public benefit. The profit is directly transferred to the member organisations. In addition, it is possible for bars and restaurants to arrange so-called restaurant casinos—gambling tables in restaurants.

The political responsibility for gambling is divided between two departments: the Ministry of Health and Social Affairs and the Ministry of Finance. The Ministry of Health and Social Affairs is responsible for public health aspects of gambling with the Public Health Institute as the responsible authority. The Ministry of Finance is responsible for overseeing gambling and lotteries and

the processing of permits. The Gaming Board (in Swedish: Lotteriinspektionen) operates under the Ministry of Finance and is the central supervisory authority for lotteries in Sweden. County administrative boards and the municipalities have some responsibility for some permits and supervision.

For several years, international gambling companies like Ladbrokes, Unibet, and Expekt, together with national newspapers, have been challenging the Swedish gambling monopoly. These betting companies interpreted the ECJ ruling in the Gambelli case as the end for Svenska Spel and its monopolistic position. In October 2004, the Swedish Supreme Administrative Court came to the conclusion that the Swedish gambling monopoly was not in conflict with European Community law, a verdict that concurred with all the previous decisions. The court judged that the Swedish regulations were necessary, proportional, and nondiscriminatory. The prohibition in the Lotteries Act on promoting foreign gambling—as well as the Lottery Act as a whole—is not consistent with European Community law on free movement of services and establishment, but the court followed previous ECJ judgements that allow exceptions if the reasons are to protect the public and prevent crime (Regeringsrätten mål 5819-01). The Swedish Supreme Administrative Court did not ask for advice from the ECJ, since it lacked a reason to ask for a preruling in the question. It is incumbent upon the national court to apply the criteria that the ECJ has already specified. The ECJ has made it clear that further clarifications in this area are not needed at the community level.

Even though the Supreme Administrative Court established that the main purpose of the regulation was not to benefit the public treasury and that the system as a whole fulfils the demands of European Court law, they indicated that the Swedish system needs a review. It was concluded that while gambling enterprises must be allowed to market themselves, the marketing by Svenska Spel has been aggressive and extensive, especially on TV. The criticism against marketing led to a decision that Svenska Spel must cut down their ads on TV and

billboards by up to 20% during 2005. A contradictory development is Svenska Spel's advertising campaign for their new game Drömvinsten ('The Dream Prize'), which has been criticised by both politicians and the national organisation for compulsive gamblers. Drömvinsten is a new form of lottery but with considerably higher prizes. In addition, the application from Svenska Spel to the government for permission to arrange poker games on the Internet was accepted in November 2005, with a start in March 2006 and a governmental evaluation after 1 year. This decision was made in spite of the fact that the application was not approved by the National Gaming Board in April 2005, based on concerns about increased gambling problems and possible discrepancy with European Community law and against the recommendations of the Public Health Institute and the National Board of Health and Welfare.

Gambling over the Internet, interactive games, and the increased interest of foreign companies in Sweden have changed the gambling market drastically and put pressure on the monopolistic structure in the country. Swedish residents are not prevented from taking part in foreign lotteries, but the Gaming Board takes measures against gambling on the Internet if it is arranged from Sweden by someone other than the approved actors. Swedish law only permits a refund of a maximum of 50%, while foreign companies usually give better odds and a higher refund to the player. The government appointed an investigation group in May 2004 to make a general overhaul of the legislation in the gambling and lottery area. In March 2005, an interim report was presented, with the recommendation that the refund level be kept at the present level ([SOU 2005:21](#)). The final report ([SOU 2006:11](#)), presented in January 2006, came to the conclusion that there were reasons to question the compatibility of Swedish gambling regulation with European Community law, since economic considerations had had unproportional importance. The investigators feared that Sweden crossed the line for what was acceptable when the government allowed Svenska Spel to organize Internet poker games.

