

Impacts of the online Gambling Prohibition Policy – A Comparative Survey of Brazil versus the European Union

Impactos da Política da Proibição do Jogo *on-line* – Uma Pesquisa Comparativa Brasil *versus* União Europeia

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Abstract: Online gambling is a form of gambling. Its direct ban or lack of regulation leads to loss of revenue. These are used to support the social functions of the state. In this research we analyse the estimates about the relevance of online gambling, taking as a reference the European Union where online gambling activity is allowed. These data are compared with estimates for Brazil that does not allow online gambling. Some principles on game regulation are proposed, which can serve the Brazilian case, based on the experience of European and world regulation.

Keywords: Online Gambling. Taxation. Social Purposes. Regulation.

Resumo: O jogo *on-line* é uma modalidade dos jogos de fortuna ou azar. A sua proibição direta ou por falta de regulamentação induz perda de receitas, que são usadas para apoiar as funções sociais do Estado. Nesta pesquisa, foram analisadas as estimativas sobre a relevância do jogo *on-line*, tomando-se como referência a União Europeia, já que lá a atividade de jogo *on-line* é permitida. Esses dados foram comparados com as estimativas para o Brasil, país que não permite o jogo *on-line*. Propõem-se alguns princípios sobre a regulamentação do jogo que podem servir para o caso brasileiro, tomando-se por base a experiência da regulamentação europeia e mundial.

Palavras-chave: Jogo *on-line*. Tributação. Fins Sociais. Regulamentação.

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1 Introduction

Gambling is a historical and social phenomenon considered to be a pernicious and unwanted activity. It began to be the target of absolute prohibition which practice was repressed and condemned. However, the increase in illegal gambling and its wide influence in social problems led to regulation as a way to protect society and individuals.

The legal prohibition of random gambling had mainly moral concerns and it was its vicious, if not immoral, character that was sought to be achieved. The need to safeguard heritage, security, peace and public order was invoked, avoiding feuds, schemes, fraud and other crimes.

Clímaco (2006, p. 482) points out that “[...] despite the liberalization [...], the conservative element that always involved the game for various reasons – cultural, political and above all moral [...]” still remains. Duarte (2001, p. 89) states that “[...] the values protected by the rules, particularly of a criminal nature, are good customs, property and the tax interest”. However, it is undeniable that there are negative aspects related to the practice of gambling that have important repercussions on societies, causing damage not only to themselves, but also to third parties, which can affect fundamental legal assets.

The regulation of the sector is decisive for channeling demand towards the legal supply side and adapting this supply to the markets size. It allows to control harmful aspects related to the illicit practice of games of chance, such as fraud, money laundering, corruption, tampering sports results, access by minors and compulsive gamblers and misleading advertising. However, technology emerges with all its virtues and online gambling needs that sovereign states take restrictive measures and regulate differentially these services effectively as considering sector specificities, such as the lack of direct contact, between the user and the operator, and the easy access to online games in an isolated environment, with no social control.

For more than a decade, different regimes have been in force in Europe regarding online gambling, ranging from regulated authorization, an absence of legislation to a total ban on gambling, varying between

different liberalized model degrees. As a rule, States grant licenses to entities that intend to make games available online in their territories subject to compliance with legal requirements and the payment of fees and taxes.

However, the online gaming sector is still a young (but vibrant) segment of the digital economy of our times, being one of the few areas of technology led by European companies. Despite this new paradigm, traditional operators (and monopolies) of land-based games continue to boost their offline revenues while simultaneously expand their online offering.

Thus, the purpose of this empirical research was the online game in Brazil. The European position was analyzed regarding the reality of remote gaming, systematizing the sector's evolution through the treatment of statistical elements. The data allowed us to understand the phenomenon of online gambling in all its extent, the evolution trends and the tax revenues level that it provides.

The applicable European law principles are identified and articulated with the European Union Members, which can be applied in the Federated States in Brazil. The evolution of online gaming revenues obtained in Europe and in the World was estimated and Brazil revenue losses were projected. It was observed that social gains resulted from the legalization of online gambling, adopting clear principles and establishing a complete and modern regulatory framework.

We believe that duly regulated online gambling promotes acceptable social behaviors and can be an excellent source of revenue. However, it became evident that areas of collective society were not benefiting from the gambling investments, based on the comparative experience of European game. The research was based on the consultation of bibliography, reports, monographs, legislative sources, statistical data from countries in the European Union and specifically the country under study, Brazil.

2 Online Games and Betting – A Global Phenomenon

At the end of the 20th century, the game's activity was marked by the possibility of being carried out through internet. Traditional forms of gambling (lotteries, bingos, lotos, casino games) are now available in a virtual environment, giving rise to practice of gambling in a new format - online gambling¹.

The virtual space allowed operators to develop their activity without geographical limitations and allowed players to bet remotely, anytime and anywhere. It is known that the human drive for the game is a reality, as a recreational activity that provides fun, pleasure and passion for risk. However, with the enthusiasm and emotion provided by the new gambling and gambling paradigm, a “gray”² market has emerged in parallel, where several licensed operators in their countries provide services in other territories without any authorization. With the implosion of fortune games on the internet³, those started to compete unfairly with authorized operators, with evident losses of revenue for sovereign states.

Even so, the USA, China, Russia, Pakistan and Brazil prohibit most or all forms of online gambling (WOOD; WILLIAMS, 2009). In Europe, it was Eurobet, based in the United Kingdom, in 1996, who started offering remote gaming. That year Finland granted licenses for online lottery operations to the National Lottery of Finland (VAN DER GASST, 2001). In 1998, many of the biggest online operators were already in

¹ Online gambling covers different types of games of chance, such as sports betting, casino games, bingo, poker, horse racing and promotional games, always over the internet, in a virtual environment. In the present research, the mention of «Online Game» refers to games of chance with money bets, over the internet.

