

## Policy analysis

## Explaining trends in addictive behaviour policy—The role of policy coherence



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## ARTICLE INFO

## Article history:

Received 31 July 2013

Received in revised form 22 January 2014

Accepted 25 February 2014

## Keywords:

Drug policy

Gambling policy

Cannabis

Sports betting

Policy coherence

Portugal

## ABSTRACT

This article analyses addictive behaviour policy regimes – focusing on illegal drugs and gambling – in 19 countries over a period of 50 years. It compares how these countries have combined rules on the consumption and possession of cannabis and on the participation in sports betting with sanctions for violations of these rules. While theories of policy convergence can explain dominant trends in the way the combination of these policy instruments have changed, they cannot account for all of the empirical variation observed. Turning to Portugal, a case which deviates in both illegal drug and gambling policy from the expected trend, we show that explanations of policy change improve substantially when taking the concept of policy coherence into account. Specifically, we argue that changes of the policy status quo are facilitated when policy entrepreneurs succeed in shaping a perception of policy incoherence. In turn, when relevant actors are able to maintain a perception of policy coherence, the policy status quo is stabilized.

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## Introduction

This article describes empirical patterns in the regulation of addictive behaviour policies; namely the regulation of gambling in the form of sports betting as well as illegal drug consumption and possession in the form of cannabis. Based on this description, we seek to explain policy change within and across these sectors.

Illegal drug and gambling policy have received relatively little attention by scholars of public policy when compared to topics such as social policy or environmental policy.<sup>1</sup> Gambling has attracted attention by political scientists in two contexts: On the one hand, gambling is studied as a phenomenon of policy innovation. Particularly the spread of state lotteries and casinos in the United States (US) has been studied in this context. Here, gambling policy is used as a way to learn about the interaction between factors that drive policy diffusion and domestic factors that obstruct or facilitate such diffusion. These studies tend to focus on the step leading from the prohibition of lotteries or casinos to a state controlled system of state lotteries (Berry & Berry, 1990; Jackson, Saurman, & Shughart, 1994; Jensen, 2003; Lutter, 2010) or privately licensed casinos (Calcagno, Walker, & Jackson, 2010). Such changes in

gambling policy are predominantly perceived to be driven by economic considerations as they are a source of fiscal income over which different jurisdictions compete. A contrasting perspective is offered by scholars who focus on gambling as morality policy in which matters of first principle are seen to outweigh purely economic considerations. While ideological opposition by religious groups can thus be a relevant obstacle to the spread of gambling liberalisation (Clotfelter & Cook, 1989; Pierce & Miller, 1999), the framing of gambling policy reforms in moral terms seems to vary across countries and over time (Euchner, Heichel, Nebel, & Raschzok, 2013; Ferraiolo, 2013). These studies generally, however, remain fairly restricted in their empirical scope.

Similarly, drug policy is either studied from a strictly sectoral perspective or through a lens of morality policy. Where a sectoral perspective is adopted, attempts to theorize causes of drug policy development or changes in drug policy regimes have been much less systematic. Explanations are rarely grounded in theory and often remain descriptive (Boekhout van Solinge, 1997; Chatwin, 2011; Houbourg, 2010; Loo, Beusekom, & Kahan, 2002; Uchtenhagen, 2010). Besides, drug control regimes and policy reform are frequently treated as exogenous variables whose effects and effectiveness are then evaluated (Babor et al., 2009; Hughes & Stevens, 2012; MacCoun & Reuter, 2004; Serge, 2003; Turnbull, 2009). Comparative approaches generally remain restricted in scope providing detailed descriptions of drug policy regimes in only few countries (Boekhout van Solinge, 2004; Goldberg, 2005; Hyshka, 2009; Tops, 2001). Although drug policy is regarded as one

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E-mail address: [christian.3.adam@uni-konstanz.de](mailto:christian.3.adam@uni-konstanz.de) (C. Adam).<sup>1</sup> For a notable exception for gambling see Kingma (2008). For drugs see: Hughes (2006) and Kübler (2001).

of the “classic” fields of morality policy (Knill, 2013; Mucciaroni, 2011), only few studies adopt this empirical focus. These contributions either focus on determinants of drug policy development in the US context (Meier, 1992, 1994) or analyse the role of framing in the drug policy-making process (Euchner et al., 2013).

This article compares addictive behaviour policy regimes across two sectors and 19 countries. By focusing on this country sample, we attempt to assess as many OECD countries as possible given practical restrictions regarding language skills and resources available. Thereby, the article addresses the *descriptive* gap in existing scholarship. Furthermore, by adopting a coherent theoretical framework for analysing patterns of policy change, we address the *analytical* gap in the literature on addictive behaviour policies. We find that when complementing theories of policy convergence by the concept of ‘policy coherence’ as an explanatory factor, empirical dynamics in addictive behaviour policy can be better understood.

The paper proceeds as follows. In a first section we introduce the commonalities and particularities of gambling and drug regulation as two sub-sectors of states’ addictive behaviour policy regimes. Secondly, we present our theoretical framework for analysing policy change in these areas. In a subsequent section, we present empirical patterns and discuss to what degree our theoretical expectations are reflected by the data. Next, we present evidence from addictive behaviour regulation in Portugal which is identified as a deviant case in both sub-sectors. The paper concludes with a short discussion of the results.

### Empirical patterns in addictive behaviour policy

The regulation of drugs and gambling are two key sectors of addictive behaviour policy. We compare these two areas because in both sub-sectors policy-makers face very similar challenges. On the one hand, they have to find an ideal balance between the potentially conflictive first principles of (a) their obligation to ensure citizen’s personal liberties and (b) their obligation to protect citizens from harm. Furthermore, while the costs of social ills related to addiction are generally higher in case of substance abuse, costs related to the development of pathological gambling are far from negligible (Becker, 2011). Therefore, policy-makers have to, on the other hand, balance the objective to (c) minimize potential social costs associated with the development of addictive behaviour and the objective to (d) exploit the economic potential of hazardous activities, such as taking drugs or gambling.

Whether the resolution of these trade-offs is perceived to be legitimate depends to a large extent on whether these trade-offs are perceived to be resolved in a coherent way: does the framing of a policy output correspond to the actual output in a logically coherent way? Scientific evidence about the likely effects of policy outputs plays a key role in determining whether there is such a logical connection or not; in other words, whether there is policy coherence or policy incoherence. A large-scale liberalisation of addictive substances and activities which is framed as a measure to protect citizens from the dangers of developing addictions can only be perceived to be a coherent reform if strong scientific evidence actually supported the underlying causal chain. Since this is not the case, policy output and its justifications would likely be perceived to be incoherent.

