



UNIVERSIDADE D  
COIMBRA

Yudi Zhou

TÍTULO DA DISSERTAÇÃO

SUBTÍTULO

**LEGISLAÇÃO COMPARATIVA DOS JOGOS E APOSTAS  
ONLINE-REGIME JURÍDICO E FISCAL**  
COMPARATIVE LAW OF ONLINE GAMBLING –LEGAL AND TAX  
FRAMEWORK

VOLUME 1

Dissertação no âmbito do Mestrado em Direito  
orientada pela Prof.Doutor Dulce Margarida de Jesus Lopes  
Faculdade de Direito

Julho de 2021

## Contents

Abstract.....	2
Introduction.....	4
Chapter I: Background and Significance .....	6
Taxonomy of Gambling and Betting.....	8
Monetary Transaction.....	10
Game of Chance .....	11
Gambling Simulator Sites.....	11
The Core of Gambling Features .....	12
Reflections.....	13
Chapter II: The United States .....	15
Start with legalization: Nevada .....	15
Federal statutes.....	17
Skill vs Chance.....	25
Daily Fantasy Sports .....	27
Social Casino Games.....	32
Chapter III: The European Union .....	35
Austria .....	44
Belgium .....	50
France.....	57
Germany.....	64
Netherland .....	71
Portugal .....	78
Concluding Remarks.....	85
Bibliographies.....	90

## **Abstract**

The main objective of this paper is to examine the legal frameworks of common international jurisdictions that regulate gambling and online gambling. Gambling's distinctive moral and cultural characteristics necessitate that legal administration in this sector varies significantly between jurisdictions worldwide, particularly in terms of legislation. A study of a country or region's legal framework entails the following major components: Legal definition of gambling activities (taxonomy and category); What regulatory regimes (such as state monopolies or licensing) govern the operation of gambling activities; The specific approaches to land-based and online gambling; Hierarchy disparities in legislation in different countries or regions; Special laws, supervisors, regulators, for gambling sector in certain jurisdictions; Legislation on the taxation of gambling.

The paper claims that the legal frameworks governing gambling in the European Union and the United States are worth comparing and researching, notwithstanding the political and legal systems' disparities. These significant jurisdictions represent two of the most typical gambling legal frameworks in the world today, but there are also numerous legal stumbling blocks and challenging, demonstrating that the gambling industry is not a straightforward field that can be learned through simplistic configurations.

**Key Words:** Gambling law; Comparative Law; Legal and Political Sciences; Public and European International Law; Legal Framework of Gambling

O principal objetivo desta dissertação é examinar os marcos legais das jurisdições internacionais comuns que regulam o jogo e o jogo online. As características morais e culturais distintas do jogo fazem com que a administração legal neste setor varie significativamente entre as jurisdições em todo o mundo, particularmente em termos de legislação. Um estudo da estrutura legal de um país ou região envolve os seguintes componentes principais: Definição

legal das atividades de jogo (taxonomia e categoria); Quais regimes regulatórios (como monopólios estaduais ou licenciamento) regem a operação das atividades de jogos de azar; As abordagens específicas para jogos de azar online e terrestres; Disparidades de hierarquia na legislação em diferentes países ou regiões; Leis especiais, supervisores, reguladores, para o setor de jogos de azar em certas jurisdições; Legislação sobre a tributação do jogo.

A dissertação afirma que vale a pena comparar e pesquisar os enquadramentos jurídicos que regem o jogo na União Europeia e nos Estados Unidos, não obstante as disparidades dos sistemas político e jurídico. Essas jurisdições significativas representam duas das estruturas legais de jogos de azar mais típicas do mundo hoje, mas também existem vários obstáculos e desafios legais, demonstrando que a indústria de jogos de azar não é um campo direto que pode ser aprendido por meio de metodologias simplistas.

Palavras-Chave: Legislação sobre Jogos; Direito Comparado; Ciências Jurídico-Políticas; Direito Internacional Público e Europeu; Regime Jurídico do Jogos e Apostas

## **Introduction**

The Casino Gaming Dictionary defines gambling as "making a prediction about an uncertain outcome and then accepting the consequences of your decision for the amount of money you have bet."<sup>1</sup> It can be seen that gambling has three basic elements: the first is to have a bet, the second is to have an opponent, the third is to take a chance, none of which is dispensable. This paper holds that gambling and game of chance are equal in connotation and extension. From the perspective of political economy, the gambling industry itself cannot create value, but only participates in the distribution of value through betting and gambling.

From the legal point of view, according to whether the country allows or authorizes, it is divided into legal gambling and illegal gambling. According to the level of denotation and connotation will be told, there are betting points on narrow sense and broad sense. There are commercial and social gambling by nature. The difference between the two lies in the way they are organized and whether they are profitable or not. Social gambling is usually a form of entertainment organized by people, such as playing poker.

Such games generally have no obvious organizers, scattered personnel, small scope of influence, and more emphasis on entertainment. Governments generally do not interfere with such gambling games. Commercial gambling refers to the gambling games that profit from the special operating organizations according to the special game rules or odds, which can be divided into traditional lottery games, competitive games, casino games and so on. Competitive games include football lottery, horse racing, dog racing or other sports competitions. Commercial gambling games have a great impact on local economy and people's life, even a negative impact, so it needs to be specially regulated by the state or government. Gambling industry is characterized by entertainment service. Tourists, local residents, and even compulsive gamblers tend to gamble for pleasure and luck, thus, shouldn't be considered as actions of investment (even for those with such motives). The detailed taxonomy of the various games will be presented in Chapter 1, which is considered a good starting point for exploring the various game regulations. Gaming legal framework refers to the organization and operation

---

<sup>1</sup> George, G.f. Hshimoto, K. Casino Gaming Dictionary, Terms and Language for Page 45 Managers [M] Kendall / Hunt Publishing Company,2009, Page 46

mode that the government supervises the operation of the gambling industry under the condition of market economy.

Just like the regulatory system for food and drugs, the legal framework for gambling is also a means of government regulation for a specific sector or issue within the macroeconomic regulatory system, with the aim of ensuring the sustained, healthy and stable development of the gambling industry.

To establish the gambling legal framework is a country or a region's cultural concept, the derived out of the country or region corresponding legal gambling compatibility, guiding ideology and principles of management, etc., including the prohibitions, regulators set, market access and taxation. More specifically, the work at the operational level includes gambling enterprise registration, business registration, government and enterprise agreement, supervision and law enforcement inspection, etc. This paper deliberately selected the United States and several member states of the European Union as the research models in the field of legal framework and taxation of gambling law, in order to show what legal measures have been applied in various jurisdictions in the world when facing the special issue of "gambling".

## **Chapter I: Background and Significance**

Since 1980, the gambling industry has developed rapidly in Europe, and Britain, France, Germany, Italy, Spain, Portugal, Switzerland, and Monaco have all become the development territories of the gambling industry. On the other side of the Atlantic, the world's largest economy, the United States, has also cautiously evolved its gambling laws over the past couple of years.

The 2020 has been a brutal and difficult year for all industries due to the economic devastation caused by the COVID-19 epidemic. On the gambling side, the suspension or postponement of sporting events has had a direct impact on many sports-related gambling industries, as has the large-scale closure of gambling venues such as casinos, bingo parlors, racetracks, and lottery outlets. For online gambling, however, it has been another spring. During the quarantine, pastimes became scarce, and as more people tried slot machines on their mobile phones or other types of online gambling, visitors to gambling sites suddenly increased. Many gambling sites are seeing new customers, and existing customers are becoming more interested in online gambling (because of the closure of offline venues).

This shows that the traditional way of operating the gambling industry is gradually being replaced, and this is creating new possibilities and demands for the legal system.

Online gambling uses advanced telecommunications technologies to offer gambling access across national boundaries, providing business with unparalleled resources and fresh challenges for government control and domestic sovereignty. To name only a few, it intends to revolutionize the gaming industry by encouraging emerging technology, providing comprehensive research on social and economic impacts. Online gambling is a topic of concern because of the wide adoption of varying degrees of regulation among countries, leading to a confusing and uncertain legal climate.

The aim of this thesis is to explore the growth of the Internet and interactive gambling, to highlight government and industry response, and to show the significant challenges and issues the government and industry face as a result of this rapidly evolving market.

### ***Theoretical significance***

The legal research of the gambling industry has a significant value of theoretical analysis. From the perspective of discipline theory, legal gambling research involves comparative law, institutional economics, social and political science, etc.

So far, the United States has developed into a relatively developed country in the gambling industry. However, by reviewing the history of the legalization of gambling in the United States, it is not difficult to find that the arduousness of gambling legalization encountered by the United States are urgently needed to be solved by many countries at present.

As for the European Union, a distinctively both a special sort of economic and political entity, in accordance with the provisions laid down by the EU's various legal codes, each member state has taken respective blueprints on gambling.

This article selects the gambling legislation samples of the United States and European member states as the theoretical basis. Society is dynamic, with variables such as culture, economy and so on. Therefore, comparing the legislation of different countries and legal systems is like a clear structural map, from which the optimal solution can be found by corresponding variables.

### ***Practical significance***

In terms of the scope of academic fields, the study of gambling law involves public management, administrative management, institutional economics, sociology, legal psychology and so on, and complements with these fields. The research on this topic should follow the principle of cultivating strengths and circumventing weaknesses conducive to the healthy and vigorous development of the world gambling industry. Gambling may be a worrying or sensitive activity, which can bring you great financial rewards while possibly devastating your values, social morals, and cultural traditions. The central idea of this paper is comparative law, summarizing and analyzing the system and implementation situation of gambling operation mode, operation type, opening conditions, access requirements, and restrictive regulations in various countries and regions, especially optimizing and improving it in practice, learning from brilliant legal system models to explore more reasonable and stable gambling legal framework.



## **Taxonomy of Gambling and Betting**

Human living habits have been constantly changing due to the birth of Internet technology. As one of human activities with a long history -- gambling, it is also inevitable to change the fate.

Games of chance have seen a surge in popularity on social media has led to new discussions about whether or not they are classed as an internet gambling activity, and if so, the level of regulation they will need. Gambling themes are used in many different types of media, and online operators typically use gambling-simulated themes to promote their games. However, to the best of our knowledge, there is, very little research on the degree to which digital convergence has influenced gambling and betting's effects. Conducting relevant research on online gambling poses a major challenge in the absence of a consistent definition. This research proposes a taxonomy to organize different online activities with gambling content. There needs to be a taxonomy that employs terms of reference and essential game elements that are consistent throughout to advance a classification methods. Such a taxonomy should be flexible enough to extend to online games while remaining precise.

Before studying the regulation of online gambling, it is necessary to divide and taxonomize the structural characteristics and fundamental nature of online gambling. Broadly speaking, "Internet gambling" or "Internet betting and gaming" refers to games in which bets and gambles are made through various interactive(internet-based) devices, such as mobile apps on smartphones, computers, game consoles, etc. The terms "internet ", "interactive," "remote," and "online" are of the same nature and definition in the context of this article, as the terms are often used interchangeably in jurisdictions and concepts in different countries. The global online gambling market was worth \$53.7 billion in 2019 and is expected to grow at a compound annual growth rate of 11.5 percent from 2020 to 2027.<sup>2</sup> The proliferation of consumers has also meant an explosion in the need for legal protection mechanisms, despite significant differences in licensing requirements between jurisdictions.

---

<sup>2</sup> Online Gambling Market Size, Share & Trends Analysis Report By Type (Sports Betting, Casinos, Poker, Bingo), By Device (Desktop, Mobile), By Region (North America, Europe, APAC, Latin America, MEA), And Segment Forecasts, 2020 – 2027

For consumers, it is relatively difficult to distinguish between gambling and normal gaming because some games originate from the same network operator, which makes many games look similar (because of overlapping content). For regulators, what constitutes gambling is a watershed. The first dilemma in this area is the lack of consistent terminology among academics, legislators, regulators, and consumer protection agencies, which will largely limit sustainable and constructive discussions in this area. Many jurisdictions still use the term Gambling to refer to the behavior of Gambling. Gambling and Gaming belong to two distinct categories in historical literature, and confusion can be found everywhere today.<sup>3</sup>

This article draws on a preliminary taxonomy proposed by Parke in 2013, which discusses game platforms, the possibility of networking, and whether monetary rewards are offered.<sup>4</sup> However, this is only a foundational framework and has become obsolete (for example, "gambling" was used to refer to activities that are not generally considered gambling). Therefore, this thesis carries out a certain transformation on Parke's proposal. The main structure of the modified proposal includes four directions (see Figure 1): (1) monetary transactions; (2) the influence of skill and chance in games; (3) the nature of the platform; and (4) the intensity of gambling features.

---

<sup>3</sup> Sue Schneider. *Gaming Law Review and Economics*. Dec 2012.711-712.

<sup>4</sup> Parke, Jonathan, Wardle, Heather, Rigbye, Jane et al (2012) *Exploring social gambling: scoping, classification and evidence review*. Technical Report. Gambling Commission.

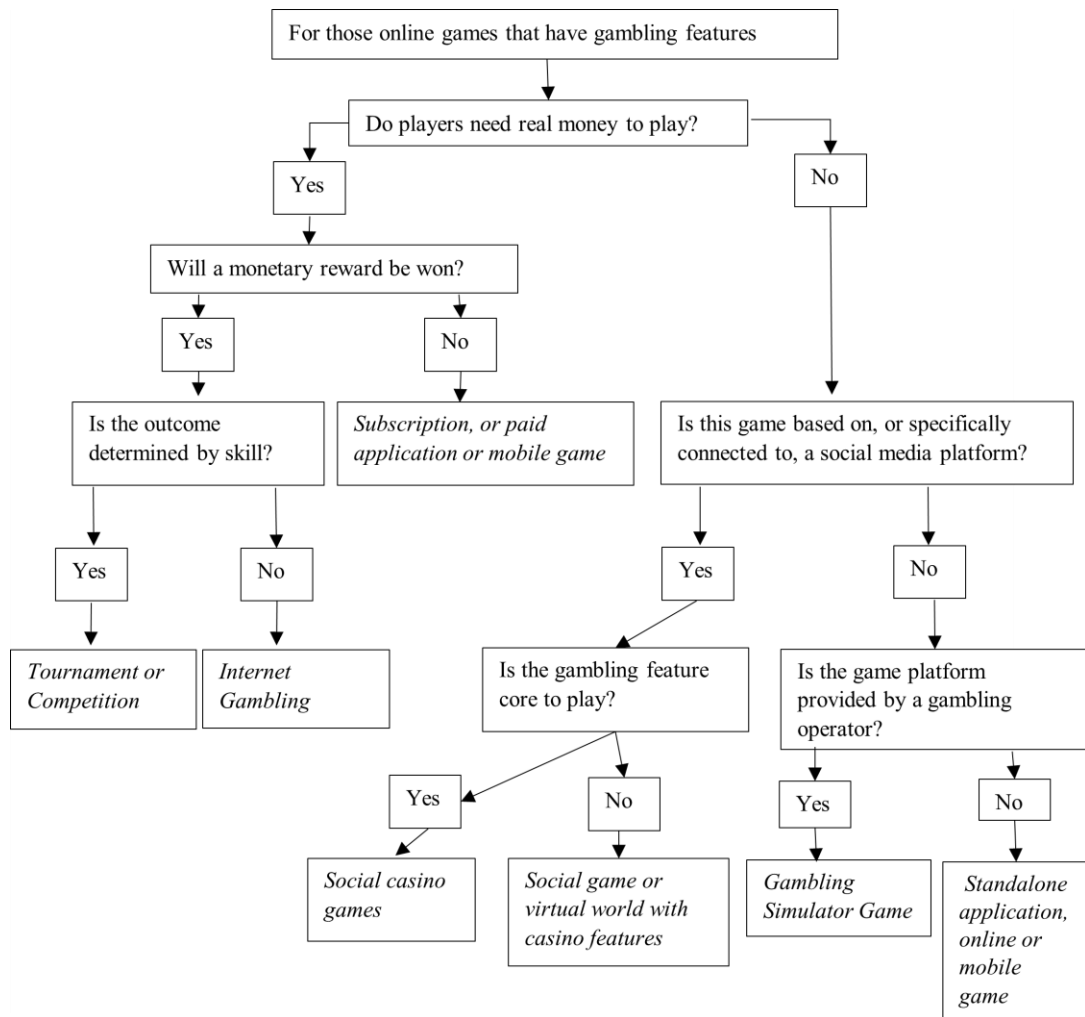


Figure 1: Modified Taxonomy

### ***Monetary Transaction***

The presence or absence of a monetary transaction is one of the most important characteristics to identify gambling behavior, and games that are not only played through payment are not classified as gambling in most cases. Another feature is that players can be rewarded with pre-determined financial rewards (which can be monetised), and the outcome is largely determined by chance (which is beyond their control). The absence of one or more of these characteristics will not constitute gambling.

### ***Game of Chance***

The term "game of chance" is familiar in much of the gambling literature and, as the name suggests, refers to games in which the outcome of a game is determined primarily by chance (out of control) rather than the skill of the user. In practice, it is apparently hard to determine whether the outcome of a game is due to random factors or something else. For example, in poker, skill may be more important than chance, but from turn to turn (per session), or from time to time (weeks or months), the outcome of the game is still a matter of luck.

Most national jurisdictions do not prohibit game of skill. However, there is a lot of debates about whether games that allow users to play organized games compete against other users, bet on the outcome of video games, and receive financial rewards, are based on skill or chance (e.g., Fantasy Sports to be discussed later). Often, such games offer an age limit in their terms, which implies that the content is not suitable for teenagers, but since it is not gambling, this is not a legal requirement.

### ***Gambling Simulator Sites***

Another thorny issue is gambling practice sites, which are often derived by gambling games (links to gambling games appear in places where pokes can be found) and act as gambling simulators. Players do not have to pay any money during the practice (registration is required), and the website gives players a fixed number of free points (until they run out), but no extra points can be earned. At this stage of the simulation, even if a reward can be won, it cannot be classified as gambling because the players do not pay. Statistics show that many casinos, gambling applications or websites have a "magic" winning rate (sometimes up to 100 percent) during the trial (practice) phase.<sup>5</sup> This is the misleading behavior of the operators, they will often give incentives on the website, encouraging players to use real money to gamble, once into this trap, the previous winning rate is no longer exist.

Such simulators often escape regulatory scrutiny and even exist in jurisdictions where online gambling is illegal at all. The legal trend is for many jurisdictions to regulate such

---

<sup>5</sup> Serge Sévigny, Martin Cloutier, Marie-France Pelletier, Robert Ladouceur, Internet gambling: Misleading payout rates during the "demo" period, 2005, 153-158

gambling simulator sites, requiring vendors to be truthful about their gambling offerings, rather than inflate their returns.

Australia, for example, equates such simulator sites with online gambling sites, whose promotional activities are illegal online gambling advertising. This type of regulated advertising applies Part 7A of the *Interactive Gambling Act 2001*, which is broadly based on the *Tobacco Advertising Prohibition Act 1992*, including not depicting unrealistic reward schemes or attracting children or vulnerable groups.<sup>6</sup>

### ***The Core of Gambling Features***

The act of gambling has legal implications. To avoid confusion, it should be applied to games that qualify as "gambling", so terms such as "no money gambling" or "free gambling" are themselves literally ambiguous. The term "games with gambling features" is too cumbersome to convey meaning, which is why some scholars have come up with the term "*social casino games*" to refer to online games with gambling elements.

First of all, social casino games don't require players to pay real currency (only virtual currency). At its core, they are interactive, so they tend to be based on social networks. Finally, game outcomes are generated by algorithms (to improve player satisfaction and sustainability), not by random probability.<sup>7</sup> Nowadays, however, the concept of social casino games is becoming more and more confusing. The reason is that many social gambling operators are themselves online gambling operators, and they use these games cleverly to promote their actual gambling products and websites, as well as to gain access to potential customers' data. Most importantly, these social casino games help operators gain a foothold in the market before online gambling becomes legal.

Many social games have gambling features to some degree, such as virtual tournaments, turntables of fortune, or random cards combinations. But whether this constitutes gambling, or

---

<sup>6</sup> The prohibition is established under Part 7A of the *Interactive Gambling Act 2001*. It applies to all forms of media, both electronic and non-electronic, including advertising over the internet, broadcast services, print media, billboards and hoardings. It means that websites designed for a specifically Australian audience will not be able to carry interactive gambling advertisements.

<sup>7</sup> Sally M.Gainsburyab, AlexRussellab, NerileeHinga, 2014, An investigation of social casino gaming among land-based and Internet gamblers: A comparison of socio-demographic characteristics, gambling and comorbidities

the "social gambling game" described above, depends on how core the gambling component is to the game. Here are a few examples of social games that have a gambling component, but aren't tied to gambling or casinos. *Zynga's City Ville*, for example, allows players to buy points with real money to use slot machines in the game. Or in the simulation game *Pet Fish Society*, where you win gifts from in-game lotteries (for virtual pets), and you can even race your pets and bet on them (similar to horse races in real life).<sup>8</sup> As a result, there are many games in which the gambling meaning is not mainstream, but merely a small element that can go on without it.

## Reflections

This taxonomy provides the criteria and definitions that define online gambling: What factors (skill or chance) determine the outcome of the game; On what platforms the game is played; Whether the player has to pay real money; Whether the virtual currency in the game can be circulated or has value in reality.

Many countries restrict online gambling and advertising in their own jurisdictions. Gambling operators, however, are catching up with social media and prospering. Some free-to-play social games with a gambling element (often profitable) have large followings, which can be tricky for policymakers. Lawmakers in several jurisdictions, including the United Kingdom, Belgium, Spain, and Australia have considered it could have potential implications. When discussing the legitimacy of regulating such games, lawmakers first need to define them in terms of the law. The Australian government has proposed a ban on online (interactive) games with gambling underlines, and the federal government agency that regulates online gambling sates it would be difficult to regulate games without a clear taxonomy.<sup>9</sup> In view of the above, a clear dividing line between social games with a gambling aspect and real online gambling games could help legislatures to regulate and better understand the intrinsic characteristics of the two.

The games in the context of the present chapter are only those online games that have a gambling aspect, not those that are potentially harmful, such as game mechanics that encourage

---

<sup>8</sup> Parke, Jonathan, Wardle, Heather, Rigby, Jane et al (2012) Exploring social gambling: scoping, classification and evidence review. Technical Report. Gambling Commission.