² For the purposes of this research, the concept of "gray" market is used to describe markets made up of licensed operators in their countries that provide online gambling services in other states, without specific authorization to do so, under the terms of the respective national laws.

³ Games of fortune or chance are games in which the possibility of winning or losing does not depend on the player's skill, but exclusively on luck. The essence of games of chance is a decision making under risk scenarios, determined by the statistical probability of hitting the chosen combination (result, key, etc.).

activity, such as Party Gaming⁴, which started being listed on the London Stock Exchange in 2005. It is estimated that at the end of 1996 there were around 15 cash gambling sites, more than 200 at the end of 1997, 650 at the end of 1999 and 1,800 at the end of 2002 (SCHWARTZ, 2006). This data indicates that, in 2003, the commercial market for online games in the EU-25 has generated net revenues (total stake, minus the paid prizes) of 51.5 billion euros (EUROPEAN COMMISSION, 2008). According to a study by PWC (2008), that value corresponded to about 5% of the global gambling market in the EU, and it was estimated that, depending on the region, the online market has grown annually between a minimum rate of 8.4% and maximum of 17.6%.

In the article «The governments get more addicted to the tax than the players to the games», Eric Pfanner (2010) characterized the regulation of online gambling in several European countries, at a time when US Congress intended to make a 2006 law that banned gambling over the internet more severe, also making transfers from financial institutions to websites of unauthorized online operators illegal. Pfanner (2010) concluded that attempts to ban the practice of online gambling were doomed to failure, arguing that it was better to legalize tax and regulate it.

Today, there are around 4.423 online gambling sites⁵ regulated in activity, configured on virtual platforms with various types of games: poker, sports betting, bingo, casinos, lotteries and skill games, among others. According to the H2 Gambling Capital (H2GC)⁶ consultancy, the USA remains the country with the highest amount spent on online

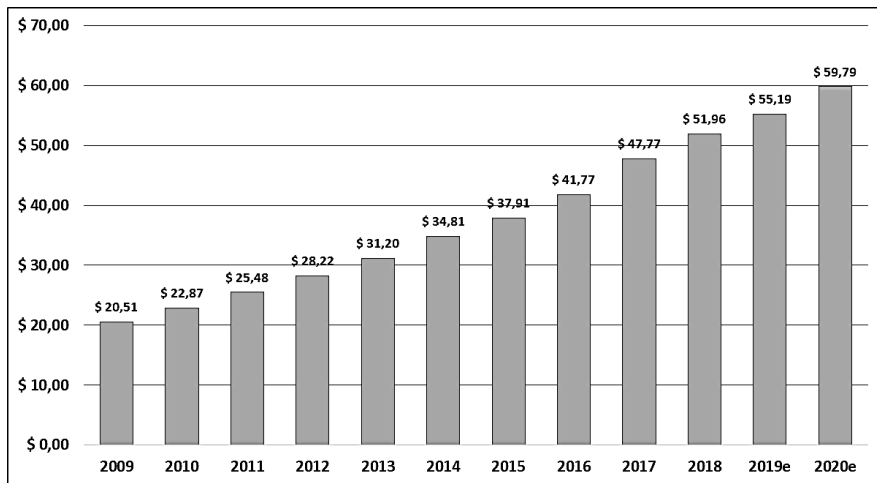
⁴ Party Gaming PLC – Created in 1997, proprietary software has evolved to offer innovative solutions in the online gaming market, with exponential growth. Information available at: <http://www.ptcasinobonus.com/cassino-software/partygaming.html>.

⁵ Listed at www.online.casinocity.com: directory of information services that acts independently in relation to game operators, updating news about online games available worldwide.

⁶ H2 Gambling Capital (H2GC) – General News: international consultant, leader in providing studies on the gaming industry at a global level, very influential for legislators in decision-making on the gambling sector, both in Europe and in the USA. Accessible at: <http://www.h2gc.com/news>.

games, with around 25% of the global market share. According to Simon Holliday (2015), founder and director of H2GC: [...]if all states regulated the online gaming sector, it is likely that its growth would reach a 20% increase next year, with an evolutionary growth potential until 30%, within 10 years. Statistics do not leave much room for questioning the optimism revealed in the sector. Let's look at some results from the global online gambling and betting market. In 2015 the sector registered a net revenue of US\$ 37.91 billion and the forecasts for 2020 point to a value that should reach US\$ 59.79 billion (Graph 1). It should also be noted that the estimated online games market for 2018, in the amount of US\$ 51.96 billion more than doubles compared with the actually verified value in 2011.

Graph 1 – Global Online Gambling Market Value (2009-2020e) (in billions of dollars)



Source: Portal Statista (2019), "Size of the online gambling market"

3 Brazil: from the casinos in the Imperial Period to the legal void in gambling

As for games of chance, Brazil assumes one of the most conservative positions in the world, as it does not have regulations that

allow the practice or exploitation of cash games. In the imperial period⁷, Casinos were meeting places for the Brazilian aristocracy, not only to play roulette, card games and alike, but also to enjoy shows in their luxurious rooms⁸.

It was through a 1946 legal diploma⁹ that Brazil banned the practice of gambling and made it illegal to exploit, with the argument that legal and religious moral tradition of the Brazilian people is opposite to the practice and exploitation of gambling, which were a harmful abuse of morals and good manners.

At the time, there were about 70 casinos concentrated in the southeastern region of Brazil, guaranteeing employment to more than 40000 workers¹⁰.

In addition to classic ethical, moral or religious discussions, usually of little consequence, games of chance have always existed and will continue to exist, because betting with money based on luck is an inherent cultural aspect of peoples' behavior. In this sense, the French sociologist Loïc Wacquant¹¹ advances us: the

⁷ "Imperial Period" is a period of Brazilian History between September 7, 1822 (Independence of Brazil) and November 15, 1889 (Proclamation of the Republic). During this period, Brazil was ruled by two monarchs: D. Pedro I and D. Pedro II. Information available at <http://www.historiadobrasil.net/imperial/>.