To find an optimal balance between conflicting principles and objectives, policy-makers have two different sets of instruments at their disposition: rules and sanctions. By defining rules, policy-makers regulate to what degree the legal access to gambling and drugs is restricted or allowed. The definition of rules enables regulators to influence the availability of addictive substances or activities to the general public and provides them with the opportunity to

exploit their economic potential. By establishing sanctions, policy-makers define how tolerant they are towards rule violations; i.e. towards the illegal possession of drugs and the illegal participation in gambling. Comparative criminology suggests that sanctions are not only used for their potential to deter people from violating rules and their ability to re-educate infringers but also as an instrument of symbolic politics (Nelken, 2002). We describe empirical developments in addictive behaviour policy by focusing on the policy-mix consisting of different instruments regulating the access to addictive substances and activities as well as of different instruments sanctioning rule violations.

On the rules-dimension, we focus on the general regulatory paradigm adopted by policy-makers. To capture this paradigm in the context of drugs, we focus on two central consumer-related activities: cannabis consumption and possession. Here, we distinguish between permission, partial prohibition, and prohibition. In the permissive model, both consumption and possession are permitted (at least for personal use). States which completely prohibit the possession but do not (or only to some extent) ban the consumption, fall into the partially prohibitive model. The prohibitive model represents the most restrictive form of cannabis regulation. States completely prohibit both consumption and possession. In the context of gambling, we focus on sports betting other than horse-racing which has enjoyed a more liberal status than other forms of sports betting in most countries in our sample. Again, we distinguish between three regulative paradigms: prohibition, state monopoly systems, and market systems. Under the prohibitionist model, gambling activities are completely forbidden. In contrast, in state monopolist systems, policy-makers decide to offer a legal supply of gambling activities and services. These are exclusively provided by a state monopolist, usually a state-owned company. Finally, market systems allow private or commercial actors to offer gambling services and activities to citizens. These suppliers usually have to apply and pay for a license given out by public authorities.

The sanctioning dimension measures the severity of punishment associated with a central consumer-related illegal activity in each sector. Regarding cannabis, we measure the legally defined sanction for a person in illegal possession of a small amount of cannabis for personal and recreational (not-medical) use who is a first-time offender and not addicted to drugs. Thus, the sanctioning dimension does not take into account illegal possession under aggravating circumstances, e.g. with the intention of dealing in drugs. In the context of gambling, we measure the sanctions for the participation in illegal sports betting. Depending on the regulatory paradigm, this reflects the participation in sports betting in general (prohibitionist model), in sports betting offered by other suppliers than the state monopolist (monopolist system), or in sports betting offered by unlicensed suppliers.

The sanctioning dimension for both policy fields consists of 15 categories of possible sanctions, which are ordered according to their severity. We consider administrative sanctions (e.g. loss of drivers’ licence) to be the weakest sanction, followed by the imposition of a fine. Custodial sanctions start with category 3. Specifically, categories 3–5 indicate sanctions where short (3), medium (4), or long (5) prison sentences can still be substituted by fines. Categories 6–8 capture sanctions where short (6), medium (7), or long (8) prison sentences can either be substituted or complemented by fines. Categories 9–14 indicate systems in which offenders face mandatory prison sentences of short duration without (9) and with (10) additional fines, of medium duration without (11) and with (12), and of long duration without (13) and with (14) additional fines. The scale ends with a life sentence in jail as most extreme form of sanction (15).

Fig. 1 captures the resulting patterns and developments in addictive behaviour policy. The vertical dimension reflects the regulatory dimension. Prohibitionist models are coloured in black.

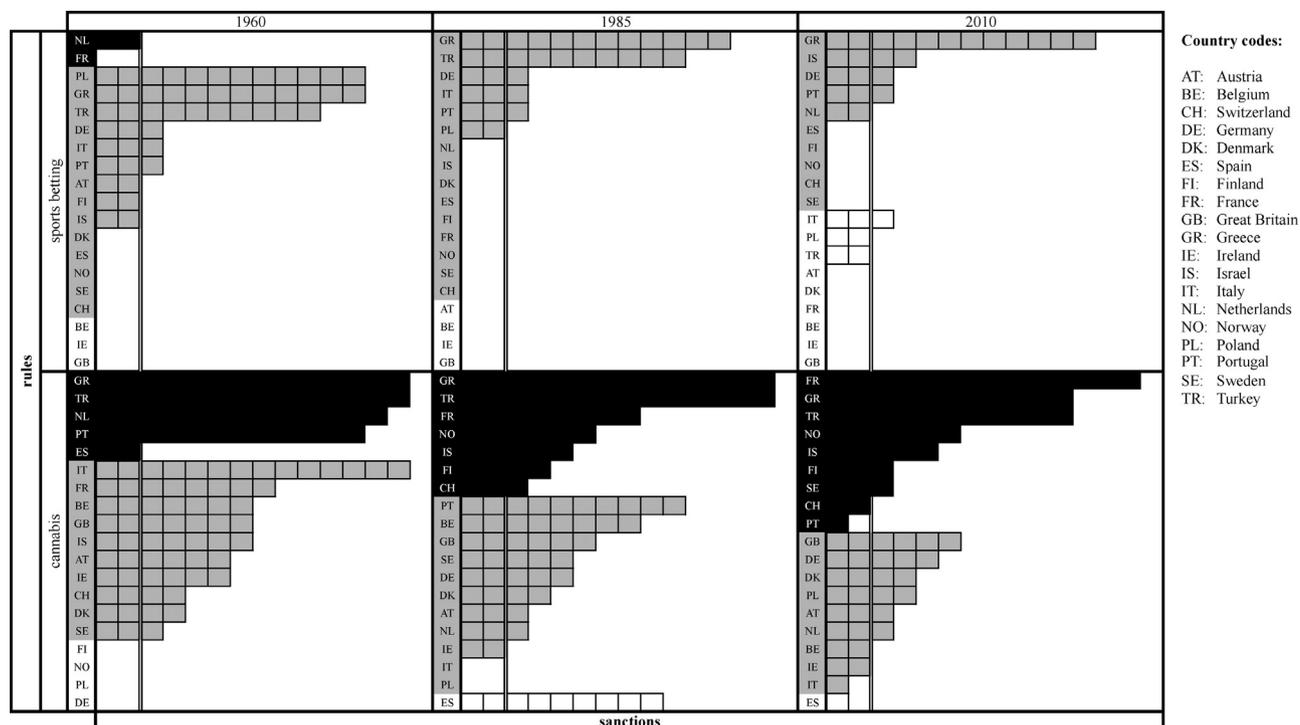


Fig. 1. Patterns of addictive behaviour policy regimes.