<sup>9</sup> Australian Government, Final Report 2012, Review of the Interactive Gambling Act 2001, available at [https://www.communications.gov.au/sites/default/files/Final\\_Report\\_-\\_Review\\_of\\_the\\_Interactive\\_Gambling\\_Act\\_2001.pdf](https://www.communications.gov.au/sites/default/files/Final_Report_-_Review_of_the_Interactive_Gambling_Act_2001.pdf)

spending but don't have a public pricing. The conventional wisdom is that casino games are in a gray area, and the natural tendency is to disparage the literature on the taxonomy of these games.

However, before developing the comparative law at the core of this paper, this chapter is regarded as an important beginning and cornerstone, to improve the legislators' cognition of online gambling games, to work out its concept, definition, and legal trend.

Therefore, this chapter is the basic principle of developing the whole legislative body of online gambling, and the field of taxonomy will bring revelatory conclusions and significance to the legal system.

In 2012, the Japanese Consumer Affairs Agency banned 'kompu gacha' functions, in which users pay real money to win something but the probability of success is uncertain.<sup>10</sup> In 2013, the Office of Fair Trading have announced that it is likely that UK and European consumer protection laws are being abused by the use of children's inexperience and credulity being taken advantage of by some operators. The UK Gambling Commission's report on social gaming stressed that further investigation is needed to see whether any further regulatory changes could be required.<sup>11</sup>

The main concerns related to the chief aspects of social wagering and betting games are that they can normalize and induce gambling, especially among children (youths) and problem gamblers, and that they are misleading with regard to the wins and losses. In conclusion, taxonomy is important in clarifying the nature of online gambling, why the operation or advertising of certain types of games should be regulated, and whether their public and social effects already face (or need) state intervention.

---

<sup>10</sup> De Vere, K. (2012, May 18). Japan officially declares lucrative kompu gacha practice illegal in social games. Inside Mobile Apps. Retrieved from <http://www.insidemobileapps.com/2012/05/18/japan-officially-declares-lucrative-kompu-gacha-practice-illegal-in-social-games/>

<sup>11</sup> Department of Broadband, Communications and the Digital Economy. (2013). Final report 2012. Review of the interactive gambling Act. Canberra: Australian Government.

## Chapter II: The United States

The United States has a huge gambling industry, which has been recognized by the American capital market, and its high returns have also been the attention and pursuit of global investors. In the U.S., casinos account for about 35% of the gambling industry's revenue over the years; Lottery revenues account for about 25%; Tribal casinos account for about 20%; Online gambling revenues account for about 20%. In 2020, due to the global outbreak of Covid-19, casino revenues in the U.S. plunged by 31.3% to the lowest level since 2003, but still reached \$30 billion, indicating the grand scale of the US gambling industry.<sup>12</sup>

The United States has the most mature gambling management system globally, and its management model is also the mainstream of development in the world today. Therefore, this thesis holds that it is a good starting point to analyze the effects of the U.S. gambling legal regime, which can be used as a reference to compare the similarities and differences between European and American gambling management regulations.

### **Start with legalization: Nevada**

By the time the State of Nevada had officially criminalized games of chance in 1909, such operations were listed as illegal since then. However, when Governor Fred B. Balzar signed a bill, known as Assembly Bill 98, once again legalizing casino gambling in Nevada, in 1931, it snowballed. To help Nevada out of enhancing their chance to prosper after the Great Depression, the Nevada legislature enacted a policy of de-criminalizing gambling and lifting the state prohibition on casinos, which had been in existence since 1909.<sup>13</sup> From then on, gambling has been legal in Nevada for the better part of a century.

Due to the shifts in American attitudes and laws related to gambling, which culminated in an incredible growth of numerous types of gambling, many of the kinds rapidly proliferated in the twentieth century. What began as an industry dominated by shady rooms or organized crime syndicates has evolved into a state monopoly in the form of lotteries and luxury casinos

---

<sup>12</sup> Casino Gaming Revenue Skidded 31% In 2020 Amid Pandemic:  
<https://www.forbes.com/sites/tommybeer/2021/02/17/casino-gaming-revenue-skidded-31-in-2020-amid-pandemic/?sh=3e0253f64027>

<sup>13</sup> 1931 Statutes of Nevada, CHAPTER 99, ASSEMBLY BILL 98, see Page 165-169 at  
<https://www.leg.state.nv.us/Statutes/35th1931/Stats193102.html>



owned and operated by international listed groups such as ITT, Hilton, MGM and Harrahs.

Most of the state's revenue is now derived from gambling. Legitimacy has been provided to the industry. The latest online casino technology has forced the entire industry to revamp, and redefine its form, and that has affected whether a new method of distribution (i.e., online gambling) is seen as an opportunity or a danger by the government, which has created regulations around online gambling.

Given the federal system of government in the United States, gambling is regulated primarily at the local level. The states' laws and constitutions have stipulations on gambling, as well as where it can be done, what kinds of games can be played, and who can provide services. The United States has close interstate commerce, and the federal government has previously regulated gambling at the national level (such as *Unlawful Internet Gambling Enforcement Act of 2006*, will be discussed later), but this has been the source of most of the controversy surrounding online gambling. On top of this, federal law will represent both the legal and legislative requirements, it also follows a regulatory reform strategy to tackle the entire gaming industry at the state level.

The *Nevada Act* represents a two-tiered regulatory system in the state. The *Nevada Gaming Control Board* is a full-time governing body, consisting of two members and a chairman appointed by the governor. Its officers are organized into different divisions to carry out various functions relating to regulating of the gaming industry, such as investigations into applications for licenses and selection and eligibility checks. The Nevada Gaming Commission is a part-time body consisting of four commissioners and a chairman appointed by the governor. The Board advises the Commission on the processing of license applications, and then the Commission makes the final decision.<sup>14</sup>

On 22<sup>th</sup> December 2011, the Nevada Gaming Commission adopted the *Nevada General Assembly Bill 258*, passed a regulation that opened the gate to interactive (online) poker games within the state, established a regulatory framework for the state to regulate Internet poker. The amendments made it possible to provide online gambling services in Nevada.

---

<sup>14</sup> Gaming Commission, see <https://gaming.nv.gov/index.aspx?page=3>

By law, online game of chance in Nevada is limited to poker<sup>15</sup>. The physical location of the core equipment of the interactive game system must be in Nevada, unless otherwise permitted by the Commission. The reform provides a guideline for licensing and operating online gambling in Nevada. Meanwhile, issues relating to licenses for operators, service providers and manufacturers of "interactive game systems" are well interpreted, even if the system is currently limited to Internet poker.

It is important to note that gaming in Nevada is regulated by the *Gaming Control Act* and its amendments, which are recognized as state law<sup>16</sup>, as well as by the Regulations of the *Nevada Gaming Commission* and *State Gaming Control Board*. Each of the 30 regulatory chapters covers an aspect of gambling, from the initial licensing system (Rule 1) to the operation of gambling establishments (Rule 5) to the ownership structure (Rules 8, 9, 15 and 16). These regulations also include various subchapters of minutiae (for example, Regulations 15, 15A, and 15B, which cover different categories of business licenses).

The first online poker site was launched in April 2013 in Nevada. To ensure the sustainability of Nevada's online gaming sites and to establish legal norms for interstate players, the governors of Nevada and Delaware signed an agreement in February 2014 to successfully share interstate online poker players in March 2015.

### **Federal statutes**

In the United States, there are nine major federal laws directly related to gambling, and criminal law may be invoked in some cases. Statutes often need to refer to state laws that prohibit gambling. In general, gambling is a federal violation only if it violates a basic state provision.

---

<sup>15</sup> Nevada's Online Gaming Regulations Changes Adopted December 22, 2011 , Regulation 5A (Operation of Interactive Gaming), available at [https://gaming.unlv.edu/reports/NV\\_online\\_reg\\_changes.pdf](https://gaming.unlv.edu/reports/NV_online_reg_changes.pdf)

<sup>16</sup> Gaming Statutes & Regulations, Nevada Gaming Control Act and Ancillary Statutes, see <https://gaming.nv.gov/index.aspx?page=51>

*The Professional and Amateur Sports Protection Act (PASPA)*

PASPA was signed by President George W. Bush in 1992 to bar states from offering legal sports betting (with a few exceptions). PASPA's provision authorizes states that already operated sports betting, or have legalized it, to continue betting or enact legislation scheme that within a year of PASPA's enactment.

Through the corresponding exemption in PASPA, Oregon, Delaware, and Montana are exempted from sports betting and lottery operations, while preserving the status quo of Nevada's casinos, which are rich in gambling content, including sports betting. In addition, it includes gambling activities on designated Indian tribes. Broadly speaking, only those sports betting that is already in effect in a given state can continue to operate, without authorizing any new forms.<sup>17</sup> An exception to PASPA would have included New Jersey if the state had instituted a sports betting scheme within a year of PASPA's enactment, which New Jersey missed in 1993. As is the case in New Jersey, let alone other states, the possibility of sports betting is hardly worth trying.<sup>18</sup>

*Murphy v. NCAA* changed the future of sports betting in the United States, and the scope of the case could be different if New Jersey, which has spent nearly a decade trying to overturn the law, took advantage of a loophole allowed for its action.<sup>19</sup>

In a 2011 New Jersey referendum, 64 percent of voters supported a constitutional amendment to allow sports betting. In 2012, the Legislature enacted the Sports Betting Act, which authorizes casinos, horse racing and certain regulated sports betting in New Jersey to license casinos and sporting events under a comprehensive regulatory regime. However, several sports leagues sued New Jersey for PASPA violations. In its defense, New Jersey argued that PASPA was unconstitutional under the anti-commandeering doctrine.

The federal appellate court rejected the state's challenge, but the Supreme Court agreed to hear the case. In May 2018, the Supreme Court held in *Murphy v. NCAA* that the statute was

---

<sup>17</sup> 28 U.S. Code § 3704 – Applicability, see <https://www.law.cornell.edu/uscode/text/28/3704>

<sup>18</sup> Walter T. Champion <https://www2.stetson.edu/law-review/wp-content/uploads/2020/01/2.-49.1-ChampionPDF.pdf>, PASPA'S GOT A BRAND NEW BAG: PRESIDENT TRUMP'S STATES' RIGHTS BIAS FOR GAMBLING CALLS THE WINNING HAND, available at [://www2.stetson.edu/law-review/wp-content/uploads/2020/01/2.-49.1-ChampionPDF.pdf](https://www2.stetson.edu/law-review/wp-content/uploads/2020/01/2.-49.1-ChampionPDF.pdf)

<sup>19</sup> What Is PASPA? | The Professional Amateur Sports Protection Act, December 10, 2020, available at <https://www.thelines.com/betting/paspa/>

invalid and unconstitutional. The court held that PASPA "expropriated" the regulatory powers of the states without permission, by shifting the cost of federal regulation to the states.

There is an important principle in the Constitution of the United States, the anti-commandeering doctrine, which supervises the federal government to fulfill its obligations. It is important to note, however, that this case does not advance or address the constitutional argument that PASPA discriminates against different states by, for example, allowing Nevada, Oregon, Delaware, and Montana to be exempt from certain exemptions from its ban.<sup>20</sup>

### *The Federal Wire Act*

The Federal Wire Act differs from most federal laws dealing with gambling in that its provisions spell out prohibited behavior. The Act specifically prohibits that:

*“A person engaged in the business of betting or wagering knowingly uses wired communication facilities to transmit bets or wagers or information in an interstate or foreign business to assist in placing bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers....”<sup>21</sup>*

See exemptions in section (b):

*“...transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.”<sup>22</sup>*

Back in 2011, when New York and Illinois responded to questions about whether the Act barred states from selling lottery tickets over the Internet, the Department of Justice Office (DOJ) concluded that the Act only applied to sports betting. In 2018, however, the 2011 interpretation was overturned when the DOJ, after a failed attempt to expand the scope of the Act, announced that it would no longer be limited to sports betting.

---

<sup>20</sup> Murphy v. Nat'l Collegiate Athletic Ass'n, 138 S. Ct. 1461, 200 L. Ed. 2d 854 (2018).

<sup>21</sup> 18 U.S. Code § 1084 - Transmission of wagering information; penalties, <https://www.law.cornell.edu/uscode/text/18/1084>

<sup>22</sup> Id. Section (b)

The DOJ came to this conclusion six months after the Supreme Court declared Professional and Amateur Sports Protection Act (PASPA) unconstitutional, from where sports betting once benefited, and now all interstate lotteries and gambling and a lot of gambling products have suddenly become illegal. In early 2019, the DOJ gave individuals and companies a 90-day grace period to change their business models to accommodate the new stance.<sup>23</sup>

On February 15, 2019, shortly after the opinion was issued, various lawsuits were filed against the DOJ. The New Hampshire lottery became the first in a long line of state lottery operators to file a lawsuit seeking to overturn the 2018 DOJ's opinion. The DOJ withdrew the suits on a variety of procedural grounds and emphasized that the 2018 opinion was substantive.

In June 2019, the District Court for the District of New Hampshire issued an order that raises legal questions about : (1) whether the 2018 opinion of the DOJ is subject to judicial review; (2) Whether the Act extends beyond sports betting.<sup>24</sup>

In its memorandum, the DOJ cited lottery vendors' fear of criminal sanctions, and said its 2018 opinion "does not address whether the Federal Wire Act applies to State lotteries and lottery vendors." But the DOJ also did not exclude those companies and businesses, saying only that it is "under review."

However, after hearing oral arguments, the district court rejected the 2018 opinion, declaring that the Act's scope was limited to interstate sports betting. On June 3, 2019, the District Court rejected all of the DOJ's arguments that it intended to expand the Act and issued a 63-page ruling. The DOJ filed an appeal with the First Circuit Court in December 2019.

Now 2021, the Biden administration is in office, and he once denounced the Trump administration's senseless clampdown on the gambling industry in 2011. Given the state of affairs in the United States since COVID-19, the chances of the Supreme Court granting certiorari are slim. In addition, we have now had two federal appeals courts rule that the Act applies only to betting on sporting events.<sup>25</sup>

---

<sup>23</sup>William E. Moschella, Scott Scherer and Mark R. Starr, Wire Act Ruling a Win for iGaming and Lotteries, Status Quo for Sports Betting—for Now, available at <https://www.lexology.com/library/detail.aspx?g=f838e758-6ee2-4363-946b-323bcd13079b>

<sup>24</sup> New Hampshire Lottery Comm'n v. Barr, 386 F. Supp. 3d 132, 145 (D.N.H. 2019).

<sup>25</sup> William E. Moschella, Scott Scherer and Mark R. Starr, Wire Act Ruling a Win for iGaming and Lotteries, Status Quo for Sports Betting—for Now, available at <https://www.lexology.com/library/detail.aspx?g=f838e758-6ee2-4363-946b-323bcd13079b>

### *The Travel Act*

Illegal Internet gambling involves at least seven federal criminal statutes, one of which states that "using interstate commerce facilities for illegal gambling is a federal offense under the 1952 Travel Act, 18 U.S.C. 26 Offenses against the Travel Act are punishable by up to five years in prison or a fine (the amount of which is twice the gains or losses caused by the crime, or \$250,000, or \$500,000 per organization).<sup>27</sup> The Travel Act can be provided under The Money Laundering Act and RICO's prosecution, but it does not have the termination capability of The Wire Act, nor the forfeiture capability of The Illegal Gambling Business Act.

To determine the jurisdictional elements of the Travel Act, at a minimum, the Internet telecommunications element: The business in question is the establishment of interstate or foreign commerce (within or from the United States) over the Internet; Establish procedures, interstate or foreign, for the payment of debts arising from gambling; In interstate or foreign gambling distribution proceeds. The Travel Act understands a commercial criminal enterprise as "in the course of an ongoing business where such overt conduct has existed and intends to continue to exist". In view of this, isolated or sporadic criminal acts are not sufficient evidence.<sup>28</sup>

The Travel Act states criminal as "any commercial enterprise involved in gambling...An illegal act that violates the laws of the state or the United States ". The applicability of the Travel Act essentially depends on differences between state laws, which means that the Travel Act may be violated only if a state law is violated.<sup>29</sup> In other words, a misdemeanor violation of state gambling laws can constitute a state offense, which is a federal means of punishing businesses that illegally use interstate or foreign facilities. It is essentially a federal reinforcement of state law.

---

<sup>26</sup> Internet Gambling: An Overview of Federal Criminal Law, November 29, 2004 – January 24, 2012, available at : <https://www.everycrsreport.com/reports/97-619.html>

<sup>27</sup> 18 U.S.C. 1955(a), 3571(d).

<sup>28</sup> United States v. James, 210 F.3d 1342, 1345 ,2000

<sup>29</sup> Contra, Blackjack or Bust: Can U.S. Law Stop Internet Gambling? 16 Loyola of Los Angeles Entertainment Law Journal at 675

### *Wagering Paraphernalia Act and Johnson Act*

The Paraphernalia Act prohibits any person other than a "common carrier in the ordinary course of business" from knowingly carrying or transmitting in interstate or foreign commerce any record, personal item, ticket, certificate, instrument, slip of paper, letterhead, paper, word, or other device used, intended to be used, modified, or designed for "various gambling-related activities."<sup>30</sup>

The Wagering Paraphernalia Act was intended to "provide the federal government with the means to combat interstate crime and to assist The states in enforcing their criminal laws..."

The Johnson Act, which regulates the interstate transportation of certain gambling equipment and requires manufacturers and distributors of gambling equipment to register with the federal authorities, is intended to assist local law enforcement agencies in their fight against "national criminal syndicates."<sup>31</sup>

### *Anti-Lottery Act*

Back in the old days, out-of-state lottery operators circumvented in-state regulations by sending tickets by mail to in-state residents. That leaves the state postal system open to exploitation, but no way to sue out-of-state operators, and no way to enforce state anti-lottery policies. In one notable case, a notorious lottery company shifted its operations to Honduras to circumvent state and federal anti-lottery laws, leading Congress in 1895 to pass the Federal Anti-Lottery Act restricting the import and export of gambling-related materials.<sup>32</sup>

The Anti-Lottery Act prohibits carrying (or mailing) in interstate or foreign commerce any document, certificate, or instrument relating to a lottery, opportunity, share, or interest, or a prize, in whole or in part, based on a lottery, gift enterprise, or similar program.<sup>33</sup>

### *The Indian Gaming Regulatory Act (IGRA)*

IGRA gives federally authorized Indian tribes the right to regulate gambling on Indian lands" to the extent not expressly prohibited by federal law or public policy and is conducted in

---

<sup>30</sup> 18 U.S.C. § 1953(b)(2) (2003).

<sup>31</sup> Codified as amended at 15 U.S.C. §§ 1171-1178 (2003).

<sup>32</sup> Robert Blakey & Harold A. Kurland, Development of the Federal Law of Gambling, 63 CORNELL L. REV. 923, 931 (1978), Act of March 2, 1895, ch. 191, § 1, 28 Stat. 963.

<sup>33</sup> 18 USC Sections 1301 and 1302.

the State." The precondition is that the tribe and the government must negotiate an agreement on the games to be played (e.g. pari-mutuel and casino gaming, which are designated as Class III gaming).<sup>34</sup>

IGRA divides games into three categories: Class I, Class II and Class III. Class I games are social gambling with low rewards; Class II games are other non-banking card games, including bingo, that may or may not be permitted in different states and are subject to state licensing authority laws; Category III games are other types of gambling that must be operated under a compact between the holding tribe and the state.

The IGRA aims to pacify state and tribal sovereignty, and to address issues of gambling law and jurisdiction on Indian reservations, providing a framework for Class III games.<sup>35</sup> IGRA set up the National Indian Gaming Commission to act as the supervisor of gaming on Indian lands. Its main responsibilities are to investigate gaming establishments, conduct background checks, review and audit books, impose fines, and issue guidelines. The Commission usually reserves primary regulatory authority to a tribal gaming regulator.

Although tribal gambling accounts for a third of the legal gambling industry in the United States, many tribes make less money from it than they seem because it is concentrated among a few tribes, the data show.<sup>36</sup>

#### *Interstate Horseracing Act (IHA)*

The IHA's policy is to regulate interstate commerce related to horse racing betting in order to promote the development of the horse racing and legal off-track betting industry in the United States.

No person may accept an interstate off-track wager except as provided in this chapter.<sup>37</sup> Any interstate off-track gambler in violation of this shall be civilly liable to the sponsoring state, the sponsoring race association, and the racing team.

---

<sup>34</sup> 5 USCA § 2710(5)

<sup>35</sup> The Connecticut General Assembly, OFFICE OF LEGISLATIVE RESEARCH, January 3, 1994 94-R-0040

<sup>36</sup> Michigan v. Bay Mills Indian Cmty., 572 US 782, 809 (2014)

<sup>37</sup> 15 USC Section 3003.



The business of "off-track betting systems" is determined by state law or state licenses, and refers to groups that are allowed to offer betting on horse racing at locations other than where the race is held.<sup>38</sup>

"Parimutuel" refers to those races where the results are placed in systems or pools (they need to be licensed or allowed by state law). In the betting process, participants are pitted against other players rather than operators.<sup>39</sup>

Any betting or transmission of interstate parimutuel wager by telephone or other electronic media is off-track betting. Such wagers are considered IHA compliant only if :(i) the off-site betting is legal in both the states in which the betting and transmission are made; and (ii) is accepted by the off-track betting system.

The framework defined by the IHA requires an agreement with the host racecourse in order to obtain the simultaneous broadcast of events and to observe betting on those events. And the agreement must be approved by host racing association, host racing commission, and off-track racing commission as prerequisite to acceptance of wager.<sup>40</sup>

#### *The Unlawful Internet Gambling Enforcement Act*

The UIGEA prohibits those engaged in the gambling industry from accepting payments in connection with illegal gambling, subject to imprisonment and fines, as well as civil and regulatory enforcement measures.<sup>41</sup> The UIGEA's approach is to combat illegal gambling in financial transactions by starting with the payment process, which is a necessary part of gambling activities.