⁸ Luxury room as "Cassino da Urca" ones, in Rio de Janeiro, was the best known casino. Frequented by many celebrities, where the charismatic figure of Carmen Miranda stood out, who performed on stage every week, between 1936 and 1940. Information available at <http://www.cassinodobrasil.com.br/>.

⁹ Law n. 9215, of April 30, 1946 - Sub-section for Legal Affairs of the Presidency of the Republic of Brazil (Prohibits the practice or exploitation of games of chance throughout the national territory).

¹⁰ General Eurico Gaspar Dutra, until then minister in the government of Getúlio Vargas, was elected President of the Republic of Brazil in January 1946. His objectives were to govern without opposition and to approve his main projects for Brazil, which he achieved. One of the first measures he took was to ban gambling and end casinos.

¹¹ Loïc Wacquant is a professor of Sociology at the University of California, Berkeley and a researcher at the Center de Sociologie Européenne, Paris. He was a co-founder and editor of the interdisciplinary magazine *Ethnography* and a regular contributor to *Le Monde Diplomatique* newspaper.

[...] practice of gambling is socially accepted and is rooted in the customs of society. The animal game has existed for more than a century (since 1892), having become a misdemeanor in 1941. It is part of the culture and has already become a folklore in our society. Criminal law does not have the power to repeal the economic law of supply and demand. If the demand is not met by the legal market, it will be met by the illegal market.

So, if gambling is a socially tolerated conduct, prohibitive policies tend not to have the desired effects, which is why it appears that almost all countries in the “developed world” have opted for their legalization, through mechanisms of permission, concession or authorization.

The relationship of Brazilians with the internet has changed a lot in recent years, both in terms of the content surveyed and in relation to the various forms of access, namely with the exponential growth of smartphone sales in recent years¹². However, until now, the 1946 legislation has not been changed and, as such, Brazil maintains its prohibitionist position regarding to the exploitation and practice of gambling.

The rampant growth of the illegal gambling market, due to the lack of regulation in the Brazilian territory, has very harmful consequences, of an economic and financial nature, with the withdrawal of large amounts of capital without any tax return, despite the gambling taking place on illegal sites.

The loss of revenue for Brazil is evident, as a result of a new offer that expands the range of products available to players, without leaving their physical comfort zones. This compromises public support for social functions that could be supported by gambling revenues.

Online gambling operators in Brazil do so illegally from abroad as the legislation in force has not been revised to fit them. This legislative

¹² IDC Brasil (2015), accessible at: <http://g1.globo.com/tecnologia/noticia/2015/04/venda-de-smartphones-sobe-55-no-brasil-em-2014-diz-idc.html>. IDC is a leader in market intelligence and consultancy in the information technology, telecommunications and mass consumer technology markets.

void leaves room for legal interpretations that can motivate wrong behavior by users, beyond the control of the authorities.

However, the 1946 diploma that made betting on physical establishments in Brazil illegal, could not predict the phenomenon of the internet as a non-physical territory. Therefore, Brazilian law does not limit the performance of betting on the web, since internet is not part of the physical territory of Brazil.

Thus, Brazilians can bet on the gaming sites that are available without any illegality, since the servers used by online game operators are being displayed in countries that use this type of activities.

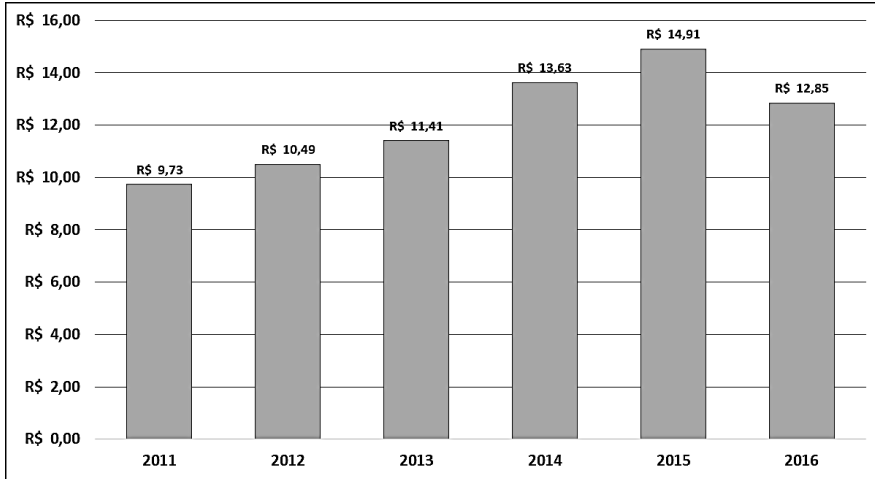
It seems clear that maintaining the current lack of regulation of online gambling, coupled with the transfer of player habits, has a strong impact in tax revenue loss for the State, which could be avoided by legal measures.

At the Brazilian Gambling Congress (RIO DE JANEIRO, 2013)¹³, there was consensus and it was clear that, in 2012, illegal gambling moved almost twice the R\$ 11.1 billion (reais) of official games (considering R\$ 10.4 billion from Lotteries of Caixa Económica Federal, R\$ 400 million from State Lotteries and R\$ 300 million from Turfe¹⁴) without any counterpart of these resources to the State or to society.

¹³ The Brazilian Gambling Congress took place in Rio de Janeiro between 18 and 20 November 2013, with the participation of 250 delegates from all over the world, designed to function as a high-level platform for exchanges between players in the gambling markets (online and offline). Accessible at: <http://www.brasiliangamingcongress.com/>.

¹⁴ Turf is the name of the sport that promotes and encourages horse racing. The promotion of horse racing and the sale of bets on Brazilian territory is governed by federal law (Law 7291 of 19 December 1984 – Law of Turf).