Partial prohibition of cannabis and state monopoly systems of sports betting are coloured in grey. White colour indicates market systems in sports betting and systems of permission in the context of cannabis. The horizontal axis represents the severity of sanctions for rule violations. More squares indicate higher levels of sanctions (0–15). Everything below three squares represents only administrative sanctions or fines. If three squares or more are displayed, we are in the context of criminal sanctions with potential prison sentences. This demarcation is highlighted by the double vertical line for each point in time.

We provide snapshots for 1960, 1985, and 2010. As more countries are displayed in lighter colours, addictive policy regimes become more liberal. Furthermore, when the total area covered by squares decreases, countries have reduced the level of sanctions for rule violations.

By the 1960s, the vast majority of policy-makers in the Western world had answered the question of how to design optimal addictive behaviour policy regimes in the context of gambling differently than in the context of drugs. The regulation of drugs reflected a preference for citizen protection at the cost of restricting individual liberties as well as the sacrifice of exploiting the economic potential of drugs as taxable product for the sake of what seemed to be an optimal way of minimizing the societal costs resulting from drug addiction.

This found expression in predominantly restrictive policy regimes which imposed rather high criminal sanctions for violations of these rules. Specifically, in 1960 five countries of the sample – Greece, Turkey, the Netherlands, Portugal and Spain – had prohibited both cannabis consumption and possession altogether. Ten states in our sample – Italy, France, Belgium, Great Britain,<sup>2</sup> Israel, Austria, Ireland, Switzerland, Denmark and Sweden – had established partially prohibitive regulatory approaches, combined with sanctioning regimes of varying severity. Italy stands out as the strictest punisher of that country cluster; illegal cannabis

possession was sanctioned with up to 8 years imprisonment and a fine. The other countries of the group had chosen moderate penalties which provided the opportunity to substitute a jail sentence with a fine. With the exception of Spain, all of these states punished illegal possession with tough sanctions which included mandatory prison sentences. The remaining four countries of the sample – Finland, Norway, Poland and Germany<sup>3</sup> – had not yet enacted regulations and sanctions on drug consumption and possession at that time; therefore, we coded them as most permissive.

In contrast, gambling regimes in 1960<sup>4</sup> mainly reflected the wish to make use of the economic potential of gambling activity and an emphasis of personal liberties of responsible citizens. In consequence, the predominant gambling regime was characterized by a controlled supply of gambling products through state monopolies (grey colour). While some countries – particularly Greece and Turkey – imposed additional protections for this monopolist system by threatening people who participated in illegal gambling outside the monopoly with severe criminal sanctions, others abstained from such measures. There was thus no dominant penal paradigm. Only France and the Netherlands still ran prohibitionist systems banning sports betting with the exception of horse racing completely.

Until 1985, the main changes resembled the legalization of sports betting in those two laggard countries; France (in 1985) and the Netherlands (in 1974). Furthermore, some countries reduced the strictness of sanctions imposed on people participating in illegal sports betting. Most notably, Poland substantially reduced sanctions for participants of illegal sports betting focusing its sanctions instead on suppliers of illegal gambling. In the context of drug policy, the two groups of countries with a partially prohibitive or prohibitive regulatory approach had both grown and the group of non-regulators had disappeared. In Germany, a ban on the

<sup>3</sup> Until 1990, West Germany only.

<sup>4</sup> The information for Belgium refers to 1963 since we have been unable to gather information prior to this date.

<sup>2</sup> Specifically: England and Wales.

possession of drugs was introduced in 1971. Poland followed in 1985, but did not adopt sanctions for illegal drug possession. Norway and Finland went one step further and prohibited not only drug possession, but also drug consumption in 1965 and 1972 respectively. The only country belonging to the permissive regulatory model in 1985 is Spain which had witnessed a fundamental change of its drug law in the early 1980s. In 1983, possession of small amounts of drugs for personal use was removed from the list of criminal offences. While this kind of possession was thus not illegal and punishable any more, sanctions in the case of possession for other purposes than personal use remained high. Besides Spain, the Dutch adopted a new drug law in 1976 that did not criminalize drug consumption any longer and included only low and substitutable jail sentences for illegal cannabis possession. While the Dutch drug regulation is often perceived as permissive, this is only because drug possession for personal use has *de facto* not been prosecuted since the late 1970s due to implementation guidelines for the central Opium Act. However, drug possession is clearly prohibited and punishable under the Opium Act (EMCDDA, 2005). Since we focus on policy output, not on enforcement, we classify the Dutch policy as restrictive. In contrast, France, Israel and Switzerland had strengthened their regulatory approaches in the early 1970s by prohibiting drug consumption. Within the partially prohibitive country cluster, Italy and Ireland significantly de-penalized illegal cannabis possession. In 1975, Italy completely removed sanctions for the possession of moderate amounts of drugs for personal use. Two years later, Ireland abolished the opportunity to impose jail sentences in the case of cannabis possession and introduced a system of monetary penalties.

Until 2010, the group of countries following a prohibitive regulatory approach further increased at the expense of the partially prohibitive cluster as Sweden and Norway banned drug consumption in 1988 and 1992. Furthermore, we observe a general reduction of the sanctioning severity in comparison with 1960 and 1985. Spain has remained the only country with a permissive regulatory approach. Although Spain tightened its approach in 1992 by prohibiting drug possession for personal use again, this ban only applies to possession in public; infringements are punished with administrative sanctions. Within the group of the prohibitive countries, France resisted the trend towards lower sanctioning levels and tightened the penalties for cannabis possession in 1992. The most remarkable legal change occurred in Portugal, where tough jail sentences were replaced by administrative sanctions in 2000. Switzerland also decided to de-penalize drug possession for personal use; since 2002, only fines are imposed in case of such offenses. Belgium, part of the partially prohibitive cluster, adopted a similar sanctioning approach and introduced low monetary penalties for cannabis possession in 2003. Italy, which had abolished punishment in 1975, re-penalized drug possession in 1990 (only adopting administrative sanctions, however).