A federal crime derived from UIGEA is that persons engaged in a gambling or gambling business knowingly accepts money in connection with another person's participation in illegal Internet gambling. The UIGEA terms are designed to be definitions, exceptions, and exemptions, some of which are stated directly, some of which are implied. As elsewhere in the U.S. Code, "persons" refers not only to individuals, but also to "corporations, associations, businesses,

---

<sup>38</sup> 15 U.S. Code § 3002 – Definitions (7)

<sup>39</sup> 15 U.S. Code § 3002 – Definitions (11)

<sup>40</sup> 15 U.S. Code § 3004 - Regulation of interstate off-track wagering

<sup>41</sup> 31 U.S.C. 5366(a), 18 U.S.C. 3571.

partnerships, societies, and joint stock companies."<sup>42</sup> UIGEA defines what does not belong to the category of "business of betting or wagering" and proposes a proprietary pronoun "bets or wagers."<sup>43</sup>

In the earliest UIGEA legislation, "a game subject to chance" rather than "a game subject to chance" is used to refer to "bet or wager", The initial vocabulary doesn't seem to cover many card games. The revised wording appears to have broadened the scope of games to include more games involving chance.<sup>44</sup>

The UIGEA also defines information on the financial characteristics of lotteries and gambling<sup>45</sup>, with exemptions for common activities such as securities and commodity trading, insurance, online games and promotions that do not involve gambling, and certain fantasy sports<sup>46</sup>. For the first and only time, the term was incorporated into an item of federal law, UIGEA defined 'unlawful internet gambling' as 'bet or wager that is unlawful under any applicable federal or state law in the state or tribal lands in which the bet or wager is initiated, received, or otherwise made'

'Bet or wager' defined as "the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome."<sup>47</sup>

### **Skill vs Chance**

In 2015, Chapter 463 of *Nevada's Revised Statutes* was amended to allow games of skill and games of chance (or mixed games of chance and skill) to be located on casinos in Nevada. The definition of a 'game of skill' is that "the outcome of the game is determined primarily by the player's skill at a given time, not by luck". While a 'mixed game of luck and skill' is, by

---

<sup>42</sup> 1 U.S.C. 1.

<sup>43</sup> 31 U.S.C. 5367

<sup>44</sup> Hearing at 16 (statement of Bruce G. Ohr, Chief of the Organized Crime and Racketeering Section, Criminal Division, United States Department of Justice).

<sup>45</sup> 31 U.S.C. 5362(1),(D): includes any instructions or information pertaining to the establishment or movement of funds by the bettor or customer in, to, or from an account with the business of betting or wagering").

<sup>46</sup> 31 U.S.C. 5362(1)(E)(ix)

<sup>47</sup> 31 USC Section 5362

definition, "a game whose outcome is determined by both luck and skill in a given period of time."

The distinction between game of skill and game of chance is subtle, and the fact that many states have handled it so differently that it eventually had to get the attention of the *IRS (Internal Revenues Services)*.

For instance, the rules for Daily Fantasy Sports (DFS, will be discussed in details later) <sup>48</sup>vary from state to state: Some states categorize it as illegal gambling, while others regulate it and legalize it in state law since it is regarded as a game of skill and therefore not gambling; Some states have enacted laws that broadly state that DFS is not gambling (but do not indicate whether it is a game of skill), while others do not explicitly state their position concerning DFS. <sup>49</sup>

In October of 2015, the Nevada State Gaming Control Board announced a notice stating that DFS falls within the scope of gambling games as defined by Nevada law, and that anyone who intends to offer a DFS in Nevada must first have a license issued by the Board to operate a sports prize pool. The commission identified DFS as gambling without making an overall assessment of Fantasy Sports in the traditional, season-long format.

Coincidentally, same year in New York, Attorney General Eric Schneiderman issued a cease-and-desist order to DraftKings and FanDuel<sup>50</sup>, arguing that DFS was in violation of New York State law against illegal gambling, which specified at that time that games where players "risk something of value" and do not have "control or influence" over the outcome, are gambling<sup>51</sup>. As a result, the two operators settled civil lawsuits in March and October of that year over false advertising and illegal gambling charges for \$12 million.<sup>52</sup>

---

<sup>48</sup> Daily Fantasy Sports is a general term for fantasy sports games where each competition lasts for a few hours or days or weeks, rather than the entire season. Players can select professional athletes to form teams and earn points based on their individual performance on the field. Players make money by placing bets on the platform and competing with other players. See also [https://en.wikipedia.org/wiki/Daily\\_fantasy\\_sports](https://en.wikipedia.org/wiki/Daily_fantasy_sports)

<sup>49</sup> In Recent Ruling, IRS Again Concludes That Daily Fantasy Sports Are Gambling, Oct 19, 2020, <https://www.forbes.com/sites/anthonyynitti/2020/10/19/in-recent-ruling-irs-again-concludes-that-daily-fantasy-sports-are-gambling/?sh=6928e0ce437f>

<sup>50</sup> FanDuel and DraftKings, the two largest American companies in the daily fantasy sports industry.

<sup>51</sup> A.G. Schneiderman Issues Cease-And-Desist Letters to FanDuel And DraftKings, Demanding That Companies Stop Accepting Illegal Wagers in New York State, November 11th, 2015, see <https://ag.ny.gov/press-release/2015/ag-schneiderman-issues-cess-and-desist-letters-fanduel-and-draftkings-demanding>

<sup>52</sup> DraftKings, FanDuel Pay \$12M To Settle NY False Ad Claims, available at: <https://www.law360.com/articles/854771/draftkings-fanduel-pay-12m-to-settle-ny-false-ad-claims>

Configuring the debate over games of chance and games of skill: the legitimacy of fantasy sports. UIGEA seems to provide some theoretical basis for the rationality of fantasy sports, however, keep in mind that the system of state law is not held together by a single law, which means fantasy sports are still not exempt from violations of other state or federal laws. To the extent that today's DFS has evolved its rules to the point where it is difficult to fit the UIGEA framework.

In 2016 several state attorneys general issued written submissions seeking to pass state laws defining DFS as illegal gambling and restricting its operations, with New York having the strongest response (directly trying to stop the two largest DFS operators in the country).<sup>53</sup> In the midst of all this, only a handful of state laws have upheld the legality of DFS. At the heart of this debate is what kind of game is DFS (game of skill or chance)?

### **Daily Fantasy Sports**

The fate of Fantasy Sports seems to have taken several twists, as states begin to regulate it in terms of licensing, taxation, consumer protection and disclosure. In one of the dramatic twists, the state of New York, which was one of the nation's earliest opponents, stated legalized and started regulating DFS.

On May 14, 2018, the U.S. Supreme Court declared the Professional and Amateur Sports Protection Act (PASPA) unconstitutional, paving the way for the legalization of sports betting across the country. FanDuel and DraftKings are quickly taking over the sports gambling industry on the back of the daily fantasy sports (DFS) industry. For FanDuel and DraftKings, the transition from quasi-gambling to full-fledged gambling is a good time, given that they have spent the past few years arguing that DFS is gambling (and that DFS has almost all the legal features of gambling). Both companies grew stronger with the end of PASPA, warming up and revving up their sports betting engines in the weeks following the Supreme Court ruling. They appear to have been ready to go well before the May 2018 supreme ruling.

On November 27, 2019, there was an action consolidating for centralized pretrial proceedings of more than eighty individual and putative class actions filed either in United

---

<sup>53</sup> Statement From A.G. Schneiderman On Agreements With FanDuel And DraftKings, March 21 2016, <https://ag.ny.gov/press-release/2016/statement-ag-schneiderman-agreements-fanduel-and-draftkings>

States District Court for the District of Massachusetts or transferred this court by the Judicial Panel on Multidistrict Litigation. DraftKings (based in Massachusetts) and FanDuel (based in New York) are two of the largest online game providers in the U.S. that offer DFS competitions to residents. Players can compete against each other for cash prizes based on the performance of teams or players in the real world. The two companies above are collectively known as DFS defendants. Paysafecard.com USA and Vantiv, the companies that provided the transaction processing services, are accused of being payment processing defendants (PPDs).

### *Under UIGEA*

As early as 1997, Congress held hearings on the subject of Internet gambling, following the rise of foreign poker and sports-betting sites. Federal and state laws have long prohibited gambling of all kinds, but these new sites are bringing business to the United States through the Internet. In 2006 Congress passed the UIGEA, making it easier and more precise for the Department of Justice to handle the gambling-related financial chain. The UIGEA targets the sources of funding for illegal gambling, particularly gambling companies that are physically located overseas and face charges of illegal gambling, which are often not subject to extradition. There are also concerns that a change in federal law might hurt DFS pilot production or challenge larger companies to adjust their books.

In 1998, McGettigan, a lobbyist for the Major League Baseball Association, introduced the idea that DFS was not gambling to Congress, and Congress exempted some DFS when drafting Internet gambling legislation. At that time, there were several exemptions through UIGEA, one of which was DFS. In the context of UIGEA, the definition of "gamble or bet" had the following exemptions:

Participate in sports games or fantasy/simulation educational games/competitions (games or competitions involving one or more teams), any fantasy and simulation sports teams consisting of real amateur or professional sports organizations. (as defined in section 3701 heading 28), and meets the following conditions:

(i) Winners' rewards are announced to participants before the competition, and the value of the rewards is not affected by the number of participants or the amount of money participants pay.

(ii) Winning outcomes are determined by the knowledge and skills of the participants, and are largely determined by the overall statistical performance of individuals (often athletes) in various real-world sporting events:

(a) Points, records, or any combination of performance that reflects a particular team or group of teams.

(b) Only the various performances of an individual athlete at a real world sporting event or other event.

Congress initially wanted to insulate traditional, season-long DFS, but made the line between such activities and sports gambling even more blurred. In 2010, a professional and talented team in Scotland launched FanDuel in the United States and launched a series of interactive games called Daily Fantasy Sports. Then came rival DraftKings, which also struck a secret partnership with the exclusive media outlet of Major League Baseball at the time.

### *Gambling Under State Law*

The article has explained the difference between games of skill and games of chance in the previous chapters, and whether a game is legitimate depends on the degree of chance that the outcome of the game determined by. States such as Arizona and Louisiana require game vendors to perform chance testing, which is why most DFS companies are reluctant to go along with them.<sup>54</sup>

The broadest chance testing is that a game is legitimate if the player's skill is at least 51% dominant in the outcome of the game. Alternatively, evaluate whether luck is a major component of the game. Chance can be the material element of the game, even if the skill to chance ratio is less than 51%. A few states use another test, which does not allow any chance in the outcome of the game and is the most rigorous of all. There are also some irrationals, for those offering a cash reward, the one-to-four question has a 25% chance of guessing correctly without knowing the answer, a common activity that should not be considered a game of chance or gambling, or

---

<sup>54</sup> See Chris Grove, What Are The States Where You Can Play Daily Fantasy Sports?, LEGAL SPORTS REP. (last updated Sept. 4, 2019, 11:35 AM), <https://www.legalsportsreport.com/daily-fantasy-sports-blocked-allowed-states/>.

outright illegal .There is also a fourth test, called "gambling instinct", which is the only test that does not test the "chance" factor, but simply asks whether an activity will attract or motivate the player to gamble.<sup>55</sup>

DraftKings and FanDuel have been playing with the rules of law from the start, branding their products as technical games and in the FS genre of games that are exempt from UIGEA. It should be noted that the UIGEA, as a federal banking statute, is judicially interpreted as "there is no provision in this subchapter that could be construed to alter, limit or extend the federal, state or tribal state covenants prohibiting, permitting or regulating gambling activities within the national scope."<sup>56</sup>The reading tendency of UIGEA is that in any "state of chance" (such as Arizona), providing DFS is very likely to violate state and federal law.

While UIGEA didn't actually alter any laws, FanDuel, DraftKings, and the Fantasy Sports Trade Association (FSTA) have directly used it to argue that DFS no longer defines the scope of gambling. This may be said to be the embodiment of pre-emptive incisively and vividly. In short, UIGEA is the best defense FanDuel and DraftKings have against regulation. They've applied DFS into a narrow exemption from the law, and then "reasonably and legally" expanded it across the United States.

### *FanDuel and DraftKings*

On May 14, 2018, the U.S. Supreme Court declared the Professional and Amateur Sports Protection Act (PASPA) unconstitutional, paving the way for the legalization of sports betting across the country. FanDuel and DraftKings are quickly taking over the sports gambling industry on the back of the daily fantasy sports (DFS) industry. For FanDuel and DraftKings, the transition from quasi-gambling to full-fledged gambling is a good time, given that they have spent the past few years arguing that DFS is gambling (and that DFS has almost all the legal features of gambling). Both companies grew stronger with the end of PASPA, warming up and revving up their sports betting engines in the weeks following the Supreme Court ruling. They appear to have been ready to go well before the May 2018 supreme ruling.

---

<sup>55</sup> Jeffrey C. Meehan, *The Predominate Goliath: Why Pay-to-Play Daily Fantasy Sports Are Games of Skill Under the Dominant Factor Test*, 26 MARQ. SPORTS L. REV. 5, 15 (2015).

<sup>56</sup> 31 USC 5361: Congressional findings and purpose, see <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title31-section5361&num=0&edition=prelim>

On November 27, 2019, there was an action consolidating for centralized pretrial proceedings of more than eighty individual and putative class actions filed either in United States District Court for the District of Massachusetts or transferred this court by the Judicial Panel on Multidistrict Litigation.<sup>57</sup> DraftKings (based in Massachusetts) and FanDuel (based in New York) are two of the largest online game providers in the U.S. that offer DFS competitions to residents. Players can compete against each other for cash prizes based on the performance of teams or players (athletes) in the real world. The two companies above are collectively known as DFS defendants. Paysafecard.com USA and Vantiv, the companies that provided the transaction processing services, are accused of being payment processing defendants (PPDs).

New York Attorney General began investigating the two companies' products in 2016, and before the New York Attorney General took legal action against them, the two companies had been using sports betting's association with gambling to lure investors and users. Then, after being sued, the companies began to separate themselves from sports betting and gambling products, even removing ads that included sports betting. In the wake of the New York Attorney General's lawsuit, the two companies were temporarily out of sight, perhaps because of business difficulties brought on by a disillusioned desire to merge.<sup>58</sup>

However, both companies repositioned their business after the hiatus ended, using gambling elements to lure users and including them in their ads.<sup>59</sup> Eventually, Professional and Amateur Sports Protection Act (PASPA) has been declared unconstitutional by the Supreme Court, which is great news for the two companies. They can now develop their own Sports betting apps and Fantasy Sports, and even some games that are not accepted by UIGEA.<sup>60</sup>

The tortuous judicial course of these two companies, once made them into mud can not be maintained. Their woes lasted until 2018, when DraftKings and FanDuel even delayed

---

<sup>57</sup> In re Daily Fantasy Sports Litig., 2019 U.S. Dist. LEXIS 206689 (D. Mass. November 27, 2019)

<sup>58</sup> Emmett Knowlton, One Year After Taking over the Fantasy World, DraftKings and FanDuel Are Reportedly Running out of Cash and Can't Pay Their Vendors, BUS. INSIDER (Oct. 24, 2016), <https://www.businessinsider.com/draftkings-and-fanduel-reportedly-running-out-of-cash-and-cant-make-payments-2016-10>.

<sup>59</sup> See, e.g., Eric Ramsey, DraftKings Rolls out Ads at the 'Speed of Sports' and 'DK Shop' Ecommerce Store, LEGAL SPORTS REP. (Sept. 13, 2017).

<sup>60</sup> See Matt LaMarca, How Does the Single-Game NBA Format on FanDuel Differ from DraftKings, FANTASY LABS ,2019, April.



paying customers winnings from gaming competitions, pending rulings in the New York Attorney General case and *Murphy* case.<sup>61</sup>

The vague taxonomy once allowed DraftKings and FanDuels to avoid regulatory losses, when the law was too slow to categorize their activities as illegal gambling. But it also made the future of the two firms and their partners uncertain, since both would have been convicted if DFS had been categorized. Then came the Supreme Court's decision to embolden DraftKings and FanDuel, who have become the nation's top players because of long periods of endurance and risk-taking. The success of DraftKings and FanDuel won't be replicated for companies that entered the market at the same time, but had fewer funding platforms, smaller scale, and thought risk aversion was the priority.<sup>62</sup>

This is arguably true, since companies that are more respectful of the letter of the law and abide by the law are overtaken by those that circumvent the definition of the law.

### **Social Casino Games**

Over the past few years, a number of cases have been filed to dispute illegal gambling in the “Free-to-Paly” Social Casino Games. Many games do start out free to register and play, and users don't even have to bind payment methods in the beginning. However, “in-store purchases” in game application can be frankly profitable for game providers. Players often spend money to buy more virtual chips, and the way players are motivated to make “in-store purchases” is fundamentally similar to the way casinos use gambling psychology to stimulate money squandering.

“Some games offer a 'sense of pleasure and reward', and the game itself has addictive qualities. It's an addiction that predates video games and, more specifically, is akin to the addiction of casinos and lottery stores.”<sup>63</sup>

---

<sup>61</sup> Michael Erman, FanDuel Runs 2 to 3 Days Behind Paying out Players, REUTERS (Nov. 16, 2015, 12:50 PM), <https://www.reuters.com/article/us-fantasysports-new-york-fanduel/fanduel-runs-2-to-3-days-behind-paying-out-playersidUSKCN0T526320151116>.

<sup>62</sup> Marc Edelman, New Fantasy Sports Operators May Have Golden Opportunity to Enter New York Market, FORBES (Nov. 20, 2018).

<sup>63</sup> The Badger, Are micro-transactions ruining video games? | The Badger, <http://www.badgeronline.co.uk/micro-transactions-ruining-video-games/> (last visited Apr. 10, 2015).

Since 2015, there was a flurry of legal battles over social casino games, with a number of games being accused of being unlawful, often stemming from the fact that the plaintiffs had incurred financial losses while voluntarily playing the games. The claims are usually based on gambling loss recovery statutes, common law unjust enrichment laws, or consumer protection laws.<sup>64</sup>

In *Mason v. Machine Zone 2015*, Mason, the plaintiff, argued that she and many more players had lost money on an illegal "gaming device". The "device" in this case is a "virtual wheel" in a video game called Game of War that players can spin to win in-game rewards.

In the complaint, Mason asserts a claim under the State of Maryland's Gambling Losses Compensation Act (the Losses Act), seeking recovery of gambling losses. She also asserted claims on her own behalf and for the alleged class under the California Penal Code, and the California Unfair Competition Law (UCL), as well as a common law claim of unjust enrichment.<sup>65</sup>

The district court of State of Maryland dismissed Mason's claim, ruling that she had not lost money spinning the virtual wheel, instead, spent it on virtual gold, which eventually accumulated into virtual chips. As a result, there is no monetary risk when the virtual wheel spins, since players are rewarded with virtual currency, or other non-monetary rewards that can't be exchanged for currency. The way the virtual casino operates does not involve winning or losing money.<sup>66</sup>

In a 2018 case, *Fife v. Sci.Games*, a user was given free chips when he first entered the defendant's online game, which in turn gave him a gambling experience and ultimately encouraged players to buy more chips due to its addictive nature. The defendant's game always includes displays of special offers, such as packages of chips with lower price to higher price, to entice users to buy at a discount.

In a similar case concerning "top-up" social casino games, *Kater v. Churchill*, the Ninth Circuit Court noted, "If a user runs out of chips and wishes to continue playing a 'social casino

---

<sup>64</sup> Ristic v. Machine Zone, 2016 ; Phillips v. Double Down Interactive LLC, 2016); Dupee v. Playtika Santa Monica 2016 ; Soto v. Sky Union, 2016).

<sup>65</sup> United States Court of Appeals, Fourth Circuit. Mia MASON, individually, and on behalf of all others similarly situated, Plaintiff-Appellant, v. MACHINE ZONE, INC., a Delaware corporation, Defendant-Appellee.No. 15-2469Decided: March 17, 2017

<sup>66</sup> Id.

game', he must purchase more chips to gain the 'privilege of playing the game'. It means that he can also get the this privilege without spending money, just by winning chips.”<sup>67</sup> The core argument of such cases lies in whether the virtual chips in games are “things of value”.

In the wake of Kater’s ruling, lawsuits in Washington state that accuse "freemium" casino games of illegal gambling have begun to proliferate. In *Bullseye*, players can use points, promotional vouchers or money to plug into a slot machine and earn in-game rewards. Although there are many ways for players to earn vouchers, such as waiting for a certain amount of time to receive the game's automatic vouchers, the court still holds that points in the game are “things of value”.<sup>68</sup> Even though players in *Fife v. Sci.* can do a free spin every hour, and players in *Bullseye* can wait for a new voucher, their points are still "things of value" because they extend the privilege.

Kater's ruling has reverberated in the field. “Privileges are lost when a player 'must buy more chips' to continue playing the game," the court said in *Fife v. Ci.* “Thus, even more free coins that can live for an hour are of no use, since they cannot play the defendant’s game for free until then. While the game is focused on how often gold is awarded, the amount of money awarded and the speed at which it is consumed means that the player will have to pay most of the time. As a result, spending money becomes necessary to reinforce and extend privileges”<sup>69</sup>

At the time of this writing, many of these lawsuits are still ongoing. As we have noted, this ruling by the Ninth Circuit has been unprecedented. Might this be the beginning of the transition in the social game fortune?

---

<sup>67</sup> Kater v. Churchill Downs Inc., 886 F.3d 784, 787, 9th Cir, 2018

<sup>68</sup> Bullseye Distributing LLC v. State Gambling Commission

<sup>69</sup> Fife v. Sci. Games Corp, No. 2:18-cv-00565-RBL, 2018 U.S. Dist. LEXIS 212908, at \*11-12

### Chapter III: The European Union

"Cross-border" is one of the basic characteristics of online gambling. From the point of view of the European Union, an economic union with a long history, the borders between its member states are obviously not the same as those between other countries in the world. In order to protect various social interests and ensure tax revenue, EU member states have regulated gambling for centuries, and their governments have demonstrated a variety of regulatory methods.

Many argue that online gambling should be regulated at EU level, in order to respect the fundamental freedoms recognized in the internal market. Of course, the EU has been seeking a centralized regulatory mechanism that would suit national policy directions while accommodating the free-trade objectives of the Lisbon Treaty. At the same time, there is a very important point, which runs through the whole dissertation. The special nature of gambling industry means that it will inevitably involve some sensitive social issues, such as public mental health, organized crime, and the problems of vulnerable groups.

#### *Gambling services fall within the TFEU's definition of economic activity*

In 2011 the Commission adopted proposals on fundamental issues in its Green Paper on online gambling in the internal market.<sup>70</sup> In order to be fully aware of the subsidiarity and proportionality principles, these proposals focus on the five priority areas: the legislative framework on domestic law in accordance with EU legislation; making administrative cooperation closer together to improve law enforcement efficiency; protecting consumers and citizens, minors and people who are vulnerable. The above proposals focus on services and the provision of services in articles 56 and 48 of the TFEU, which are also intended to better regulate online gambling.<sup>71</sup>

There are various regulatory frameworks for online gambling regulation in EU countries. In many judgments, the European Union Court (CJEU) ruled that the national regulatory framework must comply with EU law. All national regulatory systems must respect EU law. In

---

<sup>70</sup> Green Paper on on-line gambling in the Internal Market (COM(2011) 128 final)

<sup>71</sup> All the actions proposed to be taken up by the Commission in this document are consistent and compatible with the current multiannual financial framework

a series of judgments, the CJEU has provided general guidance on the interpretation of the fundamental freedoms of the Internal Market in the area of online gambling so that national courts can assess the circumstances under which restrictive national gambling laws are justified on grounds related to the general interest.