Graph 2 – Amount collected by Caixa Lotteries (2011 to 2016) (in billions of reais)



Source: SUALO – National Lottery Superintendence¹⁵

Caixa Econômica Federal does not recognize any type of lotteries or sweepstakes sold over the internet, except for the Internet Banking Caixa (IBC) channel, where bettors can enjoy the convenience of placing their bets over the internet, but only in authorized regular contests. Caixa also does not authorize the use of links or brand citations to any of its products.

As president of the Brazilian Legal Game Institute (IJL) and founding member of the Lottery News Bulletin (BNL), Magnho José argues that “the question of games should be discussed, as clandestinity does not cancel the practice; in the case of gambling we only have two options: legal or illegal gambling; the “no game” option is impossible, as more than 20 million Brazilians play every day in the “most brazilian” animal game, not to mention other modalities”.

¹⁵ Accessible at: http://www.caixa.gov.br/Downloads/caixaloterias/LOTERIAS_valores_arrecadados_2016.pdf.

4 The First Push for Legalization of Gambling in Brazil

The money wagered on online games is still a profit for operators, mostly external, who are not subject to any public tutelage in Brazil, creating a lack of security and protection for players and direct loss of tax revenue.

The legalization of online gambling in Brazil would have, as a natural consequence, the increase in public revenues, the reinforcement of public investment in social areas where millions of Brazilians claim for improvements, in regional development through tourism and in the financing of the practice of sports, discouraging clandestine bets at the same time.

The most recent IPSOS¹⁶ studies conclude that around 8.7 million people regularly play some type of online game in Brazil of which 2 million play online poker. Even though illegal in Brazil, online betting companies profit from customers more than US\$ 200 million (dollars) annually.

Some data presented by IPSOS deserve to be highlighted: (i) among the 193 member countries of the United Nations (UN), 76% have legalized and regulated gambling, where Brazil is among the other 24%; (ii) among the 156 countries that belong to the World Tourism Organization, 71% have legalized and regulated gambling; of the 34 countries that constitute the Organization for Economic Cooperation and Development (OECD), a group of rich or developed countries, only Iceland does not allow the practice of games in its territory; (iii) finally, in the framework of the G20 (where Brazil belongs), 93% of its members have legalized games in their territories, with only 7% not allowing it: Brazil, Saudi Arabia and Indonesia (where the latter two are Islamic countries).

¹⁶ The IPSOS group is part of the global leaders in providing studies and research on marketing, advertising, media, consumer satisfaction and public opinion polls. Founded in France (1975), the IPSOS group is independent, publicly traded and has been traded on the Paris Stock Exchange since 1999. Access at: www.ipsos.com.br.

Adding data from Global Betting and Gaming Consultants¹⁷ (2014) where Brazil is the 23rd country that most bets through internet (published in the “Folha de São Paulo” newspaper, 05/05/2014).

The consultant also adds that the contribution of Brazilians to the global online market, with bets on sites located outside its country, reveals their eagerness for online sports betting (mainly in football games) and leaves clear indications of the revenue losses that could come from taxation.

According to “Viver Brasil” magazine (07/03/2015), the return of the casinos would encourage tourism, employment, income and would, to a large extent, prevent the relocation of Brazilian players to countries such as the United States, China, Portugal, Argentina, Peru or Uruguay. Indeed, it is concluded that Brazil is among the countries with the biggest loses derived from banning gambling in all its aspects (*Revista Época Negócios* magazine, 02/09/2015).

The data suggests that legalizing all gambling by electronic means is the most intelligent and sensible way to deal with the phenomenon since the legal void generates a great loss of revenue for the interests of States, with significant socio-economic impact. However, legislating online games of chance in Brazil would require a consideration of their consequences, given the complexity of the topic and the multiplicity of disciplines that implies, from taxation issues, revenue sharing among the Federative Entities to criminal matters and sanctioning.

In this regard, reference is made to a legal principle consensually signed and clarified by Bueno (1998, p. 437): “[...] The application of the principle of responsibility will lead the courts to sanction civil or criminal penalties for service providers, or internet servers, that have no security measures, considering the advancement of technology”.

¹⁷ Global Betting and Gaming Consultants (GBGC): data repository, studies and reports for the global gaming industry market. It provides consultancy and advice based on its experience, with more than 50 years operating in different areas of the sector of games of chance.

On December 9, 2015, the Special Commission for National Development (CEDN), under the supervision of the Federal Senate of Brazil, approved Senate Bill n. 186/2014, which proposed to regulate the exploitation of games of chance throughout Brazilian territory (BNL, 2015)¹⁸.

The article became part of the so-called Brazil Agenda¹⁹ with the aim of encouraging and boosting the resumption of the country's economic growth. Accordingly, the proposals contained in the diploma, aimed at the operation of casinos and bingo halls in Brazilian territory, gambling legalization and measures to regulate online gambling and betting.

The project, by *Ciro Nogueira*²⁰, included the definition of the types of games that can be explored, the criteria for granting licenses and the rules related to the payment of prizes and collection of taxes. According to *Ciro Nogueira*, “the prohibitive legislation did not change the scenario of illegal gambling in Brazil, which moves more than R\$ 18 billion (reais) in illegal gambling annually with gambling, bingo, sports betting and internet poker”.

The senator states that

Brazil isn't collecting around R\$ 15 billion (reais) annually due to the lack of regulation of gambling”, and adds, “in addition to generating jobs and greater circulation of wealth, decriminalization of gambling will result in an increase of public revenues due to taxation on the activity and, furthermore, it can strengthen regional

¹⁸ The BNL (Newsletter Lotteries News) is a daily newsletter with news about lotteries, bingos, casinos, turf, slot machines, bets and animal games. BNL also monitors bills in progress in the National Congress, judicial decisions and official acts of government lotteries.

¹⁹ The Brazil Agenda was implemented in 2015 with a view to resuming economic growth through reforms to overcome the economic crisis. The measures proposed by Agenda Brasil can be consulted on the Senate website.