In the context of sports betting, policy change between 1985 and 2010 is mainly observed on the vertical rules-dimension. Specifically, five additional countries – Denmark, Italy, Turkey, Poland and France – had given up their state monopolies by 2010 and adopted market systems allowing private actors to provide sports betting services if they fulfilled the criteria for holding an appropriate license.

In sum, developments regarding the regulation of cannabis are best described as 'persistent restrictiveness'. We observe persistence on the vertical axis reflecting the restrictiveness of rules on cannabis consumption and possession. Furthermore, only few countries substantially softened the sanctions imposed for violations of cannabis-related rules while the majority of countries in the sample maintained (potential) custodial sanctions. In the context of sports betting policy, Fig. 1 tells a different story. While there seems to have also been a slight reduction in sanctions for

participating in illegal gambling, the main developments have occurred on the rules-dimension. Specifically, we observe a trend towards ever more liberal models of sports betting policy with more and more countries allowing for private licensees to supply citizens with sports betting opportunities. The next section reviews existing theoretical arguments for their ability to account for these developments.

### Theorizing trends in addictive behaviour policy

To better understand why states seem to converge on more liberal rules regarding sports betting but remain persistently restrictive regarding cannabis, theories of policy convergence are a natural reference point. These generally differentiate between two sets of explanatory factors. On the one hand, they identify causal mechanisms which trigger policy convergence across countries. On the other hand, they discuss domestic factors which facilitate or obstruct the effectiveness of these mechanisms (Knill, 2005, p. 6). The literature generally distinguishes between five different mechanisms that determine whether convergence occurs: imposition through political pressure, harmonization through legal obligation, adaptation through competitive pressure, communication and learning, and individual problem solving resulting from similar problem pressure (Holzinger & Knill, 2005).

#### *Theoretical expectations in sports betting*

Regarding mechanisms of policy convergence, existing scholarship on gambling policy – which mostly focuses on the US – particularly emphasizes the relevance of competition and learning. Specifically, policy-makers seem to adopt more liberal gambling regimes when they learn about the positive fiscal effects of such regimes from the experiences made elsewhere (Berry & Berry, 1990) or come under competitive pressures from liberal gambling regimes in neighbouring jurisdictions (Calcagno et al., 2010).

While US-centred studies ignored legal obligation as a relevant convergence mechanism, research on sports betting developments conducted by legal scholars in the context of European Union (EU) politics suggests that jurisprudence by the European Court of Justice (ECJ) has had a substantial impact on national policy developments in this sector. Specifically, the relevance of ECJ case-law results from potential tensions between the prohibition of sports betting, or its organization under state monopolies and the principle of freedom of services under EU law (Kaburakis, 2009; Littler & Cyrille, 2007; Siekmann, 2012). This potential tension became particularly accentuated as modern communication technology (i.e. fax and internet) made it increasingly easy to organize betting services across national borders.

Regarding domestic factors facilitating or obstructing the spread of liberal gambling policies, the role of the presence of ideological opposition from religious groups is regularly emphasized (Clotfelter & Cook, 1989; Lutter, 2010; Pierce & Miller, 1999). While the Catholic Church takes a rather lenient stand on gambling and does not declare gambling to be a sin, more ascetic Protestantism remains critical of betting and gambling (Binde, 2007, p. 153). Similar to Protestantism, Judaism and Islam take strict positions on gambling (Bell, 1974; Rosenthal, 1975). These cultural characteristics should work as catalysts so that where external convergence pressures hit a specific country, cultural predispositions will affect how these pressures are processed (Jensen, 2003).

In sum, two convergence mechanisms seem most relevant in the context of sports betting policy. First, with the development of online gambling, state monopolies were increasingly difficult

to enforce. Second, the same technological development made it increasingly easy to provide cross-border gambling services which in turn accentuated the potential tension between national state monopolies on sports betting and the freedom of services under EU law. Particularly, in EU member states predominantly influenced by Catholicism, these pressures to liberalise should not have met a strong domestic ideological opposition.

**Expectation 1.** We thus expect EU member states by 2010 under the pressure of uncontrollable online gambling and increasing legal scrutiny exercised by the ECJ to have converged on a liberal market system of sports betting. Since convergence pressures were limited to the rules-dimension there is no reason to expect that states change their prevalent sanctioning paradigms.

#### *Theoretical expectations in cannabis*

Generally, most countries in our sample have experienced similar waves of increasing degrees of problem pressure related to cannabis and other drug over the time studied (Babor et al., 2009, p. 28ff; Chatwin, 2011, p. 83ff; MacCoun & Reuter, 2004, p. 213ff). The evidence regarding the effectiveness of different drug policy regimes in dealing with this problem pressure has remained mixed with respect to the success of restrictive or rather liberal drug control systems in limiting the spread of drug and its negative consequences (Babor et al., 2009, p. 166ff; Boekhout van Solinge, 2004, p. 26f; MacCoun & Reuter, 2001; Reinerman, Cohen, & Kaal, 2004; UNODC, 2007). Yet, when government officials answered the increasing problem pressure on the international level, arguments supporting the effectiveness of restrictive drug policy seem to have prevailed. Specifically, they adopted and continuously reinforced international commitments in the form of United Nations Drug Conventions binding them to maintain restrictive drug regimes prohibiting the possession of drugs and to impose criminal sanctions for drug law violations (Bewley-Taylor, 2003; Boister, 2001; Ghodse, 2008; van der Beken, De Ruyver, & Vermeulen, 2002). Consequently and in contrast to the sports betting sector, international legal obligations do not work as potential drivers of liberalisation. Instead, international legal obligations bind domestic drug policy regimes to maintain restrictive and punishing regimes.

Similar to gambling, existing scholarship emphasizes the relevance of cultural and ideological opposition motivated by denominational convictions as domestic factor affecting national drug policy regimes. One example is the relatively strict drug regime predominant in Sweden which has been promoted and protected by interests groups facilitating a culture of abstinence grounded in protestant ethics (Boekhout van Solinge, 1997; Chatwin, 2011, p. 89ff).

**Expectation 2.** Due to international commitments which bind states to prohibit drug possession and demanded that contracting states should impose adequate criminal sanctions for drug-related offences, no changes in the cannabis policy regimes are to be expected.