The CJEU agreed that the provision and use of cross-border gambling services is an economic activity that comes under the Treaty on the Functioning of the European Union (TFEU) fundamental freedoms.

In 1994, CJEU ruled gambling services an commercial practice in compliance with the Treaties (see case *Schindler*). Consequently the rules of internal market apply and Member States which wish to restrict the provision of gambling services should justify any restrictions.<sup>72</sup>

To cooperate with relevant prohibitions in TFEU ,<sup>73</sup> the CJEU in *Cassis de Dijon*<sup>74</sup> has established a definition of 'obligatory criteria' with a view to preserving non-discriminatory<sup>75</sup> national prohibitions - such as prior administrative licensing regimes - based on general interest priorities such as consumer safety or the prevention of fraud. In cooperation with relevant TFEU prohibitions, CJEU has established a definition for "compulsory criterion," based on the priorities of public interest, such as consumer protection and fraud prevention, in *Cassis de Dijon*, to preserve non-discriminatory domestic prohibitions, such as prior administrative licensing systems.

Licensing systems in cross-border environments are often unsatisfactory in practice, and a large number of cases revolve around them. This has also made CJEU aware of the need to ensure transparency and equal treatment of licensing systems in a transnational environment, thereby enhancing legal certainty. The present licensing system is a strong point of discussion. The purpose of this paper is to analyze the situation of gambling industry within the EU and to reveal the EU's future direction for development in this field under current jurisprudence.

---

<sup>72</sup> See combined TFEU art. 26,25,56,63.

<sup>73</sup> See, e.g., TFEU art. 36 ("The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security ....")

<sup>74</sup> See Case 120/78, *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein*, 1979 E.C.R. 649, para. 8.

<sup>75</sup> See Case C-55/94, *Gebhard v. Consiglio dell'Ordine degli Avvocati e Procuratori*, 1995 E.C.R. I4165, para. 37.

Since 2009 there have been a number of preliminary rulings on monopoly violations of Community law based on gambling (games of chance), which have made it less confusing for courts to interpret case law.<sup>76</sup>

### *Freedom to provide and receive services*

Art. 56 TFEU reads as follows:

*" Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.*

*The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Community. "*

Article 56 TFEU shall apply to the nationals and firms in a Member State which provide or receive a service and can be invoked both by the supplier and the recipient of services (Article 52 and Article 62 TFEU). In cross-border activities, the provisions apply only. The supplier (positive freedom) or the recipient (negative freedom) or the service itself (correspondence services) therefore have to cross the boundary.<sup>77</sup>

Contrary to the provisions of Article 49 TFEU which relate to permanent operation, Article 56 applies when an activity is conducted temporarily in another country by the service provider or corporation. Under Article 57 TFEU, services are normally provided for payment, as far as the provisions on the free movement of goods, capital and persons are not governed. Consequently, the characteristics of the "service" are the temporality and remuneration, these include industrial or commercial activity, craftsmanship activities and professional activities, and consequently independent activities.

The provisions of Article 56 TFEU cover gambling as well as that laid down in Schindler, Zenatti, Anomar, and the following jurisprudence. The ECJ calls upon games of chance / gambling to be treated as economic activities within the context of Article 2 TEC, because they meet the two conditions provided by the Court of Justice in its jurisprudence,

---

<sup>76</sup> Case C-42/07 Liga Portuguesa de Futebol Profissional and Bwin International [2009] ECR I-7633); Case C-46/08 Carmen Media Group [2010] ECR I-8149; and Case C-64/08 Engelmann [2010] ECR I-8219.

<sup>77</sup> See C-294/97, *Eurowings Luftverkehr*

namely offering a special reward service and an purpose for profit.<sup>78</sup>

The provisions on freedom to offer services are therefore explicitly explained in an activity that allows people to participate in games of chance in exchange for a salary payment. For eg, lottery advertising and lottery tickets to other Member State imported into one Member State to citizens of a Member State.<sup>79</sup>

As Article 57 of the TFEU<sup>80</sup>, Article 56 of the TFEU specifically forbids all discrimination on grounds of nationality. Therefore, Article 56 is read as a prohibition on any other limitation on free movement of services under ECJ jurisprudence.<sup>81</sup>

Thus, all national non-discriminatory laws that apply to nationals and foreigners without distinction must be reviewed to ensure conformity with EU law, and a proportional review must be conducted.

#### *Secondary Union law*

The EU requires secondary laws harmonizing domestic gaming industries. The lack of legislative harmonization and the subsequent division resulted in significant gaps in legislation between Member States. Gaps on the basis of consumer safety and gaps between legislative strategies have also been so high that the scope of various guidelines to maintain regional peculiarities needed to be partly or entirely removed from gambling.

#### *Primary Union law*

There is no sectoral secondary legislation for harmonizing the European Union 's regional gambling markets. Exclusion of the rule from some guidelines encourages Member States, in matters which would otherwise be regulated by secondary regulation, to take unilateral administrative decisions and to enhance legal complexity and fragmentation.

Although member states are free to determine which regulatory framework is necessary to achieve the defined level of consumer protection, all national restrictions must

---

<sup>78</sup> Case C-6/01. *Anomar*,

<sup>79</sup> Case C-275/92 *Schindler*, Case C-67/98 *Zenatti*, para. 24.

<sup>80</sup> See TFEU, Art.57 (3)

<sup>81</sup> See C-33/74, *Van Binsbergen*, ECR 1974, 1299 et seq.; C-76/90, *Saeger/Dennemeyer*, ECR 1991 I-4221, para. 12.

comply with EU law. The supremacy and direct application of EU law permits legal entities and persons to rely on the fundamental freedoms laid down in TFEU before national courts. Gambling, in compliance with Article 56 TFEU, is therefore of the utmost importance as an economic activity and as a service.

The Commission ensures that the treaties are applied properly and correctly and ensure that Member States are careful when fundamental freedoms are restricted, so that the effective operation of the internal market is guaranteed. To accomplish this task, the Commission monitors legal changes at the national level and may take infringement proceedings against individual Member States if a member State fails to comply with the requirements of the Treaties or a member country adopting legislation considered to be in violation of fundamental freedoms.

The ECJ, with the Commission, plays a significant role as guarantor of fundamental freedoms. The Court not only resolves infringement procedures<sup>82</sup> to ensure proper application of the Treaties, but also offers its interpretation of EU law at a national court's request.

In *Schindler* the CJEU has classified for the first time gambling as a service and has opened the possibility of challenging the national laws of gambling-despite an inadequate legal harmonization in the EU<sup>83</sup> - before the Court of Justice on the pretext of non-compliance with primary law. Regarding gambling, the above relate primarily to the application of Articles 49 and 56 of the TFEU and prohibit the Member State from applying specific (gambling) legislation.<sup>84</sup>

But it is the exclusive authority of national courts essentially to decide on the case under consideration of the language of Article 267 of the TFEU, and its restriction on the jurisdiction of the Court over the 'interpretation of the Treaties' and the "validity and interpretation of actions by Union bodies, departments, offices or agencies. " <sup>85</sup>The referring court is responsible for determining whether the CJEU principles apply to national gambling legislation. Since all the national courts are bound to the interpretation of the Court, the court may, if previous

---

<sup>82</sup> TFEU art. 260(1).

<sup>83</sup> Case C-54/96, Dorsch v. Bundesbaugesellschaft Berlin, 1997 E.C.R. I-4961, para. 23.

<sup>84</sup> Pursuant to TFEU art. 267, courts "against whose decisions there is no judicial remedy" are obligated to bring the matter before the CJEU.

<sup>85</sup> Id.



judgements do not give a sufficiently clear response, also undertake another preliminary ruling process.<sup>86</sup>

Combined with the Court's lack of competence in the assessment of national gambling regulations, this fact leads to an increasing number of cases relating to gambling before the CJEU. Despite these procedural shortcomings, the preliminary CJEU decisions continue to be a major factor for complying with the principles of freedom of establishment and service under national gambling legislation. In view of the Court's interpretation of the several internal market provisions, and the continuous advance of the equal treatment and transparency principles, it is compelling to establish a potential legal target state for play in the EU to be aware of the relevant case law of the CJEU.

#### *Related case-law*

In 1994, the European Court of Justice issued the first case law related to gambling. At *Schindler*, in violation to the total ban on large lotteries in the UK, the ECJ had faced a preliminary question by the United Kingdom court on the import of German lottery tickets.<sup>87</sup> The Court held that the ban on the import of lottery tickets was a breach of Article 49 of the EC Treaty.

As a service, the gambling industry does not have clear applicable measures that ECJ sought to find grounds for its prohibition under other cases relating to article 49 of the EC Treaty.<sup>88</sup> The Court has mentioned that the lottery brings risks not only to individuals but also to society, due to the moral and cultural specificity. The Court referred to the "unique essence" of the lotteries perceived as an incentive for expenditure, with possible negative effects for the person and society as a result of the legal, religious and cultural aspects of lottery, also the relative risk of crime or fraud.

---

<sup>86</sup> See e.g., Case C-206/94, *Brennet AG v. Paletta*, 1996 E.C.R. I-2357, para. 11.

<sup>87</sup> C-275 /92

<sup>88</sup> In Case 120 /78 *Cassis de Dijon* [1979] ECR 649 the EJC established the principle of the 'law of reason' whereby Member States can justify, through reasonable justifications, non-discriminatory limits on the free flow of goods. There was created an analogous definition for services.

Member States have had significant discretion to restrict the provision of cross-border gambling services. It could have been an extremely low level of freedom to speak about the of gambling services at this stage.

Member States' prerogative remained unchallenged by *Läärä* and *Zenatti*.<sup>89</sup> The court also found that gambling prohibitions could not be governed by the requirements of one member state in another. Since this area is unharmonious, the Court held that constitutional restrictions can only be considered in terms of national objectives.<sup>90</sup>

This is in stark contrast to previous case law concerning double regulatory charges, such as *Webb*<sup>91</sup>. The Court of Justice of the European Communities, in view of the requirements of the Member States of origin, encouraged comparative inquiries on the justification and proportionality of the claimed restriction. Following *Zenatti*, *Straetmans* stated that the Member States could "exercise value judgments ... within the broad discretion."<sup>92</sup>

The latter case of *Gambelli* was regarded as establishing the external limits of discretion of the Member States. In comparison with previous cases, the Court of Justice did not determine whether the restriction should be imposed unambiguously but provided fairly clear instructions to the referring court on the evaluation of the essence of the national restrictions.<sup>93</sup>

Here, the European Union's most basic and broadest measure of national restraint started taking shape. The *Gebhard* case was taken as a typical judgment line, the Court made clear that "measures must be justified by the imperative requirements in the general interest, be suitable for achieving the objective which they pursue and not go beyond what is necessary in order to attain it." Also, since this is the first time it has been put into practice, the regulatory burden already faced by the supplier's member states should be respected.

But much of the subsequent discussions focused on the requirement that the restrictive measure form part of a strategy "consistently and systematically regulating betting activities." This balancing act is established with respect to the State monopolies and legislative structures utilized by a single provider; the reasoning for a constraint in the context of a single provider is

---

<sup>89</sup> C-124 /97 and Case C-67 /98,.

<sup>90</sup> Id.

<sup>91</sup> Case 279 /80 *Webb* [1981] ECR 3305.

<sup>92</sup> *Straetmans*

<sup>93</sup> Id.

focused on theoretical limits. This is, however, not expressed numerically and depends in large measure on the political decisions of the national governments in force.

Following this part of *Gambelli*, national courts should consider whether restrictions on supplying games from another Member State are consistent with how the monopolist or licensed operator, operates. Therefore, if the specified purpose of the national restriction is to reduce the demand for gambling services due to the risks associated with gambling, it is difficult to prove the national policy is reasonable or correctly enforced if only the operator is permitted to advertise heavily and refers to improved profits as a motivating factor in its annual reports. This balancing act must not only take place before national courts tackle this question, but the appropriate ministry or authority must ensure that the monopolist represents the clear and systematic implementation of the regulatory regime.<sup>94</sup>

In November 2003, the Court ruled in the *Lindman* case, which, unlike the ongoing cases, did not refer to an indistinctly applicable measure, but to the application of Finnish tax law to gains in a Swedish lottery. However, the European Court of Justice continued in the general direction embarked on *Gambelli*, referring explicitly to the fact that the parties involved in the government had not demonstrated that there was a causal relationship between the risks they cited and the participation of their residents in the game offered in another Member State. This raises the question of whether an evidentiary burden has been imposed on Member States to defend restrictive measures.

Case *Placanica*, can be considered to reduce the discretion enjoyed by the Member States within *Schindler*. Although the decision in *Placanica* deals with a number of issues, the most relevant for this article are those considered under the heading "licensing issues".<sup>95</sup>

Continuing the path established at *Gambelli*, the ECJ has recognized that restrictions related to combating crime and fraud can be used as a justification, regardless of the objective of eradicating the real number of gambling opportunities. Consequently, a controlled expansion

---

<sup>94</sup> Holland Casino, the Dutch state-owned casino operator provides an example. In their 2003 Financial Report they stated that '[i]t is expected that gross profits and net company results will further increase in 2004. To guarantee an increase in profits during an economic recession, Holland Casino must continue to reduce its costs.' (Holland Casino, *Financieel verslag 2003*, p. 14). However, their 2004 Annual Report reflects a change in approach: 'Holland Casino does not pursue a profit maximalisation strategy.' (Holland Casino, *Jaarverslag 2004*, p. 21).

<sup>95</sup> Ibid.

of gambling opportunities was considered acceptable, and the ECJ has observed what this may require 'the offering of a wide range of games, advertising on a given scale and the use of new distribution techniques'.<sup>96</sup>

There was no intention to reduce the availability of gambling or to reduce the propensity of the Italian population to gamble and, consequently, no genuine reduction in the gaming services needed to occur. However, if the objectives of national legislation only met the stimulated unmet demand, in addition to reducing crime and fraud, it is less clear whether a controlled expansion policy is allowed and, if so, the extent to which gambling opportunities can be expanded.

Interestingly, the Court also referred to the evidence presented by the Italian government that it served to illustrate the significant illegal gambling market in Italy, which the government sought to eradicate. It therefore appears that, in the light of *Lindman*, the Member States have accepted the existence of an evidentiary burden to credibly justify a restrictive measure.<sup>97</sup>

---

<sup>96</sup> Ibid.

<sup>97</sup> The EFTA Court provided a further interpretation of Gambling in a case arising out of the Norwegian government's objective of establishing a sole right to operate slot machine games which would be granted to a state-owned body. Case E-1/06 EFTA Surveillance Authority v Norway, judgement of 14 March 2007 (not yet reported). Arguably the EFTA Court entered into far greater detail in considering justifications of a restriction on the supply of gambling services than the European Court of Justice has done to date.

## **Austria**

### *Overview*

Whether games of chance are legal in Austria depends in nature on the type of game produced. In other words, a legitimate game of chance could fall within a federal monopoly or a state-level licensing system. The number of licenses to offer games of chance services is limited, subject to strict state control and monopoly, and conducted through an open bidding process. The Gaming Act stipulates that lotteries, electronic lotteries and VLTs can only obtain one license. In a classic example of a monopoly, Austria's largest gaming company, Osterreichische Lotterien, holds the licence until 2027.

As a member of the European Union, Austria's fundamental freedoms to provide services are guaranteed by the laws of the Union. Any form of monopoly, including the State monopoly on the provision of gambling products, may affect the freedom to provide such services. Indeed, many member states have some degree of monopoly over gambling services, but such national intervention is justified only in the narrow sense laid down by the ECJ.<sup>98</sup>

This monopoly has also been at odds with EU case law for years, there was no clear case law to determine whether such a federal monopoly complied with EU law. Austrian Constitutional Court (Verfassungsgerichtshof or VfGH) has been asked in cases whether the state monopoly of the gambling industry is incompatible with TFEU.<sup>99</sup> On 15 October 2016, the Austrian Constitutional Court concluded that the state monopoly imposed in Austria on gambling did not violate the freedom to provide services under Art. 56 of the TFEU, on the basis that the monopoly did not violate the principle of equal treatment.<sup>100</sup>

The Austrian Supreme Court (Oberster Gerichtshof or OGH) first called for the abolition of Section 3 of the Gaming Act, which provides for the monopoly of the gambling industry, and finally struck down the Gaming Act as unconstitutional.<sup>101</sup> There is solid ECJ case law showing

---

<sup>98</sup> Joined Cases C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07, para.88 [...a restriction on the freedom to provide services and the freedom of establishment on the grounds of such an objective is capable of being justified only on condition that the said restrictive measure is suitable for ensuring the achievement of the said objective by contributing to limiting betting activities in a consistent and systematic manner.]

<sup>99</sup> VfGH 15 October 2016, G 103/2016; 15 October 2016, E 945/2016

<sup>100</sup> Bernhard Oreschnik, Austria: Constitutional Court Rules That Gambling Monopoly Does Not Infringe Upon EU Law, 18 January 2017, available at: <https://www.mondaq.com/austria/cartels-monopolies/560990/constitutional-court-rules-that-gambling-monopoly-does-not-infringe-upon-eu-law>

<sup>101</sup> OGH 30 March 2016, 4 Ob 31/16m

that such monopolies infringe on the freedom to provide services, which can only be justified if they are done in a consistent and systematic manner to safeguard public safety or other elements of justice.<sup>102</sup> Two of the Austrian state licensed companies aggressively promoted gambling advertising, a monopoly that the Supreme Court said was misconceived.<sup>103</sup> The above position holds that the inability of Austrian residents to rely on fundamental freedoms in their home cases constitutes a form of reverse discrimination and may not be in conformity with the principle of equal treatment in the Federal Constitution. In the end, however, the Constitutional Court rejected the request on procedural grounds. Moreover, in another case, the Constitutional Court held that the gambling monopoly was consistent and systematic with the legitimate purposes of EU case law, since the gambling industry expenditure in Austria had not increased in the past few years.

The constitutional court cited the zero development of the country's gambling market as evidence that advertising by state-licensed companies was in line with EU law, rejected the idea that the Gambling Act was unconstitutional.<sup>104</sup> If the Gambling Act were to be completely abolished, Austria's providers of game of chance would face sweeping tax changes.

Nevertheless, case law is more of a demonstration of the uniformity of EU law continues to be a subject of controversy. The ECJ has argued that in reviewing the proportionality of violations of fundamental freedoms, the restrictive measures of national courts should follow the dynamics of the situation, which means that new facts and grounds may present stakeholders with circuitous challenges to the compliance of EU law.<sup>105</sup>

### *Jurisprudence and Taxation*

The word "gambling" is not prevalent in the Austrian legal lexicon, can be broadly broken down into two categories - games of chance and betting. Unlike games of chance, which

---

<sup>102</sup> JUDGMENT OF THE COURT (Grand Chamber), 8 September 2010\*, In Joined Cases C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07, para.88

<sup>103</sup> VfGH 15 October 2016, G 103/20, those companies are Österreichische Lotterien GmbH and Casinos Austria AG.

<sup>104</sup> VfGH 15 October 2016, E 945/2016 ua

<sup>105</sup> Case C-464/15, Admiral Casinos & Entertainment AG, § 36.

are federally monopolized and regulated by the Gaming Act and federal law, betting is regulated by nine separate state special laws where seem to have multiple contexts. In general, "betting" is wagering based on a guess at a future outcome, not necessarily coincidence, but the likelihood of an event as a result of a combination of the player's knowledge and experience.

Dig a little deeper and we'll find that "betting" itself is a general term. For example, "sports betting," the most common type, has respective regulations in nine states; "Social betting", such as betting on politicians' election results, existing in some jurisdictions; "E-sports betting", currently Austrian law does not clearly define it as athletic competition. As another thorny point, there is currently no case law in Austria that specifies the nature of "fantasy sports (or leagues)".<sup>106</sup>

The Gaming Act, the cornerstone of the industry, includes the federal monopoly on games of chance and the licensing systems derived from it -- lotteries, land-based casinos, and VLT (Video Lottery Terminal) licenses -- but the exact license authority is up to the individual states. That's why nine states have their own gambling laws to regulate sports betting in their jurisdictions, and five states have their own laws to regulate slot machines outside the venues of land-based casinos.

In a nutshell, the legal framework applicable to the Austrian gaming industry mainly includes the Federal Gaming Act, the five state laws regulating slot machines out of the land-based casino venues and the nine state Betting Acts. In addition to these special laws, some general laws also apply.

Gaming laws in each of the nine states require outlets and servers that provide gambling products to be physically present in their respective jurisdictions. Sports betting is relatively lightly regulated (there are no restrictions on the number of licenses allowed, as long as the applicant meets the prerequisites of the relevant state law), and not all of those states have specific regulations on remote betting.<sup>107</sup> Each of these nine state gaming laws was based on the federal act of 1919 and developed separately into the status quo over the years.

Like many countries, Austria regulates the gambling industry under general law. Criminal Code has a place in the regulation of games of chance, as do the provisions of federal

---

<sup>106</sup> Rapani/Kotanko/Sallegger, eSport in Österreich – besteht Regelungsbedarf?, ZfWG 2020

<sup>107</sup> ONLY Vorarlberg, Salzburg, Upper Austria and Tyrol

acts dealing with fraud and money laundering. Gambling as an economic activity has competition, of course, which is where the "unfair competition provision" comes in. In Austria, operators granted licenses can ask for injunctions against unlicensed rivals. If someone takes illegal measures to make money in order to get ahead of competitors, it is an unfair trade practice.

In Austria, tax regulations are used regardless of whether the operator is licensed or not. Betting and games of chance are exempt from 20% VAT under the VAT law, but VLTs and slot machine sweepstakes outside licensed casinos are not included. The computation basis and tax rate placed on operators can vary substantially between different sorts of games, as seen in the table below.