²⁰ *Ciro Nogueira Lima Filho* is a Brazilian lawyer, businessman and politician. He currently serves his second term as senator for Piauí and the national presidency of the Partido Progressista.

development policy through tourism. It is the type of project in which the government wins and society wins too.

In justifying PLS 186/2014 (p. 12), Senator Ciro Nogueira cites the “*Study of the Illegal Gambling Market in Brazil*”²¹, where it is estimated that Brazilians bet around US\$ 800 million (dollars) annually through the global online networks, in bingo, casino games, sports betting and poker modalities.

These proposals do not revert any financial counterparts to Brazil, which would be really needed for sectors development in the country. As such, it is imperative that all parties involved discuss and move towards the legalization of online games, so that they are removed from the sphere of illegal operators who do not pay taxes and who, therefore, do not contribute to society.

5 The Gaming Industry in the European Union

The European Union (EU) does not intend to harmonize gambling regulations and does not establish specific rules in terms of establishment autonomy and free access to markets by gambling operators. Therefore, it is up to each Member State to outline its regime for online gambling, respecting the fundamental principles, law and jurisprudence of the EU institutions.

However, with regard to consumer protection, the European Commission warns Member States of four fundamental aspects that must always be taken into account:

- (i) Games advertised as “free” must not mislead the consumer about the costs actually involved;

²¹ “Study of the Illegal Gambling Market in Brazil”, presented in 2012, at the International Seminar held in Mar Del Plata, Argentina, promoted by the “Instituto de Lotería y Casinos de Buenos Aires” and “Asociación de Loterías y Argentina Casinos-ALEA”. Access at: <http://www.bnldata.com.br/blogPost.aspx?cod=17952>.

- (ii) Playful games must not induce minors to acquire certain elements without the consent of their parents;
- (iii) Consumers should be informed about payment methods and purchases should not be charged without their knowledge;
- (iv) Operators must provide an email address for consumers who wish to clarify doubts or complain.

From EU perspective, the North American model of banning gambling is in opposition to the World Trade Organization (WTO) rules. EU defends the controlled regulation model. However, there are no common, legal and regulatory rules for online gambling in the EU.²²

The creation of these rules (including tax) is a responsibility of the Member States and the monitoring of the compatibility of national rules with European rules is a responsibility of the Commission and the Court of Justice of the European Union (CJEU)²³. The latter has understood that the Member States' restrictions on gambling activities are not contrary to European law, as long as they aim at protecting consumers, preventing fraud and crimes, in short, ensuring public order. Although online gambling in Europe can be seen as a successful sector of activity, it should be borne in mind that it is a relatively young market, with development processes that are slowing down as regulatory pressure grows.

Net revenue from online gambling is expected to increase from € 16.5 billion in 2015 to € 24.9 billion in 2020. In 2015, the online gaming sector in Europe represented 17.5% of the total market value (online and offline). The forecasts for sector evolution anticipate an increase, continuous and sustained, of 22% in 2020. However, the revenue of the

²² The relative failure of the attempt to introduce a liberal gambling model in the United Kingdom in 2001 was not unconnected, since it did not require obtaining a prior license and paying taxes in its territory, allowing online operators located in tax havens would continue to serve British players.

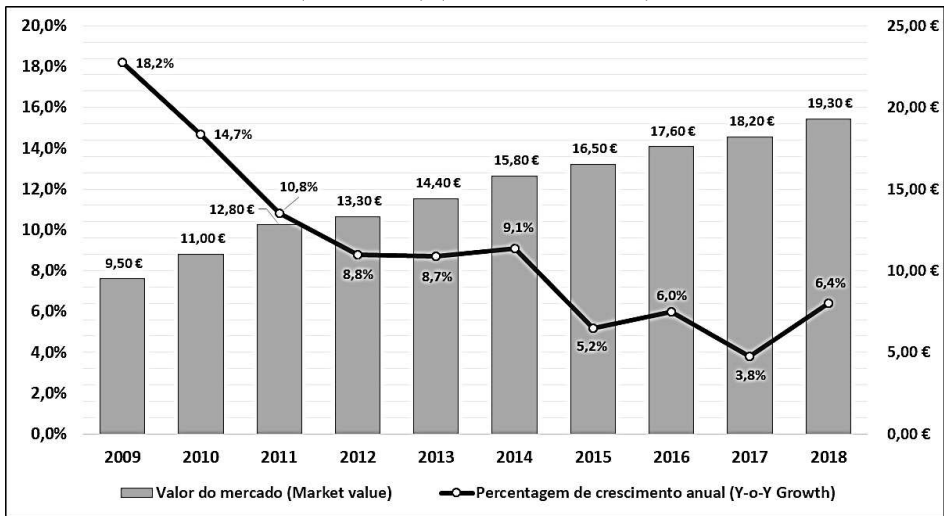
²³ Some cases submitted to the CJEU: SCHINDLER (proc. C-275/92), LAÄRA (proc. C-124/97), ZENATTI (proc. C-67/98), ANOMAR (proc. C-6/01), GAMBELLI (proc. C-243/01), LINDMAN (proc. C-42/02) MARKUS STOSS (C-359 and 360/07 and 409 and 410/07), CARMEN MEDIA GROUP (C-46/08), ENGELMANN (C-64/08), SOCIÉTÉ ZETURF (C-212/08) and SJÖBERG (C-447/08 and C-448/08)].

market for land-based games (offline) will also increase from € 77.7 billion in 2015 to € 84.3 billion in 2020, so the growth of the online market will not be achieved to the detriment of the traditional gambling market.

There are several reasons to expect continued growth in the online gaming market. From the outset, the increase in the use of smartphones and other mobile devices, technology, the growing use of the internet, changing consumer habits, as well as the gradual consolidation of regulations in several European states.