With our empirical knowledge summarized in Fig. 1, we know that while these expectations seem to be in line with most of the empirical developments observed in both sectors, they do not capture the developments completely. The next section will provide a more thorough analysis of deviances from these theoretical expectations.

#### **Identifying deviant cases?**

To analyse to what degree these theoretical expectations are reflected by our data, we categorize the countries in our

sample according to their addictive behaviour policy regimes in the context of sports betting and drugs in the year 2010. Specifically, we distinguish between persistent restriction and liberalisation in both sectors. In the context of sports betting, persistent restriction relates to upholding state monopolies while liberalisation refers to the introduction of market-based systems of sports betting on the rule-dimension. In contrast, persistent restriction in the context of drug policy relates to the upholding of criminal sanctions for the possession of cannabis for personal use. Liberalisation reflects the abolishment of custodial sanctions for such violations. We relate changes on the rules-dimension in gambling to changes on the sanctioning dimension in drug policy because these are the respective dimensions on which movements towards more liberal policy models have occurred.

Furthermore, we investigate how their classification in both sectors co-varies with (a) their status as EU members and (b) the dominant religious affiliation within domestic societies. We do so because – as outlined above – we expect EU members to be under particularly strong pressure to liberalise their sports betting regimes. All countries in our sample, with the exception of Switzerland, Turkey, Israel and Norway, are EU member states by 2010. While we do not expect religious-cultural factors to be active causal drivers of reforms in either sector (even Catholicism with its more lenient stand on drugs and gambling is unlikely to be an active promoter of liberalisation in either context), such religious-cultural factors are shown to work as catalysts making convergence mechanisms more or less effective. Against this background, we categorize our sample in three groups representing a Catholic cluster, a non-Catholic cluster including Protestant, Jewish, and Muslim cultures promoting abstinence more rigorously in both sectors, as well as a mixed cluster where neither of the two Christian denominations has been dominant. Finally, we do not have to provide additional clustering for countries in the sample bound by international commitments in the context of drug policy because all of the states in the sample have signed the UN Drug Conventions. These efforts are summarized in Fig. 2.

Countries that match our theoretical expectations are EU member states located in the lower right quadrant of Fig. 2. These states are predominantly of Catholic culture. EU member states located in the lower left quadrant of Fig. 2 correspond somewhat less to our theoretical expectations simply because we would have expected that strong pressures towards liberalising sports betting would have pushed them into the lower right quadrant by 2010. Yet, one way to bring these countries, namely the Netherlands, Germany, Sweden, and Finland, in line with our theoretical expectations is by recognizing their cultural background characterized by stronger elements of Protestant ethics.

In contrast, countries located in the two upper quadrants are much harder to bring in line with our theoretical expectations since we expected all countries to stick to their restrictive sanctioning approaches. Six countries have dropped custodial sanctions for cannabis possession, however. While countries in the upper right quadrant display theoretically unexpected behaviour in only one sector (drugs), the three countries located in the upper left quadrant behave surprisingly in both sectors. They seem to be able to withstand great pressures for liberalising their sports betting regimes while giving up their restrictive penal systems in the context of drug regulation despite the international legal commitments to maintain tough sanctions. Specifically, Portugal and Spain stand out as deviant cases as both are able to protect their restrictive state monopolistic sports betting systems but liberalised their cannabis sanctioning regimes by abolishing criminal sanctions for the possession of cannabis for personal use.

Against this background, we present case study evidence from the deviant case Portugal in order to provide insights into what

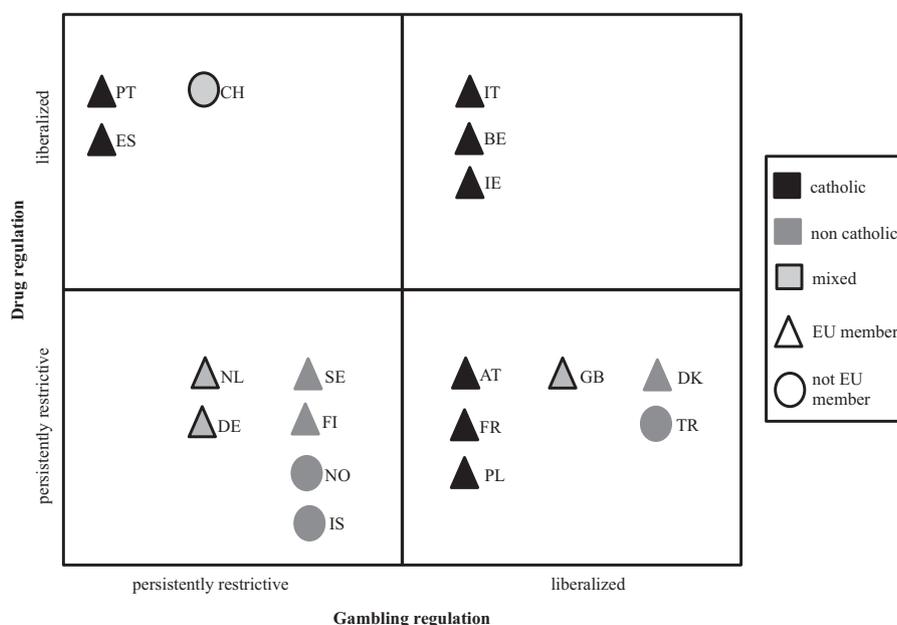


Fig. 2. Analysing deviant cases.

causes Portugal to diverge from our theoretical expectations in both sectors.

### Addictive behaviour policy in Portugal

Portugal has maintained a state monopoly system for sports betting run by Santa Casa da Misericórdia since 1961. This monopolist has also offered online sports betting services since 2001. Despite ECJ jurisprudence challenging sports betting monopolies in a series of EU member states and efforts by the EU Commission to open this market, the Portuguese monopoly was upheld. Even when the Santa Casa monopoly on sports betting came directly under scrutiny by the ECJ, the Portuguese government was effectively able to maintain the monopolistic structures.

Regarding drugs, Portugal followed a prohibitive, abstinence-oriented policy approach that criminalized and penalized not only the supply, but also the demand for drugs. This regime – characterized by a substantial interference with personal liberties through the criminalization and sanctioning of drug consumption and possession – reflected a preference for protection of the individual and the society against the hazards caused by drugs. Yet, in October 2000, the Portuguese Parliament adopted a major drug law reform by passing Law No. 30/2000 which excluded illegal drug consumption and possession for personal use from the list of criminal offences. Instead, it introduced administrative, non-custodial sanctions for both (still) illegal activities despite international legal commitments calling into question the conformity of this step with international law (Loo et al., 2002).