On 1 January 1995, it became legal to offer gambling on slot machines. Slot machines that pay out money directly are still forbidden in Sweden. Since 1997, permission for slot machines has only been given to companies owned by the state. In mid-October 2004, the government received a letter of formal notice from the Commission questioning the Swedish regulations on slot machines. In the letter the Commission asserts that the Swedish regulations constitute an obstacle to the free movement of goods, freedom of establishment, and free movement of services, contravening Articles 28, 43, and 49. According to the Commission, gambling has increased in Sweden during recent years, with Svenska Spel as the main provider of gambling. Svenska Spel is furthermore moving to expand gambling possibilities in general, for example, on the Internet and on mobile phones, and has made extensive marketing efforts. The Commission also found the Lotteries Act on gambling machines to be discriminatory in two cases and that the punishments in the Act are disproportional. The Commission is questioning parts of the Lotteries Act that they consider to be an obstacle that cannot be justified by reference to the public good, and argues that the main purpose of the Swedish regulations is economic. The Swedish government replied to this letter in December 2004 and argued that the regulations on gambling machines cannot be evaluated separately but must be considered in light of how the whole Swedish system of gambling and lotteries is designed and what its purposes are. The government concurs with the judgement of the Swedish Supreme Administrative Court that the Swedish restrictions are compatible with European Community law. If the Commission does not accept the assurance from the Swedish government that, in spite of marketing and considerable income from gambling, the regulations are based on public health reasons, it will lead to the next step in the procedure, a reasoned opinion (Formell underrättelse, case nr 2001/4826).

In April 2006, following complaints from a number of gambling firms, the European Commission decided to send an official request for information on national

legislation restricting the supply of sport betting service to seven member states (Denmark, Finland, Germany, Hungary, Italy, the Netherlands, and Sweden) ([Press release, 2006](#)).

Finland

Finland has a regulated gambling market with state actors that obtain a government licence for 5 years at a time. Only one licence is valid at the same time for each type of money gambling. In Finland, private companies are not allowed to conduct lottery activities, including slot machine and casino activities, even if the proceeds are to be used for charitable purposes. The National Lottery of Finland, Oy Veikkaus Ab, which is totally owned by the state, has a monopoly on the lottery and betting business. Gambling on horses may only be operated by the state-regulated company Fintoto. Both Veikkaus and Fintoto offer gambling via the Internet. Profits from Fintoto go to equestrian sports and profits from Veikkaus go to culture, sports, and youth work. Penningautomat föreningen (PAF) has a monopoly on casino activity and producing, selling, and promoting gambling on slot machines in Helsinki. RAY is a consortium of 96 organisations in the area of health care and social activities. In 2005, the total turnover for Finland was 2.16 billion Euros³ (www.veikkaus.fi). The Ministry of the Interior is responsible for regulating national lottery activity. County administrative boards and the police supervise lotteries that are arranged in their territory.

The Finnish monopoly on lotteries and its compatibility with European Community law were questioned in the Läärä case. In particular, the proportionality of an exclusive licence in relation to the social and economic benefits was discussed. The court case was described as a crucial question for interest organisations, since to a large extent they depend on the subsidy that RAY distributes. The Advocate General of the European Court proposed that the state monopoly should be replaced by a system with permissions, without sole rights, that all private actors within the community had access to. This system would include strong state control. The Advocate

General indicated that the vigorous marketing campaign, the interest of organisations with licences in an increase in the amount of gambling, and the deficient control of gambling by youths were all in conflict with the claimed purposes of the monopoly. The ECJ, however, went against the recommendation of the Advocate General and concluded, as mentioned earlier, that the Finnish legislation was consistent with the principle of free movement of services and goods, on condition that the restrictions aim at limiting the possible harms of gambling (Case C-124/97). The Läärä case led to increased national attention being paid to age limits and gambling responsibility.

The Finnish gambling agencies have been exposed to competition from abroad since the 1980s. During the late 1990s, the state-owned companies experienced even further competition from Internet and gambling companies such as Centrebet, Expekt, and Unibet. Today a dozen actors are offering Internet games via Internet pages in Finnish. In 2004, the Finnish state-owned company Veikkaus was allowed to raise the returns to winners to 88% to be able to better compete against foreign gambling interests. Another means of competition is to develop new and faster games. Penningautomatföreningen (PAF) has recently announced that it has launched the first interactive cellphone gambling game in the world. The company also aims to provide all its Internet games in a cellphone version. Finland's Slot Machine Association (RAY) is investigating the possibility of introducing new slot machines that accept electronic payments. The test period was to start in the autumn of 2005.