All kinds of gaming taxes are imposed consistently across the country and are established uniformly at the federal level<sup>108</sup>, all relevant operators must pay:

---

<sup>108</sup> Section 6 para 9 of Umsatzsteuergesetz



<b>Gaming product</b>	<b>Tax rate</b>
Betting	2% on Stakes
Lottery (terrestrial)	2–27.5% on Stakes
Electronic lotteries (online games of chance)	40% on Gross Gaming Revenue
Land-based casino	30% on Gross Gaming Revenue
Slot machines (in casinos)	30% on Net Gaming Revenue
Slot machines (outside casinos)	10% on Net Gaming Revenue + municipal fees
VLTs (video lottery terminals)	10% on Net Gaming Revenue + municipal fees
Other games of chance	16% on Stakes
Unlicensed slot machines	30% on Net Gaming Revenue
Unlicensed VLTs	30% on Net Gaming Revenue

---

<sup>109</sup> Thomas Talos, Nicholas Aquilina, Austria: Gambling Laws and Regulations 2021, published 20/11/2020, Chapter 2.7

### *The Regulator*

Further to the above, the entire gambling regulation system in Austria is not homogenous, there are therefore various regulatory bodies for types of games. Games of chance are a federal monopoly and subject to the Gaming Act, which is overseen by the Federal Secretary of the Treasury. The nine state governments that regulate betting in their jurisdictions through state betting laws also have the authority to regulate slot machines outside the land-based casinos. The regional competent administrative authority shall punish and enforce administrative violations of the relevant gambling laws.

### *Online Gambling*

Physical gambling and remote gambling are distinguished in Austrian gambling law on the basis of the aforementioned differences in game types. According to the distinction criteria of the gambling law, all games of chance that require the player to play through electronic media, and the result is centralized processing, are "online games of chance". The rest of the opportunities that require a location are a "land-based game of chance." Both of these are federal monopolies that are tightly constrained by the singleness of the license.

Although sports betting is covered by state betting laws, only four states have specific rules for online sports betting, which is why they are the only states that regulate distribution channels for sports betting.

The laws of these four states stipulate that online sports betting providers are legal service providers only if they have a physical device or entity in the territory of the jurisdiction, and there is no limit to the number of service licenses that can be granted under these conditions.

The only E-Lottery license has been granted, and it is currently owned by Austria's largest gaming monopoly (Österreichische Lotterien). There are still uncertainties about whether the monopolies that exist between member states, including in Austria, are in violation of EU law. As mentioned above, Austria is currently following the Supreme Court's 2016 decision that a federal monopoly does not violate EU law. In Austria, it is also an administrative offense for players to wager on games that have not been authorized by the finance minister.

However, due to the EU's complaint that the sports betting sector is not limited to domestic providers, online sports betting is peculiar in that it can be operated in Austria by any

operator with a license from any EU member state.<sup>110</sup> At last, neither the Gaming Act of Austria nor the betting laws of nine states impose obvious restrictions on IP or payment capabilities.

## **Belgium**

### *Overview*

A brief gambling ban in Belgium in the last century does not seem to have stopped the spread of harmful gambling. As a result, the government later agreed to enact a policy to help direct widespread gambling, primarily by licensing. As a result, the May 1999 Gaming Act (most recently amended in 2019) provided proper guidance for games of chance, betting, betting institutions, and player protections. It is worth noting that the Gaming Act does not extend to lotteries governed by the Lottery Act. In the years since, Belgium, like many other EU countries, has moved toward gambling licensing.

For a detailed definition of games of chance, see Article 2(1) of Gaming Act. To begin with, a game of chance is an open-ended game with stakes. Stake denotes that the outcome can result in a loss or benefit, and that the outcome is more or less contingent on chance (including the insignificant chance).<sup>111</sup> Thus, a fully free game does not fall under the category of a game of chance since no stake is involved.

However, according to Belgian case law, social network games that allow players to pay for additional game currency to continue playing are also games of chance, even if the player does not earn a monetary reward.<sup>112</sup> The Gaming Commission acknowledged in its 2018 study on the mechanics of rewards in games that the existence of gambling cannot be ignored simply because virtual currency is used in games, and that it is entirely possible to assign a value to a bet.<sup>113</sup> Value can be determined by tools that have real-world uses, such as the purchase of items

---

<sup>110</sup> Criminal proceedings against Jochen Dickinger and Franz Ömer C-347/09,” I shall point out that a monopoly scheme, because it is very restrictive of the freedoms of movement, can be justified only if its objective is to ensure a high level of preservation of public order and consumer protection.”

<sup>111</sup> Act of 7 May 1999 on games of chance, betting, gaming establishments and the protection of players, Available at [https://www.gamingcommission.be/opencms/opencms/jhksweb\\_en/law/law/](https://www.gamingcommission.be/opencms/opencms/jhksweb_en/law/law/)

<sup>112</sup> Judgment 232.752 of the Council of State ,29 October 2015 (Gamepoint).

<sup>113</sup> Research Report on Lootboxes, FPS Justice Gaming Commission, Brussels, 2018, Sept.14

to enhance the game experience. For this reason, the Gaming Council and the Council of State do not consider paid games or games involving paid subscriptions to be gambling. However, there are several exceptions, such as where there is a possibility of reward or where the player may refund or raise the sum in the form of any benefit from wagering.

Based on the above case law, the Game Commission has a more detailed interpretation of "prize crates" in video games." Prize crates" in video games has the same variety of possibilities as a treasure chest, where the player can acquire equipment that is merely used to enhance the visual effect or to enhance the player's abilities. Rarely available items are more valuable, so unusual game items often represent higher value. Under Belgian law, the purchase of such boxes is considered gambling, which has led many vendors to tailor their content to suit the Belgian market.

Under the Gaming Act: Sports games, games in which the player can only win a maximum of five additional wins (free of charge), and card or board or parlor games with limited bets and a small amount of monetary value are not considered games of chance. All practices that match the Gambling Act's concept of gambling are either banned or subject to a licensing regime.

General games of chance, such as poker and other card games, dice games, slot machines, and other gaming devices available in casinos, arcades, or gambling shops, are governed by the Betting Acts and Royal Decrees. The Gambling Act determines the various types of gambling products by multiple kinds of licenses (excluding the F1 license), which stipulate that the holder may provide services in accordance with the games of chance specified in the Royal Decree. There are ten of such licenses.

Lotteries don't fall within the application of the Gaming Act but are subject to Lotteries Act, the Belgian Criminal Code Art.301-303, and the provisions on public Lotteries set out in the National Lottery Act.

Lotteries governed by the Lottery Act and the National Lottery Act, typically recognized as all transactions that offer the public the potential to obtain a benefit, must meet three criteria:

<sup>114</sup>The loss or receiving of goods is accidental, and no matter what skill the player utilizes; the

---

<sup>114</sup> Belgian Criminal Code, Art.301

player cannot deliberately engage in or interfere with the outcome; Stake is not needed, which means that a free transaction may be equal to a lottery; offer to the public.

In September 2020, the Belgian Gaming Commission published a latest blacklist of gambling websites.<sup>115</sup> Any person or institution that operates, participates in, facilitates or promotes the operation of, or promotes the operation of, games of chance without the permission of the Commission will face charges. Fines for players can range from €26 to €25,000, while fines for organizers can range from €100 to €100,000.

### *Jurisprudence and Taxation*

In order to produce a reliable and regulated gaming environment for players, the Belgian gambling system employs a restrictive expansionary policy, mostly through the construction of monopolies, with the State constraining the number of licenses.

"... This is the second objective. That is, channeling gambling and betting activities into a controlled system so that they are not exploited for criminal or fraudulent ends. From this vantage point, any rules to restrict the expansion of the casino business are perfectly consistent with the core concept of prohibiting stealthy, unregulated gambling.

To accomplish this, the Belgian and French governments have clearly said that, rather than prohibiting activities, the government should investigate if the designated operators are trustworthy and charismatic. This necessitates a broader range of games, large-scale promotion, and new publishing methodologies.”<sup>116</sup>

In the above content, the licensing system is effective, can ensure the market activity at the same time to intervene, in order to prevent various forms of criminal harm. However, as far as the total number of permits is concerned, the Court does not yet have a strong basis to judge such a setting under Community law.<sup>117</sup>

Belgium's gaming policy is categorized into two parts. The first is the state monopoly on public lotteries, which excludes the few pre-licensed charitable lotteries. The second category

---

<sup>115</sup>List of banned gaming websites :

[https://www.gamingcommission.be/opencms/opencms/jhksweb\\_en/establishments/Online/blacklist/index.html](https://www.gamingcommission.be/opencms/opencms/jhksweb_en/establishments/Online/blacklist/index.html)

<sup>116</sup> Judgment of 6 March 2007, CJEU, Placanica, C-338/04, 359/04 and 360/04, EU:C:2006:324, Para.55

<sup>117</sup> Ibid. Para.57

is the game of chance, which is prohibited in Article 2 of the Act save for operators that are already licensed by the Belgian Gaming Commission.<sup>118</sup> Vendors must also hold the license required by the act in order to operate online games of chance. National Lotteries is certified to offer online lottery game goods under the National Lottery Act.

In Belgium, public lottery games are a state-owned public utility under direct government control, hence any provider of such games must be the operator of the National Lottery, both online and offline. Other markets for games of chance, though supervised and controlled by the federal government, are competitive, with providers competing for limited allocations of licenses.

All the constraints of the Act of May 7, that is, all gambling activities, are regulated by the Gaming Commission.<sup>119</sup> Games that do not involve an element of chance are excluded from the Act: promotional contests without an element of chance (excluding sweepstakes); sports competition; games that have no financial gain and is only allowed to be played up to five times in a row; unprofitable card or parlor games that are not played on gaming venues; games based on amusement parks and fairs, as well as games organized by local associations for special events no more than four times a year; games organized by a charitable or non-profit organization that involves only a very limited number of bets.

Only entities or individuals licensed by the KansspelCommissie are allowed to establish games of chance and gambling venues, according to the Act of May 7, 1999. Unauthorized games are strictly prohibited. Furthermore, it is illegal to knowingly promote or participate in unlicensed games. Currently, commercial contests, sweepstakes, lotteries, and private poker and bingo organized by advertisers are restricted or even banned because they all involve indirect or direct payments from players and the results are largely serendipitous.

The municipal administration has limited authority and can only allow the installation of land casinos and gambling halls.<sup>120</sup> The modification of the Act in 2019 strengthened its

---

<sup>118</sup> Article 4 of the Gaming Act

<sup>119</sup> Wet van 7 mei 1999 op de kansspelen, de weddenschappen, de kansspelinrichtingen en de bescherming van de spelers, as amended by the two laws of January 10, 2010

<sup>120</sup> Article 34 of the Act, In line with an agreement between the operators and the municipal govt, the authorities have the power to decide on the operation of the casinos on their own.

powers slightly, allowing it to organize betting shops outside of casinos and control some games that are exempt from the category of gambling due to low stakes or low returns.<sup>121</sup>

However, the establishment permits issued by municipal authorities do not necessarily have the same conditions or duration as the gambling licenses. This led to a dispute in 2017 when some casinos had to renew their permits for up to 30 years, even though they were unsure whether they would retain their gambling licenses for years to come.

In addition, the provisions of the Belgian Commercial Code concerning consumer information, fair trade management, and the remote sale of online gambling are also applicable to gambling product providers. The law of 31 December 1851 states that the Belgian National Lottery not only monopolizes all lottery games, but also the scratch-card game for small sums and the tombola games.<sup>122</sup>

Like most countries, Belgium also uses its penal code to punish illegal gambling. For land-based casinos, strict compliance with building and development laws and regulations in the jurisdiction in which they operate is required. The industry's self-regulation also includes the introduction of a new industry code of conduct in 2019 that restricts advertising for gambling activities.

In Belgium, gaming taxation is a regional issue, with Flanders, Wallonia and Brussels deciding on their own. The rules for taxing games of chance are set out in the "quasi-income tax code", because each of the three jurisdictions has its own tax rate, which makes the tax on games of chance regionally competitive. The tax is theoretically imposed on gross gaming revenue, or the amount of profits that operators make after deducting winnings paid to players. But gambling machines pay a fixed annual gambling tax, and there are differences between regions and types of games, as well as online gambling.

The general tax on gross wager amount is 15% (Walloon at 11%).<sup>123</sup> All racehorses and greyhound racing are taxed at 15% on gross profits. A decree by the Flemish government in 2015 extended the 15% flat tax to games outside the European Union that had not previously been taxed. For online betting, 11% of gross profit is levied on the total amount of betting less

---

<sup>121</sup> Article 3 of the amended Act 2019

<sup>122</sup> Wet van 31 december 1851 op de loterijen

<sup>123</sup> Wetboek van de met de inkomstenbelastingen gelijkgestelde belastingen van 23 november 1965

the amount paid to the punter. In addition to general taxes, casinos also tax gross margins on different types of games.<sup>124</sup>

National lottery operators also have to pay gaming taxes, as well as annual monopoly rents, special subsidies and donations. Belgium imposed VAT on online gambling other than lotteries in 2016, but the legislation was declared null and void in 2018 after legislators were deemed to have overstepped their authority.<sup>125</sup>

### *Regulator*

The Belgian Gaming Commission, which is responsibility of the Ministry of Justice, regulates games of chance. The committee meets once a month and is made up of officials from the Ministries of Justice, Finance, Public Health, Economic Affairs, and the Interior, among others. A secretariat that oversees daily operations operations and provides recommendations would be beneficial to the Gaming Commission.

According to the Act, the Gaming Commission is the institution that advises, makes decisions, and regulates all Confidential Games. The lottery is not under its control, but is regulated by the government via the competent minister, with direct intervention from two commissioners. They will determine if the National Lottery's operation and operation are in accordance with applicable law, its obligation to serve the public, its management agreement with the Belgian government, and its bylaws. Furthermore, the two commissioners serve as advisers to the National Lottery Operator's Board of Directors and Executive Committee at all meetings.

The exercise of prosecution and supervisory powers by the two commissioners is an expression of the government's direct authority over the National Lottery.<sup>126</sup>

---

<sup>124</sup> decreet van 3 juli 2015 houdende bepalingen tot begeleiding van de begroting 2015

<sup>125</sup>Belgian Constitutional Court annuls VAT for online games and online gambling, available at :<https://www2.deloitte.com/content/dam/Deloitte/be/Documents/tax/TaxAlerts/VATAAlerts/VAT%20alert%20-%20Constitutional%20Court%20annuls%20VAT%20on%20online%20games%20and%20online%20g....pdf>

<sup>126</sup> Chapter 5 of the National Lottery Act



### *Online Gambling*

The 2010 amendment of Act covered all sorts of games of chance, including online gambling. Previously, only one type of state-run lottery was allowed to offer online games. When the Belgian Constitutional Court first considered the nature of the provider, in some cases the National Lottery's online operations complied with CJEU case law. The 2011 amendment opened the door to all web-based games, meaning that, in addition to offline gaming licenses or concession, operators may need to apply for an online game license of a similar nature.<sup>127</sup>

The Act, in general, does not define online games of chance separately, but it certifies that such a manner of supplying games of chance exists through informational instruments--electronic devices that process, compress, or store data that is transmitted and received solely via wired, radio, optical, or other electromagnetic means.<sup>128</sup> The use of "informational instruments " to provide games of chance includes, of course, Internet-based games of chance, a term that Belgian lawmakers have cleverly used to ensure that legislation will always be adapted to new and unknown technologies that may be faced. The National Lottery Act allows the National Lottery to use informational instruments to organize games of chance such as the lottery.

In principle, all games of chance must follow the same regulations that apply to their offline counterparts. There are also particular requirements, such as regulating online gambling providers to have a 40% solvency ratio, as well as some defined safety and technical criteria. The Royal Decree issued on October 28, 2018 on the safety of information and the conditions in which gambling and gambling operations are performed imposes additional limits on financial gaming restrictions, pre-payment, and, in particular, publicity. According to the 2018 Royal Decree, each player's weekly standard online gambling expenditure is limited to 500 euros. This restraint may drive certain players to seek suppliers improve limitation, should the supplier in any case seek approval from the Gaming Commission, and those players who were classified with debt payment troubles must be denied. In an effort to avoid the risks of using credit cards to gamble online, the Decree also clamps down on the use of credit cards linked to

---

<sup>127</sup> Judgment of 10 March 2004, Belgium Constitutional Court, No. 33/2004.

<sup>128</sup> Article 2 (10), Gaming Act

electronic wallets and other forms of Internet payment. Furthermore, the Gaming Commission reaffirmed that players would be permitted to gamble only on sites licensed by the Gaming Commission, and that violators will undoubtedly face criminal penalties.

Offering online games of chance other than lotteries, which are played using informational instruments<sup>129</sup>, necessitates a land-based physical presence. As a result, only the first holder of a land-based license may be eligible to apply for an online gambling license.<sup>130</sup> Meanwhile, an online license can only be used to play games of the same type as a land-based license, and their validity periods are also the same.

The Act requires that servers that deliver gaming products be permanently situated in Belgium.<sup>131</sup> To properly comply with European case law in practice while achieving the aim of controls and sanctions, Belgian servers presently have the ability to take game websites offline and store key data on Belgian servers.

## **France**

### *Overview*

Gambling was banned in France for quite some time. Over the years, exemptions have been granted to the French Code of Homeland Security as the law governing games of chance, and a relaxed attitude has started being taken towards certain gambling activities.<sup>132</sup> The French Homeland Security Code, promulgated on May 1, 2012, is a major aspect of French gambling law, in addition to other special laws and regulations controlling certain gaming products. The French gambling law was revised again in October 2019. The law was enacted following the publishing of the Action Plan for Corporate Growth and Transformation in the same year, which directed the French government to implement regulatory and legal reforms pertaining to games of chance. The revision is substantial. First, four national policy objectives have now been enshrined as a weathervane for the regulation and control of gambling and games of chance in

---

<sup>129</sup> This mainly includes the Internet (via a PC, smartphone or tablet) or other potential means

<sup>130</sup> A+ License(online casino games), B+ License (online gaming machines) , F1+ License (online betting)

<sup>131</sup> Article 43/8 of the Gaming Act

<sup>132</sup> *Article L.320-1, French Code of Homeland Security*

the most recent French Homeland Security Code<sup>133</sup>. They are as follows: Prevent addiction and protect minors; Ensuring the integrity, reliability and transparency of the gaming industry; Combating fraud, money laundering and the financing of terrorism; Make sure the types of bets are balanced.

Another significant change is that France's national lottery operator, Française des Jeux (FDJ), has now been privatized, and a new supervisory body has been established to oversee the registered operator, FDJ and Pari Mutuel Urbain (PMU). The new administrative, the Autorite Nationale des Jeux (ANJ)<sup>134</sup>, wields more authority than the previous one. The revamped ANJ will now have the exclusive authority to audit operators, instruct them to shut down commercial communications, give decisions to frame licensed games, determine terms and conditions for operators to try out new products, revoke or suspend game licenses, and impose consequences on operators who violate the law.

Gambling is defined in the French Homeland Security Code as "a game in which, in whatever form, provided that it is offered to the public, the outcome is wholly or partly determined by the realization of a certain hope or opportunity and the organizer obtains economic value from the participants."<sup>135</sup> This basic definition can be derived into four metrics: the receiver of the game is the public; players have a chance to make money; game outcomes tend to be haphazard; players are required to provide money, regardless of the name or nature of the game, or whether the money will be paid back later. Online gambling is defined in the French Homeland Security Code as any gambling and betting operation conducted solely through an online communication service, as long as the online betting service is provided to the public with the terms of the agreement that has a monetary value for the bet, belongs to the online gambling operator.

---

<sup>133</sup> Article L320-3

<sup>134</sup> France's Autorite Nationale des Jeux (ANJ), also known as the "National Gaming Authority," is an independent administrative body tasked with regulating internet gaming in France. Article 34 of Law No. 2010-476 [1](French Gambling Law)[2] on May 12, 2010 established it in order to strengthen competition and sectoral control of gambling and online games.

<sup>135</sup> Article L.320-1 of the French Homeland Security Code

### *Jurisprudence and Taxation*

Under French Civil Code, gaming contracts are deemed "random contracts." A contract is a random contract if the parties agree that the contract and the associated gains and losses will be effective concurrently based on an unpredictable execution.<sup>136</sup> Betting and gambling, by definition, rely on the uncertainty of winning as a balancing to the expenses of losing. Gambling differentiates from other random contracts in that there is a wager on chance in which one side randomly places an economic value on the other party. The "wager" in an ordinary random contract is frequently a wager on a service, and the origins of the "risk" are not the same as gambling.

Currently, French lawmakers have codified games of chance, gambling products, and internet gambling goods, but the boundary between skill games and gambling products is not well delineated in French gambling law, which means that some skill games may be incorrectly labeled as gambling activities.<sup>137</sup> As mentioned earlier, games of chance include "... the outcome is wholly or partly determined by the realization of a certain hope or opportunity and the organizer obtains economic value from the participants." actually covered "games that rely on players' proficiency or intelligence, as well as games of skill" to a certain extent.<sup>138</sup>

The French Homeland Security Code authorizes and regulates the provision of games in all casinos at sea, in climate resorts, in tourist resort cities (except Paris), and on cruise ships flying the French flag. Game clubs and game rooms may also offer card games or games of chance, if authorized by the Minister of the Interior.<sup>139</sup> The state is mandated by law to run the national lottery,<sup>140</sup> which is currently legally monopolized by the state operator La Française des Jeux, which also holds a concession to offer sports betting services.<sup>141</sup>

The logic of the distinction in France's early legal context was that games of chance were forbidden, but games of skill were legal. However, the lawmaker's understanding of skill games

---

<sup>136</sup> Article 1108

<sup>137</sup> See Article L.320-1 also Article L.320-5 of the French Homeland Security Code.

<sup>138</sup> *Idem*.

<sup>139</sup> Law 2017-257 of 28 February 2017

<sup>140</sup> Article 136, Finance Law 1933

<sup>141</sup> Decree 85-390 on the organisation and operation of sport forecasts games

today is that even games that require the full use of the player's functions are not immune to compulsion and addiction, and therefore should be banned. It is tempting, though, to think that the principles enshrined in French law have crushed gambling to death. But don't overlook a study of the exemptions and exceptions in French gambling law that give the system myriad specific scenarios and possibilities, whether in casino games or online gambling.

The French National Lottery was formed in 1933, and the operator Française des Jeux (FDJ) was constituted in 1976, preserving the right to launch lottery games that the National Lottery possesses in specifically. When sports betting got momentum in 1985, FDJ took over the sports lottery concession. The introduction of the Internet and the subsequent "Online Gambling Law" in the twenty-first century can be considered the first hurdle for FDJs. Even after being granted the concession to offer online games, FDJ may face fierce competition. Nonetheless, this French behemoth of the gambling industry remains powerful. In 2019, most of FDJ's capital has been transferred to the private sector, and the government will appoint a commissioner to the Board to ensure state control of the company.<sup>142</sup>

Since the beginning of 2020, the Autorité Nationale des Jeux (ANJ) has taken a dominant role in regulating FDJ activities, demanding the ANJ's approval for the launch of all new FDJ products. The ANJ has the authority to suspend or terminate licenses at any stage, as well as to restrict businesses that provide excessive gambling temptations.