In the following graph, we can see the consistency in the growth of online gambling in Europe, including its evolution until the end of 2018.

Graph 3 – Value of the online gambling market in Europe (2009-2018) (in billions of euros)



Source: H2 Gambling Capital and iGaming Business Magazine

Regarding regulatory models, trend has been to adopt the so-called liberal regimes, models receptive to private operators and open to foreign investment.

In fact, the regulation of online gambling in the EU is characterized by the diversity of legal frameworks, with few States prohibiting gambling on the internet. However, in some cases, monopoly regimes (with online gambling and betting) remain, usually protected and managed by the State, either through a public operator or through a private operator with exclusive concession.

However, what happens is a progressive implementation of legal regimes for online gambling and there are even more jurisdictions with licensing systems. Although there is a huge diversity of legislative solutions for the regulation of online gambling, the current scenario suggests that the local license regime (local licensing market) based on the existence of licensed operators that provide services within a strictly regulated framework at national level, is prevailing. The alternative would be a monopoly regime of strict control by the State. This proactive European attitude towards online gambling has allowed European States not only to regulate the phenomenon controlling it better, but also to obtain essential revenues for the rebalancing of their public accounts (CATARINO, 2013).

Frame 1 – General rules of the models adopted in Brazil (proposal) and in the European Union

Brazil (Proposed)	European Union
<ul style="list-style-type: none"> - This proposal allows the exploitation of the “animal game”, electronic games (video-lottery and video-bingo), casino games in resorts and online games; - Exploration depends on a prior license by an agency to be defined by the federal government and authorization by the States and the Federal District; - In order to be authorized for exploration, the company must demonstrate “technical capacity”, “fiscal compliance” and “financial standing”; - Anyone who exploits gambling without authorization, is subject to imprisonment from three months to one year and a penalty; - The penalty is also applied to companies that allow children under 18 to enter places where games are played; - Anyone who defrauds, seeks to control game results or pay prizes in breach of the law, is subject to imprisonment from six months to two years and a fine. 	<ul style="list-style-type: none"> - Basic requirements must ensure that consumers have sufficient information about the risks associated with gambling; - Commercial communication - advertising and sponsorship - must be carried out responsibly; Member States must ensure that minors do not have access to gambling, in accordance with rules that are in place to minimize their contact with gambling; - There must be a registration process for individual accounts, which will allow operators to keep records of players' behavior and trigger the necessary alerts; - Players must have access to support services to ask for assistance regarding their relationship with the game, and must be able to exclude themselves from gambling websites; - Member States should ensure that training is provided for online gambling operators to ensure a good understanding of the problems linked to the phenomenon and to acquire skills for an appropriate relationship with players.

Source: Prepared by the authors of this article

Frame 2 – Frameworks and taxation regimes in some European countries

Countries	Regulatory Framework	Tax regime
Cyprus	<p>The practice of gambling and betting is regulated through local, specific and autonomous licensing, and only online betting is authorized and can be carried out on sporting and non-sporting events. Since the approval of the “Betting Law of 2012” (The Betting Law of 2012) licenses for interactive betting have been allocated where the charge depends on its duration and, in addition, a bank guarantee deposited in a financial entity based in Cyprus or in another European Union country.</p>	<p>Under the licensing regime in force, online betting operators are subject to an effective tax of 13% on net revenues: 10% in favor of the central government, 2% for the Cypriot senior sports authority (Cyprus Sport Organization) and a additional 1% to finance responsible gambling initiatives by the regulatory authority.</p>
Spain	<p>The exploitation of games of chance in Spain is subject to authorization by the supervisory body with competences assigned for its regulation: if the scope of marketing is national, the competent regulator is the Directorate-General for the Ordering of the game (DGOJ). If the scope is that of an Autonomous Community, competence is assigned to the corresponding autonomous administrative unit. Thus, online games with national coverage, contests and lotteries are a state competence. In the sphere of autonomous competences there are games in casinos, bingos, lotteries of an autonomous scope and other games of a traditional character.</p>	<p>The tax regime in force for online gambling and betting is provided for in “Ley 13/2011, de 27 de mayo, de Regulación del Juego” (the Law of the Game) which regulates, in particular, the activity of gambling and betting at money when developed through electronic, computerized, telematic and interactive channels. Since its entry into force, the Gambling Law has provided for taxation in two areas: a tax on all online (state) gambling activities and a fee for the administrative management of those games. The tax rate differs according to the type of game, the lowest being 10% (random combinations) and the highest 25% (all other games). More recently, through Law 6/2018, of July 3, the Spanish government introduced relevant news in the gambling taxation system, significantly reducing the tax on all online gambling and betting, with tax rates of 25% to 20%, and setting all taxable bases on the operators' real profit.</p>