Finland has a special situation in the form of the Åland Islands gambling company, (PAF, licensed by the Government of Åland to arrange games with money prizes in Åland, on board ships, and on the Internet (<http://www.paf.fi>). Since 2001, there has been conflict between PAF and the Finnish state, since PAF have been marketing their Internet games in newspapers and direct mail advertising on the Finnish mainland. Their Web page has furthermore been translated into Finnish

to better attract the Finnish population.⁴ The Finnish Supreme Court of Justice announced their verdict in February 2005, rescinding the judgement of the Court of Civil and Criminal Appeal, and fining the CEO, the marketing manager, and the chairman of the board of PAF for violation of the lottery law (HD:2005:27). The conflict has continued, and in mid-December 2005 PAF handed in an application for a summons against the Finnish state, since the government demands that PAF prevent persons from the Finnish mainland registering as gamblers with accounts on Åland. The legal dispute has its origins in different legal interpretations of the verdict from the Supreme Court of Justice (<http://www.paf.fi>).

Denmark

The biggest actor on the Danish market is the Dansk Tipstjeneste. Shareholders in the company are the Danish State (80%), the Danish Sports Federation (DIF) (10%), and the Danish Gymnastics and Sports Association (DGI) (10%). Dansk Tipstjeneste's profits are distributed according to rules laid down by the Danish Parliament for sporting, cultural, and other nonprofit purposes. DanToto was formed in 1991 and became part of Dansk Tipstjeneste in July 2000, dealing with horse and greyhound gambling. Dansk Automatspil was formed in 2001, as a daughter company of Dansk Tipstjeneste. The Tipstjeneste Group has a monopoly on most of the gambling within the country, except slot machines and the six private casinos. Gambling reached new heights in Denmark with a boom in turnover when the national lottery 'Lotto' was introduced in 1989. The approximate total gambling turnover, casino business not included, in the country in 2005 was estimated to be 26.8 billion DKK, (3.59 billion Euros) (<http://www.tips.dk>).

The National Supervisory Authority for games and lotteries is part of the Gaming Authority under the Ministry of Taxation. The Gaming Authority supervises games and monitors the gambling market. The gambling law, Spilleloven, prohibits Danish companies from acting on behalf of foreign gambling. However, Denmark has for a long time had a more liberal attitude towards the

marketing of foreign gambling companies, and for a long time these were able to advertise in the evening papers. During 2001, the Danish authorities started to notice that a considerable amount of money disappeared through foreign companies in gambling on the Internet. The Ministry of Taxation then repeatedly reported to the police Internet pages with so-called banners with advertising for foreign gambling companies. While regulations of marketing of foreign lotteries traditionally have been more liberal in Denmark than in Sweden, for example, regulations in other areas have been more restrictive. Dansk Tipstjeneste has, for example, such influence on the boards of Danish banks that it has been next to impossible for a foreign gambling company to open an account ([Holmberg, 2004](#)).

According to the Ministry of Taxation, the Danish model for regulation of the gambling market has come under pressure and the trend towards deregulation of the Danish gambling market is already apparent. In December 1999, the government therefore established a working group given the task of preparing for the modernisation and unification of the existing gambling legislation in the country. In addition, the group was to assess the possibilities for maintaining national control of the Danish gambling market on the Internet. The working group published its report 'The future of gaming in Denmark—The need for unified gaming legislation' in 2001 (Ministry of Taxation, 2001). The report proposed that a new Danish gambling law should require issuing banks to block Internet credit card payments coming from illegal gambling providers. Close cooperation with the bank was considered vital for the future control of the Danish gambling market. However, the proposition received a lot of criticism from various state agencies and the government. In March 2003, less than 2 weeks after the preruling in the Gambelli case, Denmark introduced a new gambling law. The new law meant, among many other things, that it became illegal to work for a foreign gambling company in Denmark. The law also contained a prohibition on foreign companies marketing themselves in Danish media and a ban on

foreign gambling companies directing their main enterprise at Denmark, for example, through Internet pages only in Danish. Together with the Gambelli verdict, the law resulted in a new debate about the future of Danish gambling regulation and how well fitted Dansk Tipstjeneste is to compete with international gambling interests ([Holmberg, 2004](#)). One way for Dansk Tipstjeneste to meet the competition from abroad has been to increase the percentage of proceeds redistributed to players from 80% to 88% per game. At the beginning of 2005, Dansk Tipstjeneste received their licence renewal. The licence explicitly says that marketing may not be too extensive and that the development of gambling options by the organisation has to be carried through with great responsibility. At the same time it stated the importance of meeting foreign competition ([Nordiska Rådet, 2005](#)).