Betting on horse racing in France began in 1890, with the original horseracing organizations exclusively offering in-track betting.<sup>143</sup> They were able to commence off-track betting by 1930. The licensed racing firms chose to form Pari Mutuel Urbain (PMU) to provide a more stable market structure and to consolidate their operations.<sup>144</sup> PMU had more than 50 horse-racing firms by 1985, and it is still Europe's most prominent operator today. Similarly, today's PMU is not immune to the competitive boom that has accompanied the growth of the market by online gambling laws, which has somewhat weakened the distinctive rights of PMU. PMU once attempted to enter the online gambling market, obtaining an ANJ online gambling license to provide games such as horse racing and sports betting. While the PUM has the

---

<sup>142</sup> PACTE, April 11 2019

<sup>143</sup> Law of 2 June 1891 on the organisation and operation of horse races

<sup>144</sup> Decree 97-456 of 5 May 1997 relating to horse racing companies and pooled betting

exclusive ability to organize land-based horse racing in the French jurisdiction, the ANJ has a strong regulatory role over it, with the ANJ having the authority to revoke or suspend various licenses at any point.

Despite the fact that France is a whole in most legal circumstances, there are regional concerns with gambling regulation. As a gambling game, cockfighting (gallodrome) is also an ancient custom in northern France and Reunion Island.<sup>145</sup> The French authorities responded by keeping existing cockfights in some places, but not allowing new games to be created.

What makes Paris the only capital city in Europe without a casino? The answer is that a law dating from 1920 to the present forbids the establishment of casinos within 100 kilometers of Paris and its surroundings.<sup>146</sup> Still, Paris has some highly regulated gambling zones, where games are scarce compared with regular casinos. The situation is now about to be overrun when a new legislation for Paris came into effect in early 2018, which dismantled the previous legal regime for gambling by authorizing the government to create gambling clubs in Paris for five years on a trial basis -- an unprecedented entity.<sup>147</sup>

Not just for Paris, the law also takes into account the geographical context in which the casino venues are selected: Only those tourist cities that are important seaside or climatic resorts; with more than half a million inhabitants; are processed of certain urban facilities; and provide at least 40 percent of the funding for activities organized by cultural institutions to meet the criteria for obtaining a casino license.

### *Regulator*

In the legal system of France, gambling on land and gambling on the Internet belong to different categories, and the regulation of which naturally depends on different authorities.

---

<sup>145</sup> Gallodrome, The generally spherical building in which cock fights are organized is called a gallodrome. In Reunion, there are still five officially tolerated gallodromes and many others illegal. See also: <https://fr.wikipedia.org/wiki/Gallodrome>

<sup>146</sup> In the case of this legal regime, it is worth noting that there is a special exemption, which is still in effect today -- a casino in a suburb less than 15 kilometers from Paris, which has been in existence since a century ago.

<sup>147</sup> LOI n° 2017-257 du 28 février 2017 relative au statut de Paris et à l'aménagement métropolitain (1)

Under the current decree, the Ministry of the Interior centrally regulates all land-based gambling operations at the national level by issuing all land-based gambling licences.

Due to the varying nature of the game, the respective government or state agencies may additionally intervene in the licensing or enforcement procedure at various stages.

The ANJ is responsible for monitoring excessive gaming in casinos. Other forms of government involvement include governors(*Préfet*), governments, and federal bodies with oversight.<sup>148</sup> The ANJ has formed to replace the previous regulator, ARJEL (Autorité de Régulation des Jeux en Ligne), with a critical role for the online gaming unit, which has the entire authority to issue licenses and faithfully execute the Online Gambling Regulations - to combat all illicit online gambling.

The former French police intelligence agency Renseignements Generaux, which had been in charge of implementing French gambling regulations for some time, was dismantled in 2018, and the new decree establishes a new police agency Central des Courses et Jeux dedicated to gambling venues.<sup>149</sup> Local governors are generally in charge of day-to-day administrative functions linked to land-based gambling, and several commissions, such as those of the Ministry of the Interior and the Ministry of Finance, have particular supervisory responsibilities over certain gaming activities.

Previously, all casinos and PMU retail operations had to be pre-authorized by the Ministry of Interior, and the recent decree now includes FDJ retailers among those required to be authorized.<sup>150</sup>

### *Online Gambling*

The Homeland Security Code defines online gambling as "games played solely through an online public communication service." In turn, "anyone who uses a public communication service to offer gambling services involving money to the public" is an online gambling operator.<sup>151</sup>

---

<sup>148</sup> Publication of ordinance n°2019-1015 reforming gambling regulation

<sup>149</sup> Decree 2008-612

<sup>150</sup> Decree 2017-1306 on the opening of retailers and games of chance.

<sup>151</sup> Article L.320-5

Although the 2019 Decree appointed the ANJ as the new online gambling regulator, its powers go far beyond that, including new powers and organizational functions such as overseeing the industry monopolies of the FDJ and PMU.<sup>152</sup>

The ANJ licensees can only offer gambling products in France, where the site is intended towards French residents. Platform providers are not forced to apply for licenses directly, but operators who do must employ ANJ-approved game software. During the licensing procedure, contracts with suppliers are essential, and all suppliers must be specified in the application. A white label distinguishes the trademark owner from the operator, indicating that the vendor, not the trademark owner who has complete control of the game software.

So far, the European Commission has been relatively comfortable with France's framework for regulating online gambling. And the commission has closed a series of proceedings against France as its online-gambling market has opened up. There are, of course, certain gambling products that do not perfectly comply with EU rules, such as the Zeturf case, which argues that France's monopoly on online racing infringes on freedom of service.<sup>153</sup> But ECJ rulings have upheld monopolies that protect consumers and prevent excessive gambling or fight money laundering.

Poker, Sports Betting, and Horse Betting are the three online gambling product licenses that are now accessible. Because the three products are distinct, a single operator can receive three licenses at the same time, but must go through 3 independent licensing processes. Operators can use the same license to run multiple gambling websites. Currently, the ANJ does not place a limit on the total number of licenses that may be awarded.

The identity of online gambling operators is not precisely confined, and individuals can also become authorized objects. To qualify, however, operations must be based in the European Union or a European Economic Area member that has signed a treaty with France to combat deception and tax evasion. Botswana, Brunei, Guatemala, the Marshall Islands, Nauru, Niue, and Panama are currently among these countries. Those countries must, of course, fulfil their treaty duties; otherwise, they will be unable to ensure that providers on their territory will be qualified as French service providers.

---

<sup>152</sup> Decree of 4 March 2020

<sup>153</sup> Zeturf v Prime Minister, ECJ, C 212/08



## Germany

### Overview

Germany is widely known for taking a strong prohibition against Gambling. The regulatory attitude, which also reflects the socio-cultural peculiarities of Germans, is that Gambling is detrimental to the gamblers and to the children.<sup>154</sup> Under the old gambling law, currently, the German Interstate Treaty on Gambling of 2012, all forms of Gambling, with specific exceptions of licensed sports betting and lottery, were considered illegal.<sup>155</sup> A few more betting games have become legal with effect from July 1, 2021, following legal reforms by German Interstate Treaty on Gambling (*GlüStV 2021*).<sup>156</sup> The list of additional legal betting games remains limited to online casinos, virtual slots, and poker games.<sup>157</sup>

The reforms in betting regimes have been influenced by many driving factors. First, Germany is trying to keep up with the regulatory practice common to its EU regional peers such as Austria, Denmark, and Spain, which have loosen regulatory restrictions. The expansion of a range of legalized gambling activities by *GlüStV 2021* is seen as efforts to advance individual liberty over state control. However, the government's role to protect public interest-the welfare of the gambler and children participation- still remain salient even in the new regulatory regimes. For instance, there is an array of "technically feasible" requirements that operators that operators would need to meet to offer gambling services. The "technically feasible" essentially target the gambler vulnerability, for instance through limiting customer deposits and imposing age authentication obligation on the service provider. Further, the nation was considerably losing significant tax income by keeping prohibiting some prevalent games such as Poker and online betting.<sup>158</sup> A regulated market would enable the country to monitor and control licensed operators and online casino activities while also contributing towards government revenues through licensing fees and taxation. Hoffman approximated the potential

---

<sup>154</sup> Hofmann, Joerg, Matthias Spit, and Jessica Maier. "Food for thought—German regulation on online gambling under the scrutiny of market data." (2016), *European Gaming Lawyer*, Autumn Issue, 10

<sup>155</sup> See s.4 of the German Interstate Treaty on Gambling of 2012

<sup>156</sup> *Glücksspielstaatsvertrag 2021 (GlüStV 2021)*

<sup>157</sup> S. 4 and 5 *GlüStV 2021*

<sup>158</sup> Hofmann, 10

income tax from online casino to be EUR 675m.<sup>159</sup> Without a properly regulated market, Gambling would thrive as a black market, with no statutory basis for government taxation or customer protection. These are the public interest considerations that drive regulatory changes. Generally, the State still enjoys a monopoly over lotteries, either through state agencies or through government-owned corporations. Monopoly has also traditionally existed in running casinos, even though in some states, there are now limited licensing being issued to private actors.

Germany has its unique governance structure and power distribution when it comes to regulating Gambling. The legal framework grants limited regulatory jurisdictions across government levels.<sup>160</sup> While the regional governments have the powers to define the behavioral boundaries in sports betting (that is what sports betting is legal or illegal), it divests them the powers to define the consequences of non-compliance. Rather, the non-compliance sanctions are vested on the federal government and have been implemented through Penal Code.<sup>161</sup>

### *Jurisprudence and Taxation*

The general rule is that gambling law only applies in Germany to games of chance. To assess whether a game is that of chance rather than skills, the courts apply the test of an average player rather than a skilled one.<sup>162</sup> If attaining an outcome is dependent on experience or skills, then it ceases to be a game of chance and so outside the purview of gambling laws. Section 33i(1) of the Commerce Regulation Act shows the very limited manner in which games of skills would amount to a game of chance if there are elements of prize to be won in the course of the game. The prize will necessitate securing licenses. Among the games of chance that are recognized include sports and horse betting (including pool betting, spread betting, and arguably

---

<sup>159</sup> Ibid

<sup>160</sup> Adam, Christian, Steffen Hurka, and Christoph Knill. "Four styles of regulation and their implications for comparative policy analysis." *Journal of Comparative Policy Analysis: Research and Practice* 19, no. 4 (2017): 327-344.

<sup>161</sup> See s.285 of the German Penal Code. It provides six months imprisonment for legal Gambling.

<sup>162</sup> Section 33d(1) of the Commerce Regulation Act

fantasy leagues)<sup>163</sup> lotteries and draws, poker and dice games. Their online equivalents are now accepted under the new Interstate Treaty.<sup>164</sup>

Germany exhibits a vertical-shift model in granting gambling regulation powers to its institutions. In this regulatory approach, two complementary powers, such as the powers to define behavioral boundary (such as permissible betting sports) and the non-compliance consequentiality, are vested on different institutional levels of governance.<sup>165</sup> In Germany's case, the regulatory powers are shared vertically between the federal and regional governments.<sup>166</sup> The regional governments (Länder) enjoy exclusive legislative and regular mandates to define what constitutes legal or illegal betting. The Länder's mandate is strictly limited to defining the behavioral restraint -whether betting will be allowed, whether citizens have a right to access the betting sports and whether private betting operators can legally offer betting services within Germany. Länder has fulfilled this regulatory mandate through the Interstate Treaty (Glücksspielstaatsvertrag), a legal instrument negotiated by the regional governments. Even though the instrument defines legal and illegal sports betting, the sanction for illegality under the Treaty (and any other law) is a preserve of the federal governments, a higher-level of governments.

Like its peers in the EU, German has used criminal sanctions, in Penal Code, as one of its regulatory controls to Gambling. Paragraph 285 of the German penal code provides for a six months imprisonment for illegal Gambling.<sup>167</sup> There is a provision to substitute the fine sanction with a fine. However, it can be noted that German's usage of the penal code as a regulatory instrument is exceptionally limited to defining suctions rather than substantive focus on legality or illegality of gambling behavior.<sup>168</sup> As demonstrated below, German's restraint on penal regulation of Gambling is partly explained by the existence of multiple regulatory frameworks and varying institutional powers in gambling laws.

---

<sup>163</sup> See VGH München, MMR 2010, 498, 499;

<sup>164</sup> *GlüStV 2021*

<sup>165</sup> Adam, Christian, Steffen Hurka, and Christoph Knill. "Four styles of regulation and their implications for comparative policy analysis." *Journal of Comparative Policy Analysis: Research and Practice* 19, no. 4 (2017): 327-344.

<sup>166</sup> *ibid*

<sup>167</sup> *German Criminal Code* (Strafgesetzbuch – StGB), Para 25.

<sup>168</sup> *Ibid*

Prior to the amendment of Glücksspielstaatsvertrag in 2021, the applicable law was State Treaty on Gambling 2012, which only allowed licenses for sports betting and for lotteries? Any other form of Gambling was strictly prohibited and therefore not licensable. The Treaty further required the gambling service providers to verify the age income sources of their customers before allowing their participation. The State Treaty on Gambling 2021<sup>169</sup> makes sweeping amendments to the nation's gambling laws. The most notable change is that certain online betting games- namely online Poker, online casino (table) games, and virtual slots- will be legal , provided the service seeks licensing for the games and meets stringent licensing restrictions.

The federal government has omnibus provisions in Paragraph 285 of *the German Criminal Code*, which stipulates six months imprisonment or fine for illegal Gambling. Adam et al.<sup>170</sup> has argued that the regulatory approach taken by German results in complicated diagonal regulatory shifts, in that one level of governance would have to engage with the other level to coordinated regularly environment and safeguards. Unless the regional government levels and federal government coordinate (vertically) in making reforms, then there might be a mismatch between the behavioral boundaries defined by regional laws and sanctions imposed by the national levels.

Licensing decisions, in the limited range of licensable gambling activities, remain subject to judicial review. As highlighted in German referral to the Court of Justice of the EU in case C-336/14<sup>171</sup> where the court held that the licensing authorities were subject to due process, so that in the case of procedural flaws, then the affected party would challenge the licensing decision. The court further stated that licensing authority, including deciding on the number of licenses, is a decision but not be arbitrary. They should be informed by relevant facts and evidence. Judicial protection on licensing issues, evidently, is extremely limited to procedural issues and breach of rules of natural justice.

In terms of licensing issuance, all the states in Germany tend to limit the number of licenses that can be issued to any betting service provider. According to a tendering notice issued in 2012, in

---

<sup>169</sup> *Glücksspielstaatsvertrag 2021 (GlüStV 2021)*

<sup>170</sup> *Ibid*

<sup>171</sup> Referral of the Local Court of Sonthofen in case C-336/14, Ince.

respect to sports betting, the maximum number of sports betting licenses to any provider was limited to 20.<sup>172</sup> However, the GlüStV 2021 abolished this cap, so the number of maximum licenses that any shop may be given will be technically unlimited. The original limitation of 20 was adversely criticized by the industry players and scholars as being arbitrary, piling pressure for its removal. Another important consideration is that land-based sports betting shops will need two types of licenses. First, they have to secure sports betting (operating) licenses, and secondly, the shop licenses.

Another unique feature of German gambling laws is the provisions for gambler exclusion. Unlike in many countries where the liability to exclude oneself from potentially dangerous Gambling is a responsibility of an individual, Germany puts the duty on the gambling operator. Exclusion means prevention a gambler from entering the gambling premises, or in the case of online Gambling, from entering the gambling platform. The duty of a casino to protect, by exclusion, a person at the risk of financial damages is a legal, contractual duty anchored on GlüStV.<sup>173</sup> The breach of this duty would be actionable and subject to compensatory damages under the German Civil Law Code.<sup>174</sup>

With regards to taxation, Germany takes a position that gambling operators and brokers (both German-based and foreign) must pay taxes to the government, irrespective of whether the gambling services they provide are done lawfully or unlawfully.<sup>175</sup> The tax rates, however, vary with the type of Gambling. Online Poker services and online casinos have the lowest taxation rate, which is the general value-added tax rate (19%) on the gross revenue. For the lotteries, the tax rate is 20% of the stakes, whereas the sports betting rate is 5% above the general VAT rates.<sup>176</sup> The rates may be varied depending on the government's financial policies and budget.

---

<sup>172</sup> Contract notice Services of August 8, 2012, under Directive 2004/18/EC, D-Wiesbaden: sport-related services 2012/S 151-253153

<sup>173</sup> See ss.8, 20 GlüStV

<sup>174</sup> The German Civil Law Code s.823, Para. 2

<sup>175</sup> Paul Voigt, Gambling law in Germany, Taylor Wessing, April 2015. Accessed July 7, 2021, <[https://www.taylorwessing.com/download/article\\_gambling\\_germany.html](https://www.taylorwessing.com/download/article_gambling_germany.html)>

<sup>176</sup> Ibid

### *Regulator*

Regulation of Gambling has traditionally been a preserve of the state government, so regulatory enforcement should be based on a state-by-state basis. Typically, enforcement will be carried out at the state ministry level, mostly by the State Ministry of Interior. The Interstate treaty, however, mandates any state to ask another state to act on its behalf in enforcing gambling regulations.<sup>177</sup> The provision of inter-state action is meant to promote enforcement efficiency in cases where the subjects of enforcement may be in another state and so outside the jurisdiction of the State that seeks to enforce regulations.<sup>178</sup>

However, under the changes GlüStV 2021, there is now an additional interstate regulatory agency, the *Darmstadt Regional Council*. The council coordinate, implements, regulate and advise on gambling regimes.<sup>179</sup> The mandate of the Council encompasses licensing. The Council remains the bundling authority of the State, and as such, the highest regulatory organ. It has headquarters in Darmstadt, with regional offices in Frankfurt and Wiesbaden.

### *Online Gambling*

Germany has traditionally taken a restrictive stance against online Gambling, putting strict prohibition. The rationale for restricting online Gambling has been generic and similar to those extended to other forms of Gambling, which is to protect the children and the gambler. However, the State Treaty on Gambling 2021<sup>180</sup> has relaxed the prohibitive stance by introducing restricted licensing provision internet horse betting and brokerage of sports.<sup>181</sup> This exception, in effect, allows three online gambling games, namely: online casino (table) game, virtual slots, and Online Poker.<sup>182</sup> Online sports were already provided for in the old State Treaty on Gambling and remain legal and licensable. Games of chance remain strictly

---

177 Sections 9a(1) and (2) of the Gambling Treaty 2021

178 Strohäker, Tanja, and Tilman Becker. "Casino Gambling in Germany: Development, Legal Conditions and the Exclusion System." (2017).

179 Section 9a(5–8), Gambling Treaty 2021

180 GlüStV

181 Section 4 (5) GlüStV

182 GlüStV 2021

prohibited, and any organization, advertising, or brokerage of such games on the internet remains illegal under Section 4 (4) of the State Treaty on Gambling.<sup>183</sup>

Under the transition provisions in GlüStV 2021, sports betting (including those offered online), virtual slots, and online Poker will remain tolerated without having to secure a German licensing. Even so, the virtual slots and online pokers will have to meet stringent transition provisions (prerequisite) before converting from illegal to legal status and operating provisionally without a license. Two restrictions are outstanding. First, the operators must demonstrate that they meet the technically feasible player requirements prescribed by GlüStV 2021. The “technically feasible” guidelines are to be provided by relevant enforcement authorities. Any operator that fails in compliance will be bound to terminate. Secondly, in case an operator offering is limited to sports betting, they will need to apply for German sports betting license as a prerequisite to operations.

Multi-agency German gambling authorities and heads of states published “technically feasible” guidelines published on September 30, 2020.<sup>184</sup> These guidelines will offer parameters for converting to legal operation status, and for licensing. Generally, all one betting providers will have to satisfy three licensing requirements, that the operator: (1) be registered within the EU; (2) have a German website; (3) have a monthly deposit limit 1000 EUR per player; (4) includes a 'panic button' which causes a 24-hour exclusion from the game; (5) exclude the minor through authentication and identification measures available, including official data and player details; (6) desists from any advertisement of unlicensed Gambling, including online Poker and virtual slots.<sup>185</sup> Virtual slot games and Casinos have further restrictive requirements. For instance, there is a prohibition against referring to virtual slots as “casino” or “auto-play” or “casino games.” Further, virtual slots will need to last for no less than 5 seconds. The stakes of virtual play is further limited to 1 EUR per game. All these measures are conscious efforts to impose stringent control on online betting.

---

<sup>183</sup>Section 4 (4) GlüStV

<sup>184</sup> Joint guidelines of the highest gaming supervisory authorities of the federal states with regard to offers of virtual slot machine games<sup>1</sup> and online Poker on the basis of the circular resolution of the Heads of the State and Senate Chancelleries on September 8, 2020

<sup>185</sup> DLA Piper, Update: German Gambling Regulation 2021 Transitional Regime. Lexicon Library, October 5, 2020.

The jurisprudence reflected by the court rulings and regulatory objective suggests a restrictive approach—that all forms of Gambling remains banned and illegal unless expressly accepted by the regulations. The restrictive stance has been clear in the German Interstate Treaty on Gambling of 2012, official communication of head of states clarifying the 2021 treaty implementation, and key court cases. The judgment in *Higher Administrative Court North Rhine-Westphalia*<sup>186</sup> clarified three objectives of German gambling regulations: to protect the minors, to protect the gamblers (players), and to combat the back markets mushrooming in the gambling industry. The court took the view that these were the foundational basis in Interstate Treaty of 2012. These objectives remain applicable to the 2021 amendments since provisions relating to objectives were not subject to amendments.

## **Netherland**

### *Overview*

Netherlands is among the EU countries that have showed progressive development in her gambling regulation and policy in the recent years. The legislative regulation of land-based Gambling can be traced back to 1960s through enactment of the Betting and Gambling Tax Act 1961 (BGTA)<sup>187</sup> and the Betting and Gambling Act 1964.<sup>188</sup> The two laws generally legalized games of chance.<sup>189</sup> None of the legislations made reference to common general categories such as betting or game. With the evolution of remote Gambling and expansion of de-facto market, the country embarked on reforms to make provisions for regulating the market and protecting public interests as well as consumers.

These considerations culminated to a prolonged and controversial debate on the Remote Gambling Bill in both parliamentary houses. The nations' House of Representatives eventually passed the Bill in July 2016, paving the way for Senate's consideration. The Senate finally passed the Bill into a Law in February 2019, with the effective date being set two years later.