Countries	Regulatory Framework	Tax regime
Malta	<p>The first legislation on online gambling and betting in Malta was enacted in 2000 (Public Ordinance Lotto L.N. 34, 2000). In April 2004, after the reform and reevaluation of the initial legislation, the Remote Gaming Regulation (S.L. 438.04) was published, becoming the first EU member state to regulate remote gaming. The Republic of Malta has, since then, been an established and reference name in the online gambling and betting industry, with hundreds of companies operating from that territory, benefiting from an attractive tax rate on income from the exploitation activity (the lowest in Europe). The market is open to operators in the European Economic Area (EEA) and the sector represents around 10% of Malta's economy, with the Malta Authorized Gambling “tag” being an indication of reliability for those interested.</p>	<p>Online operators, holders of licenses validated by MGA, pay tax at the rate of 5% on gross revenue, that is, on the difference between the stakes and the payments received, less the amounts paid in prizes. The scheme was updated with the approval of the “Gaming Act 2018” (Chapter 583 of the Laws of Malta).</p>
Portugal	<p>The regulation of online gambling is a significant milestone in the history of gambling in Portugal, marked with the approval of the Legal Regime for Online Gambling and Betting (RJO), by Decree-Law No. 66/2015, of 29 April, which placed Portugal alongside the vast majority of European countries, which, in the last decade, had already regulated their exploitation. The complementary legislation necessary for the implementation of the defined model was approved, namely the control, monitoring and inspection system, managed by the competent entity - the Games Regulation and Inspection Service (SRIJ). The first licenses were granted in 2016, making it possible to play online with the guarantee that the game is regulated, supervised and controlled. Accordingly, the Portuguese State was able to tax revenues that until now escaped it, as the amounts spent by portuguese players and bettors on (legal) platforms operating in other countries were not subject to any tax in Portugal.</p>	<p>Online gambling and betting are taxed through a specific tax - the Special Online Gambling Tax (IEJO). In terms of subjective incidence, this tax falls on the exploiting entities that hold a license, being the objective tax base defined in the law according to the category of game or bet and taking into account the exploration model that underlies each one. The operating entities are only taxed in IEJO on income directly resulting from the exercise of the activity of exploiting online gambling, with no other tax being levied on these income. The IEJO's legal framework for taxation establishes, for games of chance, a rate between 15% and 30%, depending on gross revenue and, for sports betting, a rate between 8% and 16%, based on impact on the volume of bets. The revenue from the tax collected is applied in accordance with the stipulated in the RJO and, in particular, is intended to finance the development of the sports and tourism sectors. SRIJ itself and the Autonomous Regions, also benefit from IEJO revenues, as do other public entities, namely the Service for Intervention in Addictive Behaviors and Dependencies (SICAD).</p>

Countries	Regulatory Framework	Tax regime
United Kingdom	The issuance of licenses for the exploitation of online gambling was regulated through the Law on Licensing and Advertising of Gambling (Gambling Act, 2014) which came into force on 1 November 2014, which determined that remote gambling operators must have a license from the regulatory authority to accept players and to advertise their services in the United Kingdom, if the equipment or facilities are located in the territory. The scope of the subject of the new legal regulation, now includes all operators that provide online gambling services to customers physically located in the United Kingdom, whether they are resident or non-resident entities in the territory.	License holders pay tax at a single (universal) rate of 15% on their profits, that is, on the difference between the stakes and payments received, less the amounts they pay in prizes. The scheme was implemented through the 2014 Finance Law for remote gaming (Finance Act, 2014).

Source: Prepared by the authors of this article

6 Methodology, Objectives and Results

The analysis was based on data of turnover and gross revenues of online gambling companies and on tax revenues collected in Portugal, Spain, United Kingdom, Cyprus and Malta for the years 2016, 2017 and 2018. Data from Brazil were estimated from available studies (H2 Gambling Capital and iGaming Business Magazine).

The level of statistical significance for all tests was 5.0% (0.05). The Shapiro-Wilk tests (Shapiro and Wilk, 1965) were used to determine whether the distribution of variables, for each of the groups, had Gaussian properties. However, due to the absence of Gaussian properties, the application of parametric tests (based on parameters such as means and standard deviations) was invalidated and Mann-Whitney (Mann and Whitney, 1947) and Kruskal-Wallis (Kruskal and Wallis, 1952) were applied.

The hypotheses put to the test were as follows:

- a) H1. The turnover of Brazil's online gambling potential when compared to some European Union countries is statistically significant.
- b) H2. The gross revenues from Brazil's online gambling potential when compared to the revenues of some European Union countries is statistically significant.
- c) H3. The tax revenues from Brazil's online gambling potential when compared to the revenues of some European Union countries is statistically significant.

Once the turnover, gross and tax revenue values were grouped by country, Gaussian properties (normal distribution of values) for the set of countries under analysis were not confirmed.

Table 1 shows, for each country, the median values of each of the variables under analysis (turnover, gross and tax revenue). Thus, it is possible to state that the values obtained are different, with the median for the United Kingdom being much higher than the other countries, on the other hand, the values obtained for Cyprus are considerably lower. However, it is important to know if these differences are statistically significant.

Table 1 – Median by Country, turnover, gross and tax revenue

	Median (m€)		
	Volume of business	Gross Revenue	Tax Revenue
Brazil (e)	19.521,4	1.016,4	171,2
Portugal	1.854,1	122,6	54,2
Spain	13.298,5	559,5	139,8
United Kingdom	115.520,6	5.549,0	832,3
Cyprus	526,7	70,3	9,1
Malta	---	542,0	27,1

Source: Prepared by the authors of this article

Regarding the Kruskal-Wallis test, which corresponds to the simultaneous comparison of the countries under observation, the null hypothesis is rejected ($p\text{-value} = 0.000 < 0.05$). This implies that it is not possible to conclude that the revenues from the taxation of online gambling have a significant value in the gross revenues of companies and tax authorities in Brazil. The analysis hypotheses H2 and H3, according to which the gross revenues and tax revenues from online gambling are statistically significant, are not valid. On the other hand, the H1 hypothesis in which the turnover of online gambling companies is statistically significant is valid.

Table 2 – Kruskal-Wallis and Mann-Whitney test for turnover, revenue and gross and fiscal (All countries at the same time)

	Countries (simultaneous)		
	Volume of business (H1)	Gross Revenue (H2)	Tax Revenue (H3)
Kruskal-Wallis Test	3,86	-17,42	-9,84
Degrees of freedom	2	2	2
P-value (bilateral)	0,07	0,000	0,00
Mann-Whitney Test	226275,23	11828,97	1853,13
P-value (bilateral)	0,00	0,00	0,00

Source: Prepared by the authors of this article

With regard to the statistical comparison between Brazil and some European Union countries, which tax revenues from online gambling, the following results were obtained: hypothesis H1 is valid for the Brazil-Portugal, Brazil-Cyprus groups and rejected in the Brazil-Spain and Brazil-United Kingdom and hypotheses 2 and 3 are valid in all groups and rejected in the Brazil-United Kingdom group.