Just like Sweden and Finland, Denmark has faced demands by the Commission for more competition on the gambling market, with more private actors and less state control. Besides the letter of formal notice in April 2006, Denmark received in March 2004 an official request from the Commission for information on its legislation, which prohibits the supply or advertisement of, and the facilitation of participation in, gambling services offered by providers licensed in other member states ([Press release, 2004](#)). The Commission intends to verify the compatibility of the ban in question with the provisions of the European Community Treaty on the free movement of services and on the freedom of establishment.

Norway

In Norway, new types of games and technology and more aggressive marketing have also resulted in an increase in gambling ([Lund & Nordlund, 2003](#)). Norwegian law forbids gambling with money within the country, but provides the possibility to receive permission if the purpose is to gather money for humanitarian or for socially important causes. Lotteries and gambling are regulated with three laws: Lotteriloven regulates private lotteries, Pengespiloven regulates state gambling, and

Totalisatorspilloven regulates gambling on horses. Norsk Tipping and Norsk Rikstoto are the two state actors with a right to operate in the gambling market. Foreign gambling companies are not allowed to market themselves in the country and there is at the moment a prohibition against casinos. The Norska Lotteritillsynet supervises the system (<http://www.lotteritillsynet.no>).

In Norway, gambling machines are currently run by private operators and charitable organisations under a licence system, and gaining control of the slot machine market has been an important aim of the government. For some time, the authorities had no control over the number of gambling machines in use in Norway. During 2005, the gambling market in Norway had a turnover of approximately 45.7 billion NOK (5.39 billion Euro) ([Norsk tipping, 2005](#)). During 2004, gambling machines had approximately 60% of the market share. On 17 June 2003, the Norwegian Parliament adopted legislation granting the state-owned gambling company Norsk Tipping a monopoly on the operation of gambling machines with a planned start date of 1 January 2006. According to the government, the new system was motivated by the wish to prevent compulsive gambling and crime, and a model with a state-owned company holding exclusive rights was considered to better secure the gambling machine market. This led to a letter of formal notice from ESA in April 2004 ([Reasoned Opinion, 2004](#)). In ESA's view, the Norwegian government had not shown that its gambling policy was systematic and consistent enough to justify restrictions of the basic freedoms provided for by the EEA (ESA, 2004). Here, ESA comments on the fact that consumers are encouraged to play different games and that the Norwegian state, through Norsk Tipping, has lately increased the number of available games and varieties of gambling. Moreover, the ESA regards the legislation to be contrary to the principle of proportionality, as the objectives pursued by the enactment of the legislation could have been reached by less restrictive means within the boundaries of a licence system. On the basis of these considerations, the ESA concluded that Norway

had infringed Articles 31 and 36 of the EEA ([Reasoned Opinion, 2004](#)). In the wait for a final decision, the situation is uncertain.

In March 2001, the Norwegian Ministry of Cultural Affairs set up a Specialist Committee to report on a number of aspects relating to the current and future market for money games in Norway. Among other things, the committee was asked to consider how Norway should respond to technological developments and foreign competition in the gambling market. In December the same year, the report 'Norske pengespel i ei digital framtid' was presented ([Kulturdepartementet, 2001](#)). In the report, the government was requested to consider if Internet gambling with foreign companies could be limited through strict control of economic transactions following a model presented by the Danish report on the subject. The report came to the conclusion that the international money gambling market will increasingly become a threat to national money games unless the national games are equipped with competitive conditions. Norwegian operators must therefore be allowed to fully exploit digital distribution channels and to make appropriate changes to their products. The national games should furthermore be regulated to ensure that they operate under conditions that make it possible for them to compete with foreign games.

Following these recommendations, the Gaming Board has recently given a 1-year temporary licence to arrange lottery on mobile telephones. The licence is given for 1 year to a volunteer organisation. Three temporary licences to arrange Internet gambling in Norway were also given. The licences were given to Norsk Tipping and Norsk Rikstoto and a volunteer organisation (<http://www.lotteritilsynet.no>).