---

<sup>186</sup> Higher Administrative Court North Rhine-Westphalia, judgment of February 25, 2014, file no. 13 A 2018/11.

<sup>187</sup> The Betting and Gambling Act 1964 (*Wet op de kansspelen*) (BGA), Netherlands

<sup>188</sup> The Betting and Gambling Tax Act 1961 (*Wet op de kansspelbelasting*) (BGTA).

<sup>189</sup> See Article 1(1)(a) of the Betting and Gaming Act (the Act) for definition



The Remote Gambling Act, therefore, become operational with effect from April 1, 2021, creating a new regime for an area in Gambling that was traditionally not regulated.

The gambling industry is now subject to multiple legislative and policy frameworks; all centered on a prohibited-unless-licensed approach. While open licenses are available for sports betting<sup>190</sup> and Casino games<sup>191</sup> under BGA, the lottery remains highly restricted. The state enjoys a monopoly with exclusive license for state lottery<sup>192</sup> subject to restricted conditions of no more than 69 draws per year, ticket price not exceeding EUR 30 and facilitating sales of the ticket either online or through retail shops. There is a further condition to return not less than 60% of the stakes to the players. The most notable change introduced by the Remote Gambling Act is the provision of licensing of two general categories: sports betting and remote casino gaming. With the legislative reforms, Netherlands now joins the majority group among the EU nations that have decided to legalize, license and tax revenues generated from online gambling.

### *Jurisprudence and Taxation*

A defining feature of Netherland's gambling jurisprudence is the multiplicity of the legislative and regulatory framework applicable to Gambling. The most fundamental legislation is Gambling Act 196 (BGA)<sup>193</sup> as it sets the general approach to regulating Gambling. BGA takes a restrictive prohibited approach, to the effect that Gambling is considered to be illegal unless otherwise licensed pursuant to the law. Article 1 of Article 1(1) (a) of the BGA provides a definition of game of chance as games that *'provide an opportunity to compete for prizes or premiums'* and *"if the winners are designated by means of any calculation of probability over which the participants are generally unable to exercise a dominant influence"* and *"unless a license has been granted therefore, under this law"*.<sup>194</sup>

---

<sup>190</sup> See Articles 15 to 22.

<sup>191</sup> On slots machine, applicable provisions include Art. 23 to 27 BGA. Also, see.RGA as read with Remote Gambling Decree (Besluit kansspelen op afstand) (RGD) 2020; Remote Gambling Regulation (Regeling kansspelen op afstand) (RGR) 2020

<sup>192</sup> *Articles 8 and 9, BGA*

<sup>193</sup> Gambling Act 1964 (*Wet op de kansspelen*) (BGA)

<sup>194</sup> Article 1(1)(a) BGA

In essence, this definition considers three core elements: presence of a prize or a premium opportunity; (b) probability and lack of player's ability to influence the outcome as the defining elements of a game of chance; (c) provision of a license under BGA. Unlike in other jurisdictions such as Austrian,<sup>195</sup> the player's knowledge and experience are not parameters for defining the game of chance. A more important feature of this definition is that it does not require a consideration since a player placing a stake is not an element of the game of chance. By implication, any gambling activity that is not a gaming of chance will be deemed illegal and lacking a basis for legality. Article 1(1) b prohibits any person from knowingly of an unlicensed game of chance, while 1(1) c of BGA prohibits participation in such games.

For the taxation framework, the most vital law is the Betting and Gambling Tax Act 1961 (*Wet op de kansspelbelasting*) (BGTA), which provides for licensing and taxation of a game of chance. This Act has dealt with the definition of a prize and premium, defining them to include "all goods to which economic value can be attached, which accrue to the participants in the game of chance by virtue of their participation."<sup>196</sup> This definition clarified the terms, supplementing BGA, which has mentioned but not clarified the meaning of "prize and premium."<sup>197</sup>

The Remote Gambling Act<sup>198</sup> that came into effect on April 1, 2021 is the last substantive legislation, providing a framework for licensing of selected online games of chance-sports betting and casino. There is a raft of secondary legislation seeking to operationalize the main legislations and to refine further regulation of the gambling industry.

A number of decrees have been passed to defined rules on taxation, spending limits, and specific games of chance that can be licensed and licensing terms. Among them are Games of Chance Decree 1997<sup>199</sup> Remote Gambling Decree (RGD)<sup>200</sup> and Remote Gambling Regulation (RGR) 2020.<sup>201</sup> There are also decrees that restrict advertisement of Gambling or recruitment of gamblers, including Decree recruitment advertising and addiction prevention (RRAAP)

---

<sup>195</sup> Judgment 232.752 of the Council of State , October 29 2015 (Gamepoint).

<sup>196</sup> Art. 3(2) BTGA

<sup>197</sup> In Article 1(1)A

<sup>198</sup> The Remote Gambling Act (*Wet Kansspelen op Afstand*), KOA

<sup>199</sup> Games of Chance Decree (*Kansspelenbesluit*, December 1 1997).

<sup>200</sup> Remote Gambling Decree (*Besluit kansspelen op afstand*) (RGD) 2020

<sup>201</sup> Remote Gambling Regulation (*Regeling kansspelen op afstand*) (RGR) 2020

2013<sup>202</sup> and Decree recruitment advertising and addiction prevention (DRAAP) 2013.<sup>203</sup>The rules relating to slot machine are founded in two regulations, namely Slot Machine Regulation 2000<sup>204</sup> and Slot Machine Decree 2000.<sup>205</sup>

The need to align the existing legal framework with the EU legal regime has always been a policy consideration in Netherland's gambling law reforms, especially in regards to the remote gambling legislations. The Dutch constitutional advisory body, the Council of State, underscored the need to ensure horizontal consistency with the EU laws and other existing legal regime. Their caution to the state was that while the EU law makes a provision for allowing a licensing system for remote games of chance, it was necessary to consider consequences on markets that had stricter controlled market. As noted by the Council, "in light of the European legal framework, the question arises as to whether the intended step of introducing a licensing system for remote games of chance will lead to (much) less restrictive policies being introduced for other market segments."<sup>206</sup>The idea was to ensure that the new regime does not dilute the public policy protections already advanced under the EU laws. Such concerns were founded, considering that the European Commission, as the custodian of the EU treaties could initiate infringement proceeding against a state with inconsistent law. There has not been an infringement proceeding against Netherlands in the context of online gambling regulations. However, they have come up in a different context, notably in the context of transparency in license allocation, for instance *Sporting Exchange*.<sup>207</sup>

The judicial jurisprudence on license allocation transparency is well founded in the ECJ rulings and the domestic judgment. *The Sporting Exchange*<sup>208</sup> case remains a landmark ruling that provided the guidelines for licensing considerations and environment. In the preliminary ruling by the Court of Justice of the European Union<sup>209</sup> held that failure to exercise transparency

---

<sup>202</sup> Decree recruitment advertising and addiction prevention (*Regeling werving, reclame en verslavingspreventie kansspelen*, 24 June 2013) (RRAAP).

<sup>203</sup> Decree recruitment advertising and addiction prevention (Besluit werving, reclame en verslavingspreventie kansspelen, 7 May 2013 (DRAAP)

<sup>204</sup> Slot Machine Regulation (*Speelautomatenregeling 2000*, May 25 2000).

<sup>205</sup> Slot Machine Decree (*Speelautomatenbesluit 2000*, May 23 2000).

<sup>206</sup> Netherlands, Tweede Kamer, Advies afdeling advisering Raad van State en nader rapport, 33 996 no 4 (2013-2014) at 22 (Document translated from Dutch, the original language)

<sup>207</sup> *Sporting Exchange Ltd v Minister van Justitie*, C-203/08, [2010] ECR I-04695.

<sup>208</sup> *Ibid*

<sup>209</sup> C-203/08

in an exclusive award of licensing and in the licensing procedure was inconsistent with the democratic freedom to provide services to the applicant. Exclusive license, according to the court, would only be provided in a situation where the applicant was a private provider who is subjected to strict control of the State. In the cases where the provider is a public agency, the court indicated the need for a direct control of the provider by a Council of State. In the final judgment, the court reached a conclusion that a single horse-race betting license and single sports betting did not meet these qualifying features (for exclusive license) for reasons that they were not under strict control. As such, any allocation of license (single licensing) was subject to transparent and accountable license allocation procedures. The implication of this ruling is that it limits any form of monopoly in licensing for gambling services, whether by State or private, unless the conditions for strict control has been exercised. Further, the ruling has fundamentally improved the states' commitment to ensuring transparency in licensing for games of chance, to forestall possibilities of adverse judicial review actions by aggrieved parties.

One vital case referred to the European Court of Justice (from Dutch courts) on issues of transparency and consistency with EU laws was made in *Ladbrokes Betting & Gaming Ltd v Stichting de Nationale Sporttotalisator*<sup>210</sup>, where the applicant sought a declaration that granting state monopoly in the operation of betting was incompatible with the EU laws. This case was referred back to the Supreme Court of Netherlands, which made a ruling to the effect that the monopoly compatible with the EU laws as there were oversight safeguards. The Council of State however overruled this decision in a subsequent decision, holding that absence of transparency on the part of licensing agency was unjustifiable and untenable under EU laws.<sup>211</sup> This ruling was a progressive one, as it offered an impetus for the citizens and operators to start challenging state monopoly in other context. The threat to mass challenge to monopoly provision partly explain why the state considered liberalizing online gambling while making to remotes gambling laws; trying to avoid massive cases that were witnessed after the Council of State ruling.<sup>212</sup>

---

<sup>210</sup> *Ladbrokes Betting & Gaming Ltd v Stichting de Nationale Sporttotalisator*, C-258/08, [2010] ECR I-04757.

<sup>211</sup> *Ladbrokes Betting & Gaming Ltd v Stichting de Nationale Sporttotalisator*, C-258/08, [2010] ECR I-04757.

<sup>212</sup> Littler, Alan, and Johanna Jarvinen-Tassopoulos. "Online gambling, regulation, and risks: A comparison of gambling policies in Finland and the Netherlands." *JL & Soc. Pol'y* 30 (2018): 100.

In relation to sanction for breach, two broad categories are available. First is the administrative sanction for breach of specific provisions, in which there Gambling Authority takes an administrative measure including administrative fines and withdrawal of licenses. Offering unlicensed game of chance<sup>213</sup> or promoting unlicensed game of chance,<sup>214</sup> for instance are offence attracting a penalty up to €870,000, or 10 per cent of the turnover (whichever is higher). The administrative fine for breach of 1(1) (a) start at €200,000.

Criminal sanctions are available for breach of sections that create criminal liability, and will ideally be resorted to as in second priority when administrative actions are not viable. Breach of Article 1(1) a and b are criminally punishable with a maximum fine of €21,750. Earning proceeds from unlicensed game of chance, exceeding one-quarter of €21, 750, would aggravate the fine, to a penalty of up to €87,000. The offence of knowingly taking part in unlicensed game of chance is an offense under BGA,<sup>215</sup> and should attract a fine of €8,700. However, it has been contended that in practice, the provision is never invoked.<sup>216</sup> It is equally unlikely that criminal law sanctions will go on concurrently with the criminal law, in practice.

The taxation regimes vary depending on whether it is land-based or online-based regimes. The land-based gambling tax rate is fixed at 30.1% of the gross gaming revenue. On the other hand, the tax rate under the RGA will be 29%, even though previously it was 30.1% due to the absence of operational laws for remote Gambling.<sup>217</sup> In addition, remote Gambling will be subject to a further 1.5% GGR gaming levy fee and another 0.25% GGR contribution towards the addiction prevention fund. It should be noted that the taxation rate for remote gaming is much lower than what was initially suggested in Remote Gaming Bill (20%).

### *Regulator*

Netherlands has independent regulatory authority in charge of Gambling, the Netherlands Gambling Authority (*Kansspelautoriteit*) (NGA). Founded on April 1, 2012, the

---

<sup>213</sup> Contrary to Article 1(1)(a)

<sup>214</sup> Contrary to Article 1(1)(b)

<sup>215</sup> Contrary to Article 1(1) c

<sup>216</sup> Alan Littler, Kalff Katz & Franssen, *The Gambling Law Review: Netherlands*. *The Law Reviews*, June 7, 2021. Accessed July 9, 2021, <<https://thelawreviews.co.uk/title/the-gambling-law-review/netherlands> >

<sup>217</sup> See Remote Gambling Regulation (Regeling kansspelen op afstand) (RGR) 2020

NGA mandate includes enforcement of gambling laws and regulation, supervision, and licensing of gambling operations.<sup>218</sup> There is an ongoing reform in the Netherlands gambling regimes that will allow the NGA to issue licenses for remote Gambling. This entity works closely with the Ministry of Justice and Security (*Ministerie van Justitie en Veiligheid*), which has the constitutional mandate to formulate gambling policies. However, in practice, NGA participates very actively in policymaking and usually serves as the technical entity and originator of key gambling regulations. For instance, the NGA formulated and published a Guide on Assessing Games of Chance (*Leidraad beoordeling kansspelen*).<sup>219</sup> This is essentially a policy document, in the sense that it guides on the parameters for determining whether a game qualified to be “a game of chance.”

### *Online Gambling*

Online Gambling is now regulated as a remote gambling, under the newly established legislation, the RGA. RGA identifies sports betting and casino as two licensing categories in online game of chance. However, definition of remote Gambling is explicitly provided for in the RGA as those which are 'provided at a distance using electronic means of communication and in which a person participates without having any physical contact with the party providing this opportunity or the party which makes space and resources available for participation.'<sup>220</sup> The RGA adopts this definition.<sup>221</sup> Considering the definition adopted, there are likelihood of expanding the scope of licensable modes of online Gambling, as it remains untied to a single type of apparatus, means, or distance of communication. The remote gambling regime generally takes a prohibitive licensing approach, to the effect that remote Gambling will remain illegal unless licensed.

In terms of products, the licensing categories cover both gaming products and betting products. The gaming products that will be licensable under RGA include Casino gaming, Poker,

---

<sup>218</sup> Kansspelautoriteit. Gambling and Gambling. Accessed July 8, 2021 < <https://kansspelautoriteit.nl/english/> >

<sup>219</sup> The Guide on Assessing Games of Chance (*Leidraad beoordeling kansspelen*), 2018. Accessed July 8, 2021, < [https://kansspelautoriteit.nl/publish/library/6/guide\\_on\\_assessing\\_games\\_of\\_chance.pdf](https://kansspelautoriteit.nl/publish/library/6/guide_on_assessing_games_of_chance.pdf) >

<sup>220</sup> Article 1(1)(a) of the BGA

<sup>221</sup> See *Article 31(1), RGA*

and bingo. Casino gaming includes casino table games and slot machines.<sup>222</sup> Under the betting category, licensable products include fixed odds (sports) betting, sports, and horse race betting.<sup>223</sup> Live betting, pari-mutuel betting, short-odds bingo, and fantasy betting (league or portfolio selection in sports shares). A virtual sport in which an online random generator determines the outcome is considered under a casino license rather than a sports license. Betting on non-sports events and online lotteries such as long odds bingo has no licensing provisions and is prohibited.

## **Portugal**

### *Overview*

Portugal, like many other countries, has kept gambling out of its centuries-old legal tradition. The fortunes of gambling did not turn for the better until Decree No. 14.463 of December 3, 1927. The Civil Code of Portugal in 1867 pointed out that "gambling is an inadmissible means of making money", and the Criminal Code of Portugal in 1886 directly prohibited gambling either as a profession or as a leisure activity.

However, history has proved that the law cannot extinguish the public's desire for gambling, which is why the prologue to Decree No. 14.463 says that "prohibitions cannot refute the fact that gambling exists". The creation of gambling laws resonates with legislators after weighing the pros and cons -- the best way to deal with gambling is to study and regulate it, which is the root of preventing lawlessness, rather than simply "ban" it by law.

The establishment of monitored gambling institutions or locations guarantees that the necessary circumstances for gambling activities are met, ensures credibility among people, and eliminates the growth of illegal gaming, which frequently has negative consequences. Taxation is a crucial mechanism for Portugal to balance interests and control activities through the national government, whether today or in the past.

In 1989, the publication of Decree-Law No. 422/89, of 2 December, systematized the regulatory provisions governing the matter, envisaging all the types and forms of operating

---

<sup>222</sup> Art. 23 to 27 BGA.

<sup>223</sup> See Articles 15 to 22.

games of chance existing at the time. Decree No. 422/89, issued on 2 December 1989, followed the line of Decree No. 14.463 of 1927 to make the tax system clearer and more standardized. As a result, a special tax mechanism was established -- the Special Gambling Tax (IEJ).

The IEJ is a reflection of the transformation of the status of the Portuguese gambling industry, which in its purest form keeps the state and the direct interests of gambling to a certain extent, but also affirms that the game of luck is accommodated by legislators.

Although Decree No. 422/89 has been amended several times, it has always retained its fundamental principles and form, and its regulatory intent is not to interfere with activities involving the public interest. The understanding here may be that gambling is not some kind of general interest activity that people should follow, so the focus of regulation is placed on preventing the spread of illegal activities.

However, new technologies have caused much consternation for Decree No. 422/89. The way gambling activities operate has experienced technological advancement, and the regulatory framework has unavoidably lagged behind. The regulation of games of chance requires this kind of "punctuality" because markets are dynamic and gambling patterns change. Neither cracking down on unregulated gambling nor ensuring the transparency and balance of gambling activities can deviate from the predicament of legal vacuum.

It's as if history has reached a crossroads, as it did in Portugal in 1927, when lawmakers were unable to regulate the game of chance through the legal system. Now that the necessity to regulate online gambling is so pressing, a specific regulatory framework is a desired tool for providing a legal shield for players, operators, and citizens.

### *Jurisprudence and Taxation*

Portugal has a strict legal framework for both land and online gambling. In Portugal, games of chance should be penalized in accordance with the general principles of prohibition, work and conditions stipulated by the criminal law. The government authorizes private organizations to directly operate one or more games under the system they deem the most



appropriate. The Gambling Law defines the legal framework for land-based gambling, operating in Portuguese casinos or on ships or registered ships<sup>224</sup>

Private enterprises may be authorized to operate gambling by obtaining a Portuguese gambling concession or license, but only under the supervision of Gambling Inspection and Regulation Service (SRIJ) and in accordance with the provisions of various legal frameworks. State-owned enterprises operate as monopolies under the authority of Santa Casa da Misericórdia de Lisboa (SCML) and are supervised by the Ministry of Labour and Social Security.

This activity is contingent upon the State granting a concession. The authority to run casinos is, in principle, reserved for the State and may be exercised only through concessions provided by the State through administrative contracts with entities constituted as public limited companies. These games are permitted exclusively in casinos located in gaming areas specified and regulated by legislative act.

The Gambling Act also sets out rules regarding categories akin to games of chance, which are based on chance and knowledge or solely knowledge, and award prizes of economic value. These types of games include raffles, tombola, lots, advertising contests, intelligence games and competitions.

Raffles, tombola, lotteries, contests, intelligence games, and competitions are all subject to prior government authorization, which is given on a case-by-case basis and is accompanied by certain requirements. To run these sorts of games, the Ministry of Internal Affairs must provide authorization, which will establish the operating conditions and inspection regime.

Also stipulated in the Gambling Act is that organizations operating these games must be non-profit organizations (except in the case of competitions of knowledge, hobbies or other similar activities organized by newspapers, magazines, radio or television stations, and advertising contests for the promotion of goods or services), and that they must do so in a manner that does not impose any additional costs on the participants. Additionally, it states that

---

<sup>224</sup> Decree-Law No. 422/89, of 2 December, amended by Decree-Law No. 10/95, of 19 January, Law No. 28/2004, of 16 July, Decree-Law No. 40/2005, of 17 February, Law No. 64-A/2008, of 31 December, Decree-Law No. 114/2011, of 30 November, Decree-Law No. 64/2015, of 29 April, Law No. 42/2016, of 28 December, Law No. 114/2017, of 29 December, and Law No. 49/2018, of 14 August.

they must do so in a way that does not impose additional expenses on players, does not incorporate themes associated with games of chance, and does not let participants to exchange granted rewards for money or chips.

It is important to note that in addition to the games of luck and other types of games that operate in casinos, airplanes or registered ships, there is also a "national social game" that involves lotteries and mutual betting. The right to operate this national social game is owned by the state, meaning that Santa Casa da Misericórdia de Lisboa ( SCML) has the exclusive right to organize and launch such games in the entire Portuguese jurisdiction.<sup>225</sup>

A national social game can be a lottery or a betting, which is a game in which participants use predictions to judge or guess the outcome of one or more matches (also in the form of a number draw).<sup>226</sup> It is now known that gambling activities can be carried out through the Internet or other communication devices, which is why Decree No. 282/2003 of 8 November 2003 adjusted the framework of the rules relating to bettings and lotteries.

The goal of this decree was to permit the SCML to distribute their products electronically and to extend their exclusive right to exploit games offered in electronic form on the Internet, effectively restricting any other operator from using such means. The advancement of digital technologies, as well as the appearance of online gambling, necessitated the regulation of this activity, as the previous regulation, the Gambling Act, did not keep pace with this progress. As a result, the Legal Framework for Online Gambling and Betting ("RJO"<sup>6</sup>) was enacted, establishing the essential legal framework for the regulation of this activity, driven by the European Commission's recommendations and the achievements of other pioneering nations.

RJO was formed by Decree-Law No.66/2015 and regulates the operation and participation in games of chance, fixed-odds sports bets, totalizator/paris mutual, and fixed-odds

---

<sup>225</sup> Article 1 (1) of Decree-Law No. 84/85, of 28 March, amended by the Decrees-Law Nos. 389/85, of 9 October, 387/86, of 17 November, 285/88, of 12 August, 371/90, of 27 November, 174/92, of 13 August, 238/92, of 29 October, 64/95, of 7 April, 258/97, of 30 September, 153/2000, of 21 July, 317/2002, of 27 December, 37/2003, of 6 March, 200/2009, of 27 August, and 114/2011, of 30 November.

<sup>226</sup> Regarding land based totalisator/paris mutual horse racing bets, the right to operate these type of bets is exclusive of the State, which grants Santa Casa da Misericórdia de Lisboa the right to organize and explore, exclusively for all national territory, land based totalisator/paris mutual horse racing bets (Decree-Law No. 68/2015, 29 of April)

horse racing bets, when conducted remotely, electronically, through information technology, telematics, and interactive media, or by any other means (online gambling and betting).