We argue that these divergent developments in the Portuguese addictive behaviour policy can be explained with the help of the theoretical concept of ‘policy coherence’. This concept has primarily been developed and used by international organizations in the area of economic development to prescribe logical consistency regarding goals and actions within and across policy sectors (Picciotto, 2005). We introduce this concept into the field of addictive behaviour policy by using it as an explanatory factor for policy stability in the area of gambling and drug regulation. In this regard, we understand policy coherence as the logical fit between a policy output and the framing that is used to support and justify this output.

*“Decriminalizing” the possession of cannabis and other illegal drugs*

Prior to the 1990s, drug issues in general and drug regulation in particular were not high on the political agenda in Portugal (Chatwin, 2011, p. 132). Drug legislation that criminalized and penalized the demand for drugs had existed since the 1920s. In 1983, a new maximum prison sentence of three months was introduced for illegal drug possession for personal use. This level of sanctions was only slightly reduced when a new main drug law was adopted in 1993 (Decree-Law No. 15/93).

This restrictive approach was challenged due to an aggravating drug situation since the late 1980s. Portugal experienced a severe rise in the number of drug consumers, drug addicts, drug-related deaths, and arrests for drug offences during the 1990s. The deteriorating drug situation became especially visible through the emergence of a large open drug scene in Casal Ventoso, a district on the outskirts of Lisbon (Chatwin, 2011, pp. 133–134). Soon, the policy and judiciary were overburdened with cases related to drugs (Hughes, 2006, pp. 109–112).

In the second half of the 1990s, the development of the drug situation increasingly attracted the attention of the political arena and led to a growing number of policy-makers who criticized the policy status quo. Besides, a coalition of actors from the health and legal system emerged which favoured and advocated drug policy change (Hughes, 2006, pp. 106–115). In early 1998, the reform-oriented Socialist government appointed an expert commission<sup>5</sup> to propose a drug strategy. Some months later, the commission published its report (CENCD, 1998) which contained a range of evidence-based recommendations for policy reform. The commission pointed to the adverse effects of the restrictive approach towards drug users and recommended the “decriminalization” (CENCD, 1998, p. 9) of drug consumption and possession (for personal use) by prohibiting and sanctioning both activities not as criminal offences any more, but as administrative offences.

In April 1999, the government adopted its new National Drug Strategy (Government of Portugal, 2000) which included most of the commission’s recommendations, among other things the

<sup>5</sup> Comissão para a Estratégia Nacional de Combate à Droga.

decriminalization of drug consumers. The strategy clearly reflected the legitimization crisis of the policy status quo due to the obvious incoherence between aims, justifications and effects of the policy approach:

“In fact, criminalization is not justified, and it is neither absolutely necessary nor even appropriate to confront the problem of drug use and its undoubtedly harmful effects. [...] [A]s experience has also revealed, it has not been demonstrated that to subject a user to criminal proceedings [...] constitutes the most appropriate and effective means of intervention [...]. On the contrary, in many cases, contact with the judicial system [...] together with the social stigma [...], produce harmful effects on the desired recovery [...]. From this it can be concluded that the classification as a criminal offence of mere use of drugs, as well as the possession [...] for use, is disproportionate.” (Government of Portugal, 2000, pp. 39–40)

Thus, scientific evidence that the drug policy maintained so far could not stop drug and its negative side effects had fundamentally challenged the reasoning behind the established policy approach. Penalizing drug consumers was not regarded as the solution of the drug problem any longer, but rather as a fundamental part and trigger of the problem (Greenwald, 2009, p. 6).

In October 2000, the Portuguese parliament finally approved Law No. 30/2000 which reclassified illegal drug consumption and possession as administrative offences and introduced non-custodial, administrative sanctions for rule violations. The law entered into force in July 2001.

To sum up, drug policy reform in Portugal was mainly driven by the incoherence between the consequences of the restrictive policy status quo and its underlying justifications. The substantial interferences into personal liberties of drug consumers which had previously been justified by their very effectiveness were framed by the government as an incoherent policy approach since scientific evidence had revealed the adverse effects of this strict penal policy.

#### *Protecting the state monopoly on sports betting*

Portugal takes a traditionally restrictive stand on the regulation of gambling activities. Where games of chance are not prohibited, they are provided through controlled channels of state-controlled monopolies (Siekmann, 2012). The state monopoly on sports betting, which Santa Casa held for land-based and online sports betting, came under scrutiny when the Portuguese Football League agreed on a sponsorship contract with *Bwin* (a betting company located in Gibraltar). Santa Casa complained that the Football League could not be sponsored by a company whose services were in fact illegal within Portugal. When both contracting parties were sentenced to a fine by Portuguese authorities, legal conflict emerged leading eventually to the activation of the ECJ through the preliminary reference mechanism (Cardigos, 2012). While such scrutiny by the ECJ had effectively destabilized state monopolies on sports betting in a number of countries, the Portuguese system was able to withstand the legal tests. The main reason why it could maintain a policy which clearly violated the freedom of services provided under article 56 TFEU<sup>6</sup> were twofold. First, Portugal gave explicit reasons for its restriction of these freedoms. Specifically, the Portuguese policy regime pursued the objective to protect the general interest of preventing gambling addiction and fraud. Second, and even more importantly, the gambling policy regime did so in a coherent and systematic way. The coherence of the Portuguese

gambling policy regime was explicitly emphasized in the Opinion of Mr Advocate General Bot and in the ECJ’s preliminary ruling.<sup>7</sup> The moderate measures taken by Santa Casa to extend the provision of games of chance and the moderate advertising activities made the intention to effectively protect consumers credible in the eyes of the ECJ.

The coherence of policy regimes is thus an important element to take into account when trying to explain why certain EU member states were better able to maintain their monopolist structure despite high liberalisation pressures.

#### **Conclusions**

We set out to describe and explain dominant empirical trends in addictive behaviour policy across 19 different countries between 1960 and 2010 focusing on domestic policy regimes on the use and possession of cannabis and the supply of and participation in sports betting. In both contexts, policy-makers were argued to face essentially the same general trade-offs and value conflicts.