Iceland

The University of Iceland Lottery (Happdrætti Háskóla Íslands) is state owned and the oldest statutory lottery in Iceland, established in 1933. The University had, until June 2006 (Act no. 530/2006), an exclusive licence to

run different kinds of lotteries and coin-operated gambling machines. Coin-operated gambling machines appear to be the most popular of these forms at present. The University pays 20% of the net profits of these lotteries as a licence fee to the Treasury, but not more than 150 million ISK (1.75 million euro). Two other central actors are Íslensk Getspá (Lotto Iceland) and Íslenskar Getraunir (Icelandic sports pools), and their surpluses go to sports and programmes for the disabled. Getraunir has a monopoly on sports games and Getspá operates games of chance with different charity organisations.

Under legislation passed in 1994, the company Íslenskir Söfnunarkassar (Icelandic Betting Machines) is owned by the Icelandic Red Cross, the Landsbjörg Life-Saving Association, and the association Alcohol Concern and is licensed to run coin-operated betting machines ('fruit machines' or 'one-armed bandits') for fundraising purposes. Before that date, the individual organisations had each operated similar machines under licences from the Ministry of Justice since 1972. The machines involved are very similar to those operated by the University of Iceland, the main difference being that the university's gambling machines are interconnected to accumulate large jackpot prizes, while the betting machines may not be interconnected and the prizes are far smaller, the maximum being ISK 100,000 (1170 Euro). These betting machines are generally located in refreshment shops and small restaurants, while the University's gambling machines are located in special gambling saloons and restaurants. Iceland has at the moment a prohibition on casinos. The total turnover during 2004 was 4.5 billion ISK (53 million Euro) ([Ministry of Justice and Ecclesiastical Affairs, mail correspondence, 2005](#)).

The Lotteries and Tombolas Act No. 6/1926 was until recently the general existing law on lotteries in Iceland. In March 2004, the Icelandic government received a letter of formal notice from ESA (No. 36/04/COL) about an alleged violation of article 31-36 of the EEA on lotteries and tombolas. According to ESA, it is a violation of the

EEA that lotteries are limited to Icelandic companies only. During an ESA package meeting in May 2004, the Ministry presented a draft bill to the ESA representatives with a complete revision of rules for granting licences for operating general lotteries. The bill states that a licence can only be granted to a company, association, or institution that is established in the EEA for the purpose of obtaining funds for public benefit in Iceland. Furthermore, the bill provides that the Minister be authorised to subject a lottery licence to the condition that advertising expenses do not exceed a given limit and also that a licence holder provide funds for research and measures aimed at fighting problem gambling and its consequences. The bill was put before the parliament in April 2005 and was taken into effect on 1 July 2005. The Government sent a reply, dated 12 August 2004, to the letter of formal notice. The issues that Icelandic authorities stressed were mainly moral points, such as being able to combat illegal gambling and monitoring gambling addiction, and also that the proceeds of the lotteries shall not be for personal gain but go to some good public cause, such as charities. Iceland is at the moment following what the actions of the EU against a number of countries will result in and whether further changes are necessary.

Iceland has so far not received any applications from foreign game operators like the other Nordic countries have, probably because the market is considered to be too small. Foreign operators on the Internet have not, according to the Justice Department, attracted Icelandic gamblers to any great extent. There are, however, preparations for future cooperation between the Department and the two major credit card companies in Iceland in connection with Internet gambling (e-mail exchange with Icelandic Justice Department, April 2005).

Conclusions

One of the EU's main goals is to create a common market with free movement of goods, people, services, and capital. Membership in the EU implies that a

member state give up parts of its self-determination in certain areas. There is an obvious conflict between the establishment of a common market and the different member states' interests in maintaining state-owned monopolies. The work of the commission and the rulings of the ECJ have so far mostly focussed on deregulation and harmonisation. Exemptions in many areas have disappeared for the benefit of central standardisation within the union. So far, however, gambling has not been the object of any harmonisation initiatives within the EU. In brief, the rulings in the gambling cases have shown us that the national monopolies are indeed infringing on European law. However, such infringement is admissible under certain circumstances.