Table 3 – Kruskal-Wallis and Mann-Whitney test for turnover, gross and tax revenue by country group

Grupos	Volume of business (H1)			Gross Revenue (H2)			Tax Revenue (H3)		
	Kruskal-Wallis Test	Mann-Whitney Test	P-valor	Kruskal-Wallis Test	Mann-Whitney Test	P-valor	Kruskal-Wallis Test	Mann-Whitney Test	P-valor
Brazil-Portugal	-11,15	31706,33	0,00	-22,32	1695,57	0,00	-12,47	333,88	0,00
Brazil-Espanha	2,96	49661,23	0,11	-4,15	2355,57	0,00	-0,67	463,73	0,00
Brazil-United Kingdom	33,42	202831,48	0,00	24,27	9935,62	0,00	22,85	1518,38	0,00
Brazil-Cyprus	-16,96	69547,43	0,00	-26,85	3530,13	0,00	-29,27	544,76	0,00
Brazil-Malta	---	---	---	-8,27	4238,88	0,00	-21,8	572,36	0,00

Source: Prepared by the authors of this article

7 Conclusion

Social behaviors show that individuals do not stop betting on games of chance just because they are prohibited by law. Bets continue to be placed but in a clandestine manner, with all its associated problems.

Accordingly, the prohibition of betting on games of chance is not the most appropriate way to face the practice (and addiction) of gambling. States must take a proactive role, creating appropriate legislation, other disciplinary rules and implementing consumer protection and enforcement measures, in accordance with the principles in force in their legal systems.

The legalization of online gambling in the EU proves to be advantageous because, in addition to limiting the phenomenon of illegal

gambling by making a socially relevant activity legal, it has enabled expressive revenue figures, thus supporting important social activities financially. It is estimated that there will be a transformation of the gaming business in Europe with the entry of new operators and the expansion of the offer in a model open to the gaming market, which operates through the allocation of licenses.

By banning gambling, Brazil not only fails to prevent this social transformation of gambling but also puts an activity on the margins, when it deserves institutional attention to protect the different partakers and legalize a relevant social phenomenon. In addition, this marginalization does not prevent the activity of illicit gambling - which is easier nowadays - causes an effective loss of revenue that could very well be used to satisfy important social purposes.

In conclusion, a regulatory model for online gambling activity in Brazil should include, among others, the following aspects:

- (i) Only States (in the case of Brazil, the Federated States and the Federal District) are responsible for exploring online gambling and granting licenses to entities that meet the requirements of good repute, technical and economic capacity to be defined by law;
- (ii) These, when abroad, must be located in jurisdictions linked to administrative cooperation in the field of taxation, combating fraud and money laundering;
- (iii) Regularized contributory and tax status, financial suitability and share capital not less than an amount to be defined;
- (iv) Provision of deposits to guarantee compliance with legal obligations and the existence of a subsidiary or branch in Brazilian territory;
- (v) Installation of a specific website (site), in the case of Brazil with the domain “.br”, for the exploitation of online games and bank account in an institution authorized to exercise activity in that territory;

- (vi) The regime should not, in principle, establish a limit number of licenses which, unless exceptional circumstances, may be renewable for successive periods and be subject to fees to be defined, depending on the type of game;
- (vii) Advertising for online gambling, if allowed, should provide limitations to protect minors and the most vulnerable social groups;
- (viii) Mechanisms must be created to prevent minors from accessing online gambling, requiring operators to ask for personal data (player name, date of birth, nationality, profession, address, e-mail and general registration number or passport), CPF number, bank account details, namely, IBAN or SWIFT, where payments will be debited and prizes credited;
- (ix) The legal possibility of creating a mechanism that confirms the player registers straight away, allowing the operator to verify his age, through public databases, should be considered;
- (x) The regime may cover all forms of gambling, in all its modalities, namely: a model for online gambling, open to competition, through licenses but without granting exclusives; a model of territorial exclusives for casinos [assigned to an entity(ies) previously accredited by the Federal Executive Branch, with authorization from the States and the Federal District], with permission to be able to advertise their games and a model legal for the most popular gambling modalities in Brazil – “Bicho” game and Bingo;
- (xi) The creation of a new federal physical sports betting game (bookmakers) should be considered, with access available through the “Loteria Caixa” mediator network throughout the country, opening the possibility of betting on the results of official sports competitions.

As a result, in addition to the benefits mentioned, the legalizing games that remain underground and the establishment of clear and objective requirements for operators will contribute to the creation of new jobs, to penalize defaulters, to strengthen the role of the Federal

Revenue of Brazil (by requiring tax regularity from interested parties) and to encourage regional development policies by increasing tourism and sports activity.

The regime should guarantee integrity and transparency in gambling operations, restricting access to risk groups, ensuring consumer protection and effective control of exploitation, in all its aspects.

The taxation of online operators in Brazilian territory would bring immediate tax revenue advantages and, in addition, by guaranteeing the legal protection of consumers, it would safeguard tax regularity and ensure adequate supervision of the activity. Like many European jurisdictions, with legal regimes that discipline online gambling, and designing an identical model to legalize online gambling in Brazil, the resources obtained could be directed to social, tourism and sport areas, redound the interests of all population. We also identified several positive factors: the protection of minors, the fight against compulsive gambling, the protection of families and property, public safety, in short, providing an environment where social stability must prevail.

It will be up to the National Congress to approve the regulatory initiatives to be proposed by the Government. In addition, Caixa Federal controls (online) in Brasília, more than 34 thousand terminals in 4 thousand municipalities; the Federal Revenue has one of the most competent Income Tax control systems in the world; and the Electoral Court controls 420 thousand electronic ballot boxes with the publication of results in 5 hours.

With the evident advantages that could come from the regulation of gambling in Brazil, there are no consistent arguments that justify its postponement and the maintenance of the current ban that only favors the entities that operate in this legal void.

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