The RJO technically applies to the entire territory of Portugal, but according to its terms, the following games are excluded from its scope: Gambling and betting through terminals used exclusively for offering gambling or receiving bets put in locations which, in line with the legislation, have been officially approved for that purpose; National Lottery (Lotaria Nacional); Totalizator/paris mutual bettings; The Joker raffle; The Instant Lottery (Lotaria Instantânea); Football Pools (Totogolo); EuroMillions (Euromilhões); Social national games; Land-based fixed-odds sports bets; Land-based totalizator/paris mutual horse racing bets; Land-based games of chance operated in casinos, or outside of Bingo.

Amounts paid to enter contests or lotteries are expressly excluded from Value Added Tax ("VAT"). Because of this exemption, these amounts are subject to Stamp Tax. As a result, the amounts paid will be subject to a 25% stamp tax, which shall be levied to the contest or lot participant.

Likewise, the prizes awarded are also subject to Stamp Tax at a 35% rate (if the prize is in cash) or 45% rate (if the prize is in kind). Prizes should be publicly announced net of tax, which means that the value of the prizes should suffer a gross-up to take into account the Stamp Tax due. However, whenever the contest or lot is organized by a non-profitable entity that qualifies as a Private Institution for Social Solidarity ("Instituição Privada de Solidariedade Social") or Public Use Entity ("Pessoa Coletiva de Utilidade Pública"), that develops charitable activities, an exemption will apply and the abovementioned stamp tax on both the participation amount and prizes will not be due<sup>227</sup>.

Any bets and prizes in connection to forms of gambling or betting that are covered by the RJO or are outside the scope of contests or lots (i.e. other situations that are covered by the Gambling Act) will be exempt from VAT and excluded from Stamp Tax as they are covered by the tax on gambling or the special tax on online gambling.

Depending on whether or not the game or the bet is considered to be included in the RJO, the applicable tax regime will apply. As such:

---

<sup>227</sup> Article 7 (1) (p) of the Stamp Tax Code

a) If the game or the bet is considered as being integrated in the of the RJO, then the entity will be exclusively subject to the Portuguese special tax on online gambling. Under this tax, the entity will be subject to a fixed rate of 15% on the first EUR. 5,000,000.00 of gross profit, and a progressive rate of up to 30% on the part of the gross profit that exceeds this amount. No further taxes will apply. <sup>228</sup>

b) If the game or the bet is organized by an entity that has a gam- ing concession under the Gambling Act, then the entity will be exclusively subject to the Portuguese special tax on gambling. Under this tax, the entity will be subject to variable rates up to 35% (depending on the location of the concession and the type of game) applicable to both the initial capital involved in the gambling and the gross profit of the game (Articles 84 to 87 of the Gambling Act). No further taxes will apply. <sup>229</sup>

c) If the game or bet is considered as not being integrated in the scope of the RJO, then the entity will, in general, be subject to the following taxes:

i) Corporate Income Tax on net profits, at a fixed rate of 21%, to which municipal surtax (1,5%) may accrue depending on where the entity has been incorporated, as well as State surtax (up to 9%) depending on the total net taxable profit ;<sup>230</sup>

ii) Stamp tax at a fixed 25% on the amount of each bet (item 11.1. of the Stamp Tax General Schedule); and

iii) Stamp Tax at a rate of 35% on the prizes (assuming cash prizes) - item 11.2.2. of the Stamp Tax General Schedule. Please note the prizes should be announced the net of tax (under the Portuguese regulatory norms) and, as such, this stamp tax implies a gross-up of the value of the prizes that are announced to the public to ensure that their net value (after Stamp Tax) is actually paid to the winners.

Taking the above into account, there is a direct tax benefit that derives from having the game regulated under the RJO, as this will generally ensure a lower tax burden under the Portuguese special tax on online gambling.

---

<sup>228</sup> Corporate Income Tax - Article 7 of the Corporate Income Tax Code - or Stamp Tax - item 11.1. of the Stamp Tax General Schedule

<sup>229</sup> Id.

<sup>230</sup> Articles 1, 2 and 7 of the Corporate Income Tax Code

### *Regulator*

The Serviço de Regulação e Inspeção de Jogos (SRIJ) is the gambling regulator of Portugal, responsible for controlling, inspecting and regulating all gambling activities in Portugal. Also, the licensing procedure of online gambling and betting is conducted by the "SRIJ" of the Portuguese Institute for Tourism ("Instituto do Turismo de Portugal, I.P."). The SRIJ is also the supervisory entity for online gambling and betting bets.

### *Online Gambling*

Portugal has been seeking to amend the legislation since 2014, following the European Gaming Association's and major gambling enterprises' recommendations, modifying Santa Casa's monopolistic strategy and completely opening the online gaming market in May 2015.

The Decree-Law No.66/2015 does not set a limit on the number of licensees. Any applicant who is a public limited liability company, headquartered in a European Member State or the European Economic Area, may apply for a Portuguese gambling license.

Restrictions on the types of gambling items were lifted, and casino games and sports betting were all allowed to be operated online. The decree-law requires entities to have a reliable tax and social security record, with a minimum deposit of 500,000 euros and a further increase of 600,000 euros for online gambling.

In addition, the Decree-Law No.66/2015 would block unlicensed gambling websites for regulatory and fiscal purposes. If caught, unlicensed operators can be sentenced to up to five years in prison. On the taxation front, the Decree-Law introduced a tiered taxation rate. Casino games and Texas will receive 15% of the revenue of less than 5 million euros. Above 5 million euros, the tax rate increases by 3% for each million euros, with a maximum charge of 30% of the profits. For sports betting, 8 percent of the revenue will be paid if the revenue is less than \$30 million, with a ceiling of 16 percent.

After the introduction of the Decree-Law 2015, many well-known gambling entities welcomed and hoped to expand the Portuguese market. But there are limitations. For one thing, the decree covered only online gambling, not land-based gambling. Santa Casa will still have a monopoly.

On the other hand, the tax rate of land-based gambling is not affected by the decree. Compared with the low tax rate of land-based gambling, the high tax rate of online gambling is not competitive enough, which tests the fairness of the market again.

### **Concluding Remarks**

This paper tries to clarify a point that even if the legalization of gambling has been recognized to some extent in some jurisdictions around the world, it does not mean that people can choose their favorite form of gambling unscrupulously.

Like any other industry, the gambling industry is built on demand for its product and people are always willing to gamble. However, although gambling can be regarded as a consumption activity, it is not a consumption activity that must be consumed after all. In a certain sense, the gambling industry is also a demand caused by supply and released by policy. In other words, it is demand that can be prohibited by harsh laws, hence the most stringent government regulation of the gambling industry. With the progress of transportation, finance and communication means, the relationship between the gambling industry and the national economy is getting closer and closer. More and more countries and regions begin to design or adjust their own or regional gaming regulatory system and gaming development policies. Therefore, the gambling legal framework of different countries has its own advantages and characteristics.

From the perspective of the gambling management system in the United States and the European Union, the former is the government supervision and licensing of the private management system, while the latter is the government monopoly management system. This paper lists the legal frameworks of the United States and some typical EU member states as the premise of comparative law analysis.

From the perspective of the degree of regulatory independence, American state governments have set up relatively independent regulatory agencies for the gambling industry. Among them, the National Gaming Commission is a legislative body, but it is not subordinate

to any branch of the executive, judicial and legislative system. It is an independent gambling regulator. This is also reflected in the composition of the membership. The Gaming Commission's membership rules are subject to no more than half of the members of political groups, all of whom are appointed by the governor.

Each State Gaming Control Bureau or State Gaming Enforcement Bureau is a law enforcement agency, which is also independent. Its membership is required not to be officials of any political group, and not to have more than half of its members from the same political party. And members cannot be dismissed for the duration of their term except voluntarily or for negligence, ensuring that the Gaming Control Board is immune to party competition.

EU member states, such as France, do not have an independent (dedicated) gaming regulator, the national budget ministry is responsible for gaming regulation, and local governments do not have gaming regulatory authority.

The government has set up a special gaming regulatory body under the Secretary of State, the Gaming Regulatory Commission, as the main regulatory body, as well as the National Lottery Commission and the Court of Gaming Appeal, which are not affiliated to any particular department of the government.

From the perspective of the differences in the allocation of rights, the gaming regulatory rights in the United States are mainly exercised by the states, and the regulatory rights of the states are concentrated in a special gaming regulatory agency. Mainly because it is a federal country, the state to establish a sound management of the state's various institutions and institutions. EU member states, such as France, have established a state-controlled gambling enterprise to be supervised by directors and supervisors, mainly because it is closely related to its economic management system.

What the United States and the European Union have in common is that law enforcement officers independently monitor the scene 24 hours a day, investigate violations of laws and regulations, and punish violators in accordance with the rules and regulations. These include underage gambling, fraud in gambling activities, possession of fraudulent equipment, and violation of the ban by persons barred from casinos.

From the perspective of the difference in tax declaration system, at the initial stage of the legalization of casinos in the United States, only a few dozen dollars of monthly fees were

levied on gambling tables and machines. It was not until 1945 that gambling tax was formally levied at a 1% tax rate on casinos with quarterly revenue of more than 3,000 dollars.

States government on gambling by the government "internal control" standards and enterprise accounting system with the combination of gambling tax system, namely the enterprise accounting system should be in accordance with the government of "internal control" are not allowed to build pattern design, taxpayers, according to the requirements of the government make the tax returns of a month at a fixed time fill in last month's income and tax payable, real-time paying taxes. Most European Union member states have a government monopoly on gambling and a different tax filing system than the United States, implying that gambling-related enterprises must declare taxes in the same way as government-controlled enterprises.

From a distributional standpoint, the distribution of gaming taxes in the United States differs by state. Generally, a portion of the distribution is given to national or local financial agencies, while the remainder is sent to the appropriate gambling tax administration departments. The allocation and usage of gambling taxes differ from country to country in Europe, but there are certain similarities. The government mandates that the gambling tax, after subtracting any amounts that must be repaid to the government or any taxes on issuance, would be passed over to the federal government's Treasury Department.

As a result, the state is relieved of the need to establish a specific department for the use of gambling tax funds, and the gambling tax revenue will not be used and controlled independently. However, the public welfare of gaming cannot be demonstrated independently.

Contrary to popular belief, sports betting has long been outlawed in the United States, where professional sports has been excellently established for a long time. In the European Union, by contrast, sports betting has long been seamless with professional leagues. Without a doubt, the legalization of sports betting is a double-edged sword. In today's materialistic age, whether it's the World Cup or just a little tournament, betting on a game for tens of millions of dollars may attract a large number of professional players, cause some to violate the fair play, and surely cause significant damage to events and participants. Along with the expansion of sports betting, the law should be tightened to prevent professional players also betting platforms from engaging in criminal activity.



Since 2008, several European Union member states have integrated internet gambling into the economic mainstream. Amazingly, online gambling has been legalized in a number of countries, including Ireland, Italy, Denmark, Switzerland, Spain, Germany, Greece, Australia, Belgium, the Czech Republic, Cyprus, Colombia and Canada. Europe has become the world's largest online gambling market, with revenues of \$29.3 billion just a decade ago. For many countries, the annual tax revenue of hundreds of millions of dollars is a major concern. Legalization of online gambling will effectively prevent more illegal online gambling, save the manpower and material resources needed by the police to arrest, and protect the interests of Internet users in the long run. This is just as dangerous as underground gambling, but now big entertainment casinos are a part of people's lives, driving economic growth and creating many jobs. It seems that between "complete elimination" and "taxation, regulation", the more advantageous option has emerged. Because of the moral, religious and cultural aspects of gambling, and the lack of specific industry-specific gambling regulations at the European level, EU member states can determine their level of (consumer) protection on their own in accordance with the overall interests they pursue.

The lack of uniformity in the gambling industry at the European level has led to a fragmentation of laws, with consumers and operators equally exposed to 27 different national legal systems. This is the biggest challenge facing the gambling unit in the EU -- legal uncertainty, requiring that in terms of its effectiveness, especially where it may have an adverse impact on individuals and businesses, the legal rules must be clear, accurate and predictable.<sup>231</sup>

The certainty of law requires that the content of its regulations must be explicit and predictable. In principle, member states have considerable discretion in regulating the gambling industry. But member states tend to follow their political inclinations in their decisions. This requires higher requirements for legal certainty. Firstly, these regulations need to be in line with EU laws. Secondly, online gambling is increasingly popular, and the number of illegal activities is increasing.

Moreover, legalizing online gambling does not ensure that illegal operators will disappear, and it raises new regulatory challenges -- there is no guarantee that the product is not

---

<sup>231</sup> Case C-72 & 77/10, *Costa*, 2012 E.C.L.I. EU 80, paraio. 74.

being purchased by people who are hiding their age, using someone else's identity or other malfeasances. It's worth noting that legalizing online gambling doesn't always bring benefits to the government. For example, despite being the one of the first countries to liberalise online gambling, Britain's gambling tax has not been increased significantly.

## Bibliographies

### *Treaties, Legislations and Regulations*

- 1931 Statutes of Nevada, ASSEMBLY BILL 98, available at <https://www.leg.state.nv.us/Statutes/35th1931/Stats193102.html>
- Nevada's Online Gaming Regulations Changes Adopted December 22, 2011, Regulation 5A (Operation of Interactive Gaming), available at [https://gaming.unlv.edu/reports/NV\\_online\\_reg\\_changes.pdf](https://gaming.unlv.edu/reports/NV_online_reg_changes.pdf)
- Gaming Statutes & Regulations, Nevada Gaming Control Act and Ancillary Statutes, see <https://gaming.nv.gov/index.aspx?page=51>
- U.S. Code § 3704 – Applicability, available at <https://www.law.cornell.edu/uscode/text/28/3704>
- U.S. Code § 1084 - Transmission of wagering information; penalties, available at <https://www.law.cornell.edu/uscode/text/18/1084>
- Statement From A.G. Schneiderman On Agreements With FanDuel And DraftKings, March 21 2016, <https://ag.ny.gov/press-release/2016/statement-ag-schneiderman-agreements-fanduel-and-draftkings>
- 31 USC 5361: Congressional findings and purpose, see <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title31-section5361&num=0&edition=prelim>
- Green Paper on on-line gambling in the Internal Market (COM(2011) 128 final)
- Research Report on Lootboxes, FPS Justice Gaming Commission, Brussels, 2018, Sept.14
- Belgian Constitutional Court annuls VAT for online games and online gambling, available at [:https://www2.deloitte.com/content/dam/Deloitte/be/Documents/tax/TaxAlerts/VATAlerts/VAT%20alert%20-%20Constitutional%20Court%20annuls%20VAT%20on%20online%20games%20and%20online%20g....pdf](https://www2.deloitte.com/content/dam/Deloitte/be/Documents/tax/TaxAlerts/VATAlerts/VAT%20alert%20-%20Constitutional%20Court%20annuls%20VAT%20on%20online%20games%20and%20online%20g....pdf)
- Judgment of 10 March 2004, Belgium Constitutional Court, No. 33/2004.
- The German Interstate Treaty on Gambling of 2012 (*Glücksspielstaatsvertrag 2012*) (*GlüStV 2012*)
- Decree recruitment advertising and addiction prevention (Besluit werving, reclame en verslavingspreventie kansspelen, 7 May 2013 (DRAAP), Netherlands.
- Decree recruitment advertising and addiction prevention (*Regeling werving, reclame en verslavingspreventie kansspelen*, 24 June 2013) (RRAAP), Netherlands.
- Games of Chance Decree (*Kansspelenbesluit*, December 1 1997), Netherlands.
- German Commerce Regulation Act
- *German Criminal Code* (Strafgesetzbuch – StGB),
- Remote Gambling Decree (Besluit kansspelen op afstand) (RGD) 2020), Netherlands.
- Remote Gambling Decree (*Besluit kansspelen op afstand*) (RGD) 2020), Netherlands.
- Remote Gambling Regulation (Regeling kansspelen op afstand) (RGR) 2020), Netherlands.

- Remote Gambling Regulation (Regeling kansspelen op afstand) (RGR) 2020), Netherlands.
- Slot Machine Decree (*Speelautomatenbesluit 2000*, May 23 2000), Netherlands.
- Slot Machine Regulation (*Speelautomatenregeling 2000*, May 25 2000), Netherlands.
- The Betting and Gambling Act 1964 (*Wet op de kansspelen*) (BGA), Netherlands.
- The Betting and Gambling Tax Act 1961 (*Wet op de kansspelbelasting*) (BGTA), Netherlands.
- The German Civil Law Code (Bürgerliches Gesetzbuch) (1900) Germany.
- The German Interstate Treaty on Gambling of 2021 (*Glücksspielstaatsvertrag 2021*) (*GlüStV 2021*)
- The Guide on Assessing Games of Chance (*Leidraad beoordeling kansspelen*), 2018.
- The Remote Gambling Act (Wet Kansspelen op Afstand), KOA

### Cases

- Case Ristic v. Machine Zone, 2016 ;
- CasePhillips v. Double Down Interactive LLC, 2016
- Case Dupee v. Playtika Santa Monica 2016
- Case Kater v. Churchill Downs Inc., 886 F.3d 784, 787, 9th Cir, 2018
- Fife v. Sci. Games Corp, No. 2:18-cv-00565-RBL, 2018 U.S. Dist. LEXIS 212908
- *Ladbrokes Betting & Gaming Ltd v Stichting de Nationale Sporttotalisator*, C-258/08, [2010] ECR I-04757.
- *Referral of the Local Court of Sonthofen in case C-336/14*, Ince.
- *Higher Administrative Court North Rhine-Westphalia*, judgment of February 25, 2014, file no. 13 A 2018/11.
- VGH München, MMR 2010, 498
- *Sporting Exchange Ltd v Minister van Justitie*, C-203/08, [2010] ECR I-04695.
- Raad van State [Council of State], The Hague, 23 March 2011, *Sporting Exchange Ltd v Minister van Justitie*, (2011) (Netherlands).
- Judgment of 6 March 2007, CJEU, Placanica, C-338/04, 359/04 and 360/04, EU:C:2006:324
- *C-294/97, Eurowings Luftverkehr*
- JUDGMENT OF THE COURT (Grand Chamber), 8 September 2010\*, In Joined Cases C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07
- VfGH (The Austrian Constitutional Court) 15 October 2016, G 103/20
- Case United States v. James, 210 F.3d 1342, 1345 ,2000
- MICHIGAN v. BAY MILLS INDIAN COMMUNITY ET AL, see [https://www.supremecourt.gov/opinions/13pdf/12-515\\_jq2i.pdf](https://www.supremecourt.gov/opinions/13pdf/12-515_jq2i.pdf)

### Secondary Research

- Online Gambling Market Size, Share & Trends Analysis Report By Type (Sports Betting, Casinos, Poker, Bingo), By Device (Desktop, Mobile), By Region (North
- George, G.f. Hshimoto, K. Casino Gaming Dictionary, Kendall / Hunt Publishing Company, 2009
- America, Europe, APAC, Latin America, MEA), And Segment Forecasts, 2020 – 2027
- Sue Schneider. Gaming Law Review and Economics. Dec 2012.711-712.

- Parke, Jonathan, Wardle, Heather, Rigbye, Jane et al (2012) Exploring social gambling: scoping, classification and evidence review. Technical Report. Gambling Commission.
- Rui Soares Pereira, Filipe Abreu, Raquel Dia, Jogos e Apostas Online em Portugal Regime Jurídico e Fiscal, 2018
- Serge Sévigny, Martin Cloutier, Marie-France Pelletier, Robert Ladouceur, Internet gambling: Misleading payout rates during the "demo" period, 2005, 153-158
- Parke, Jonathan, Wardle, Heather, Rigbye, Jane et al (2012) Exploring social gambling: scoping, classification and evidence review. Technical Report. Gambling Commission.
- Blakey & Harold A. Kurland, Development of the Federal Law of Gambling, 63 CORNELL L. REV. 923, 931 (1978)
- The Connecticut General Assembly, OFFICE OF LEGISLATIVE RESEARCH, January 3, 1994 94-R-0040
- Chris Grove, What Are The States Where You Can Play Daily Fantasy Sports?, LEGAL SPORTS REP. (last updated Sept. 4, 2019), <https://www.legalsportsreport.com/daily-fantasy-sports-blocked-allowed-states/>.
- Jeffrey C. Meehan, The Predominate Goliath: Why Pay-to-Play Daily Fantasy Sports Are Games of Skill Under the Dominant Factor Test, 26 MARQ. SPORTS L. REV. 5, 15 (2015).
- Matt LaMarca, How Does the Single-Game NBA Format on FanDuel Differ from DraftKings, FANTASY LABS, 2019, April.
- Marc Edelman, New Fantasy Sports Operators May Have Golden Opportunity to Enter New York Market, FORBES (Nov. 20, 2018).
- Bullseye Distributing LLC v. State Gambling Commission available at : <https://caselaw.findlaw.com/wa-court-of-appeals/1126633.html>
- Thomas Talos, Nicholas Aquilina, Austria: Gambling Laws and Regulations 2021, published 20/11/2020, Chapter 2.7
- Adam, Christian, Steffen Hurka, and Christoph Knill. "Four styles of regulation and their implications for comparative policy analysis." Journal of Comparative Policy Analysis: Research and Practice 19, no. 4 (2017): 327-344.
- Alan Littler, Kalff Katz & Franssen, The Gambling Law Review: Netherlands. The Law Reviews, June 7, 2021. Accessed July 9, 2021, <<https://thelawreviews.co.uk/title/the-gambling-law-review/netherlands> >
- DLA Piper, Update: German Gambling Regulation 2021 Transitional Regime. Lexicon Library, October 5, 2020.
- Hofmann, Joerg, Matthias Spit, and Jessica Maier. "Food for thought—German regulation on online gambling under the scrutiny of market data." (2016), European Gaming Lawyer, Autumn Issue, 10
- Littler, Alan, and Johanna Jarvinen-Tassopoulos. "Online gambling, regulation, and risks: A comparison of gambling policies in Finland and the Netherlands." JL & Soc. Pol'y 30 (2018): 100.
- Paul Voigt, Gambling law in Germany, Taylor Wessing, April 2015. Accessed July 7, 2021, <[https://www.taylorwessing.com/download/article\\_gambling\\_germany.html](https://www.taylorwessing.com/download/article_gambling_germany.html)>

- Regional Councils. Three regions - three regional councils: with six million inhabitants, the State of Hessen, like other states, relies on the concept of combining the main administrative tasks at regional administration offices – the provincial councils. <https://eah.hessen.de/english/point-single-contact/regional-councils>
- Strohäker, Tanja, and Tilman Becker. "Casino Gambling in Germany: Development, Legal Conditions and the Exclusion System." (2017).