The ECJ has consistently accepted that national legislation that confers exclusive rights to certain undertakings to offer gambling services does not, as such, constitute a violation of the European Community law, as long as this legislation is justified by objectives of social policy and consumer protection aimed at limiting the harmful effects of gambling activities, and if the restrictions are nondiscriminatory and proportionate to the objectives. However, the raising of money for good causes cannot in itself justify a restrictive policy. The Gambelli case also points out that national gambling restrictions are only acceptable according to the Treaty if they reflect a concern to bring about a genuine diminution in gambling opportunities and if the financing of good causes or the state is only an incidental beneficial consequence, rather than the main purpose. In light of the specific social and cultural features of each member state, national authorities must determine what is required to protect players, and the member states have so far enjoyed large discretionary power in regulating games. This discretionary power is not limited by the fact that other member states have regulated games of chance in a more liberal way. Since it is for the national court to determine whether legislation serves aims which might justify it and if it is proportional, different national courts have made different interpretations. This shows the difficulties with

proportionality tests, especially when it comes to questions related to public health. Furthermore, courts throughout Europe have to decide whether state lotteries are giving sales and profits priority over the control of gambling. If they are, they are not entitled to claim monopoly status. Many gambling monopolies today appear more like private businesses than companies with a public health mandate. In order to avoid risking dissolution of monopolistic structures, state-authorised companies may have to modify or perhaps withdraw from certain areas, products, or marketing campaigns. In light of recent cases in the national courts of, for example, Holland and Germany, it would seem that a state which actively seeks to stimulate demand for gambling products, whether through the development of new gambling games, the opening up of new channels of distribution, or the roll-out of aggressive marketing campaigns, could have some difficulty justifying its national gambling restrictions.

Even if gambling is a national question, considering the subsidiarity principle, the Commission has recently on several occasions questioned national gambling regulations. In October 2004, the Commission decided that it would report Greece to the ECJ for infringing community regulation of the free movement of goods and services because the country explicitly forbids electronic games with electronic mechanisms and software. Furthermore, all of the Nordic countries have received letters of formal notification from either the Commission or the ESA questioning different parts of their gambling regulations. Some of the recently published Nordic reports on gambling indicate a concern with both the rising number of people with gambling problems and the implications of ECJ court decisions on national legislation, but above all with the growth of the Internet and technical innovations. The growth of the Internet has resulted in more gambling with the help of computers both at home and in gambling cafés. This development is also a real threat to the existence of the state-run gambling companies. In the future, one of the challenges for politics around gambling is to adjust national laws to

the new techniques.

With the recent changes in the service directive, it is unlikely that the proposal will affect gambling, however, other types of common European regulations can change the possibilities for national regulation in the future. In January 2005, the European Commission signalled their intention to reform the EU gambling market when they appointed the Swiss Institute of Comparative Law to conduct a study to evaluate how the differing laws regulating on-line and off-line gambling services, as well as games in the editorial content of the media and certain types of promotional games, affect the smooth functioning of the common market for these and associated (e.g., media, sports, charity, tourism) services and thus could restrict the economic and employment growth associated with such services. The efforts of the EU to promote the development of the Internet make future changes in the regulations of the European gambling market very likely. Those changes will, furthermore, most likely be in a more liberal and deregulated direction.

Finally, gambling is a relatively new research area, and it is therefore important that researchers and politicians see the common ground with such areas as alcohol, tobacco, and pharmaceutical research, rather than focussing on the differences between different areas in the public health field. In connection with increased globalisation and international commerce, it has been more difficult to maintain effective national regulations in the public health area. A changed view of the State's role in society, increased mobility and availability, market liberalisation and private interests' more prominent role, deregulation, and fast technical developments are all things that challenge such areas as gambling policy right now.

Notes

¹Some aspects of this article have been published in Swedish (Cisneros Örnberg, J. (2005). Ökat tryck på nordiska spelmonopol. Socialt Perspektiv, 1, pp. 85–97).

²The EEA was signed in 1993 between the European Community and the then European Free Trade Area (EFTA) countries, with the exception of Switzerland. The basic idea in the EEA agreement is that the EFTA countries are a part of the European Community inner market, but outside the institutional system and decision-making process. With a few exceptions, the set of rules and regulations for free movement of goods, services, people, and capital, along with rules on competition and the main part of the harmonising legislation, also apply for the EFTA countries. The regulations in the EEA agreement are therefore very similar to the Treaties of the European Community, and the EFTA countries are continuously adapting to the changes in legislation that are made through new EU directives. The common rules are administered by the European Community institutions and the EFTA Surveillance Authority (ESA).

³Unlike in Sweden, the figure for slot machines is not the net turnover, but turnover minus wins to players.

⁴The main language in Åland is Swedish.

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