Theories of policy convergence are able to explain why most of the countries analysed in our sample have become more permissive on gambling by liberalising their sports betting monopolies but have maintained restrictive cannabis regimes. These theories fail, however, to account for all of the empirical variation observed. Policy reforms in Portugal appear particularly surprising. Portugal deviates from the dominant trend of EU members to abolish state monopolies on sports betting in favour of market-based license systems. Instead, it was able to maintain its state monopoly beyond 2010 and even beyond the point of writing this article despite high liberalisation pressures. Furthermore, Portugal also deviates from the dominant trend by abolishing custodial sanctions for the (still illegal) possession of drugs (including cannabis) completely.

We suggest that this deviation can be better understood when taking the concept of ‘policy coherence’ into account. Portugal successfully withstood legal conflict due to the high degree of coherence of its policy regime on gambling. Due to this coherence, which is reflected by a restrictive regime in all types of gambling activities, restrictions of the freedom of services under EU law were evaluated favourably by the ECJ. In contrast, scientific evidence about the unintended adverse effects of high criminal sanctions for drug violations was successfully used by relevant policy entrepreneurs in order to promote a perception of incoherence between the policy status quo and its underlying justifications. Changes of the status quo policy thus seem to be facilitated when policy entrepreneurs succeed in shaping a perception of policy incoherence. In turn, when relevant actors are able to maintain a perception of policy coherence, the policy status quo is stabilized. The case study highlights two mechanisms through which policy coherence affects policy output: judicial assessment and scientific evidence.

On the one hand, perceived policy incoherence makes policy regimes susceptible to judicial challenges facilitating policy convergence resulting from legal obligations through international judicial shocks. This is because when evaluating the proportionality of measures which restrict certain fundamental rights, courts rely on an evaluation of whether such restrictions are applied in a consistent way.

On the other hand, scientific evidence questioning assumed relationships between regulation and its effects can create a perception of policy incoherence: Established frames are no longer able to justify the policy status quo. Yet, the existence of scientific evidence is, of course, not sufficient to induce policy change.

<sup>6</sup> Treaty on the Functioning of the European Union.

<sup>7</sup> European Court reports 2009 Page I-07633.

Whether scientific evidence is used crucially depends on the ability and willingness of the respective political (and judicial) actors to do so (see e.g. Stevens, 2011). The Portuguese case suggests that the interaction of three factors facilitated the ability of scientific evidence to attract political agency by the government. First, the high level of problem pressure forced the government to address the drug problem and to take action. Second, following policy advice by decriminalizing drug consumers promised the advantage of taking massive pressure from the overburdened police and judiciary. This aspect was particularly emphasized in the National Drug Strategy (Government of Portugal, 2000, p. 40). Due to the generally low level of capacity of Portuguese institutions, this positive side effect of decriminalization seems to be of great importance. Third, the Socialist government did not have strong ideological reservations against the softening of the regulatory approach. In the absence of strong ideological predispositions, policy-makers were open for external expertise. This suggests that in countries with lower levels of problem pressure, greater institutional capacity to handle enforcement, and policy-makers with stronger ideological predispositions scientific evidence about the negative effects of criminalizing drug users is less likely to attract political agency.

### Acknowledgements

This research is based on funding of the European Research Council (ERC Advanced Grant – ERC-AG-SH2) for Professor Christoph Knill who directs the MORAPOL project analysing patterns of morality policy change in nine different policy sectors in 26 countries over a period of 50 years.

### References

- Babor, T. F., Caulkins, J. P., Griffith, E., Fischer, B., Foxcroft, D. R., Humphreys, K., et al. (2009). *Drug policy and the public good*. Oxford: Oxford University Press.
- Becker, T. (2011). *Soziale Kosten des Glücksspiels in Deutschland*. Frankfurt: Lang-Verlag.
- Bell, R. C. (1974). *Moral views on gambling promulgated by major American religious bodies*. Springfield, VA: US Dept of Commerce.
- Berry, F. S., & Berry, W. (1990). State lottery adoptions as policy innovations: An event history analysis. *American Political Science Review*, 84(2), 395–415.
- Bewley-Taylor, D. R. (2003). Challenging the UN drug control conventions: Problems and possibilities. *International Journal of Drug Policy*, 14(2), 171–179.
- Binde, P. (2007). Gambling and religion: Histories of concord and conflict. *Journal of Gambling Issues*, 20, 145–165.
- Boekhout van Solinge, T. (1997). *The Swedish drug control system: An in-depth review and analysis*. Amsterdam: Uitgeverij Jan Mets.
- Boekhout van Solinge, T. (2004). *Dealing with drugs in Europe: An investigation of European Drug control experiences: France, the Netherlands and Sweden*. The Hague: Bju Legal Publishers.
- Boister, N. (2001). *Penal aspects of the UN drug conventions*. The Hague: Kluwer Law International.
- Calcagno, P. T., Walker, D. M., & Jackson, J. D. (2010). Determinants of the probability and timing of commercial casino legalization in the United States. *Public Choice*, 142, 69–90.
- Cardigos, P. (2012). Sports betting and the law in Portugal. In P. M. Anderson, I. S. Blackshaw, R. C. Siekmann, & J. Soek (Eds.), *Sports betting: Law and policy*. The Hague: T.M.C. Asser Press.
- CENCD. (1998). *Estratégia Nacional de Luta contra Droga*. Lisbon: Comissão para a Estratégia Nacional de Combate à Droga (CENCD).
- Chatwin, C. (2011). *Drug policy harmonization and the European Union*. Basingstoke: Palgrave Macmillan.
- Clotfelter, C. T., & Cook, P. J. (1989). *Selling hope: State lotteries in America*. Cambridge: Harvard University Press.
- EMCDDA. (2005). *EMCDDA thematic papers—Illicit drug use in the EU: Legislative approaches*. Lisbon: European Monitoring Centre for Drugs and Drug Addiction (EMCDDA).
- Euchner, E.-M., Heichel, S., Nebel, K., & Raschzok, A. (2013). From 'Morality' policy to 'Normal' policy: Framing of drug consumption and gambling in Germany and the Netherlands and their regulatory consequences. *Journal of European Public Policy*, 20(3), 372–389.
- Ferraiolo, K. (2013). Is state gambling policy morality policy? Framing debates over state lotteries. *Policy Studies Journal*, 41(2), 217–242.
- Ghodse, H. (Ed.). (2008). *International drug control into the 21st century*. Aldershot: Ashgate.
- Goldberg, T. (2005). Will Swedish and Dutch drug policy converge? The role of theory. *International Journal of Social Welfare*, 14(1), 44–54.
- Government of Portugal. (2000). *Portuguese drug strategy*. Lisbon: Government of Portugal. Retrieved from: [http://www.idt.pt/EN/Legislacao/Legislacao%20Internacional%20Ficheiros/Portuguese\\_Drug\\_Strategy/estrategia\\_eng.pdf](http://www.idt.pt/EN/Legislacao/Legislacao%20Internacional%20Ficheiros/Portuguese_Drug_Strategy/estrategia_eng.pdf)
- Greenwald, G. (2009). *Drug decriminalization in Portugal: Lessons for creating fair and successful drug policies*. Washington, DC: Cato Institute.
- Holzinger, K., & Knill, C. (2005). Causes and conditions of cross-national policy convergence. *Journal of European Public Policy*, 12(5), 775–796.
- Houbourg, E. (2010). Control and welfare in Danish drug policy. *Journal of Drug Issues*, 40(4), 783–804.
- Hughes, C. E. (2006). *Overcoming obstacles to reform? Making and shaping drug policy in contemporary Portugal and Australia*. Melbourne: University of Melbourne.
- Hughes, C. E., & Stevens, A. (2012). A resounding success or a disastrous failure: Re-examining the interpretation of evidence on the Portuguese decriminalisation of illicit drugs. *Drug and Alcohol Review*, 31, 101–113.
- Hyshka, E. (2009). Turning failure into success: What does the case of Western Australia tell us about Canadian cannabis policy-making? *Policy Studies*, 30(5), 513–531.
- Jackson, J. D., Saurman, D. S., & Shughart, W. F. I. (1994). Instant winners: Legal change in transition and the diffusion of state lotteries. *Public Choice*, 80, 245–263.
- Jensen, J. L. (2003). Policy diffusion through institutional legitimation: State lotteries. *Journal of Public Administration Research and Theory*, 13(4), 521–541.
- Kaburakis, A. (2009). ECJ jurisprudence and recent developments in EU sports betting. In S. Gardiner, R. Parrish, & R. C. Siekmann (Eds.), *EU, sport, law and policy: Regulation, re-regulation and representation*. The Hague: T.M.C. Asser Press.
- Kingma, S. F. (2008). The liberalisation and (re)regulation of Dutch gambling markets: National consequences of the changing European context. *Regulation & Governance*, 2(4), 445–458.
- Knill, C. (2005). Introduction: Cross-national policy convergence: Concepts, approaches and explanatory factors. *Journal of European Public Policy*, 12(5), 1–11.
- Knill, C. (2013). The study of morality policy: Analytical implications from a public policy perspective. *Journal of European Public Policy*, 20(3), 309–317.
- Kübler, D. (2001). Understanding policy change with the advocacy coalition framework: An application to Swiss drug policy. *Journal of European Public Policy*, 8(4), 623–641.
- Littler, A., & Cyrille, F. (Eds.). (2007). *The regulation of gambling: European and national perspectives*. Leiden: Martinus Nijhoff Publishers.
- Loo, M. v. h., Beusekom, I. v., & Kahan, J. P. (2002). Decriminalization of drug use in Portugal: The development of a policy. *Annals of the American Academy of Political and Social Science*, 582, 49–63.
- Lutter, M. (2010). Zur Erklärung von Diffusionsprozessen. Das Beispiel der Einführung staatlicher Lotterien in den USA. *Zeitschrift für Soziologie*, 39(5), 363–381.
- MacCoun, R., & Reuter, P. (2001). Evaluating alternative cannabis regimes. *British Journal of Psychiatry*, 178(2), 123–128.
- MacCoun, R., & Reuter, P. (2004). *Drug war heresies: Learning from other vices, times, and places*. Cambridge: Cambridge University Press.
- Meier, K. J. (1992). The politics of drug abuse: Laws, implementation, and consequences. *Western Political Quarterly*, 45(1), 41–69.
- Meier, K. J. (1994). *The politics of sin: Drugs, alcohol, and public policy*. Armonk, NY: Sharpe.
- Mucciaroni, G. (2011). Are debates about "Morality Policy" really about morality? Framing opposition to gay and lesbian rights. *Policy Studies Journal*, 39(2), 187–216.
- Nelken, D. (2002). Comparing criminal justice. In M. Maguire, M. Maguire, et al. (Eds.), *The Oxford handbook of criminology*. Oxford: Oxford University Press.
- Picciotto, R. (2005). The evaluation of policy coherence for development. *Evaluation*, 11(3), 311–330.
- Pierce, P. A., & Miller, D. E. (1999). Variations in the diffusion of state lottery adoptions: How revenue dedication changes morality politics. *Policy Studies Journal*, 27(4), 696–706.
- Reinarman, C., Cohen, P. D. A., & Kaal, H. L. (2004). The limited relevance of drug policy: Cannabis in Amsterdam and in San Francisco. *American Journal of Public Health*, 94(5), 836–842.
- Rosenthal, F. (1975). *Gambling in Islam*. Leiden: Brill.
- Serge, S. (2003). *Controlling illegal drugs: A comparative study*. New York: Aldine de Gruyter.
- Siekmann, R. C. (2012). Sports betting in the jurisprudence of the European court of justice: A study into the application of the stare decisis principle, or: The application of the "Reversal Method" of content analysis and the essence of the ECJ case law on sports betting. In P. M. Anderson, I. S. Blackshaw, R. C. Siekmann, & J. Soek (Eds.), *Sports betting: Law and policy*. The Hague: Asser Press.
- Stevens, A. (2011). *Drugs, crime and public health: The political economy of drug policy*. Abingdon: Routledge.
- Tops, D. (2001). *A society with or without drugs? Continuity and change in drug policies in Sweden and the Netherlands*. Lund University: Lund.
- Turnbull, P. J. (2009). The great cannabis classification debacle: What are the likely consequences for policing cannabis possession offences in England and Wales? *Drug and Alcohol Review*, 28(2), 202–209.
- Uchtenhagen, A. (2010). Heroin-assisted treatment in Switzerland: A case study in policy change. *Addiction*, 105(1), 29–37.
- UNODC. (2007). *Sweden's successful drug policy: A review of the evidence*. Vienna: United Nations Office on Drugs and Crime.
- van der Beken, T., De Ruyver, B., & Vermeulen, G. (2002). *Multidisciplinary drug policies and the UN drug treaties*. Antwerpen: Maklu Publishers.