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## GREY MARKET OF GAMBLING IN POLAND – COUNTERACTION AND FORECASTS

### Abstract

The article relates to the dynamics of change of the grey market of gambling in Poland. The meaning of legal regulations concerning organisation of gambling and gaming tax within the mechanism to prevent shadow economy of gambling constitute the basic research issue. Its purpose is to identify legal solutions that effectively protect public finance. A broad definition of the phenomenon of the grey market of gambling comprising distortion of the market competitiveness mechanism for the business makes allowance for its consequence in the form of tax gap, which is a real loss for the public finance. Multidimensional, complex nature of gambling justifies diversification of test methodology and application of a dogmatic-legal method. The selected model of scientific cognition is based on an intuitive-synthetic assumption that the gambling matter is not completely recognisable due to the dynamics of the occurring processes. The available statistical works that give rise to the conclusions related to the effectiveness of the adopted legal solutions have empirical value. The efficiency of legal solutions enhancing the attractiveness of legal gambling activities, which guarantee cash flow transparency and ensure safety of gamers has been confirmed. Creating optimal conditions for conducting legal gambling activity is of basic importance when it comes to combating shadow economy of gambling. Decreasing tax rates along with tax bases has a stimulating impact on the increase of the number of entities operating in a legal manner on the

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gambling market. Prohibitive solutions related to determination of the access to legal gambling services inadequate in relation to the demand fail to comprise efficient counteraction measures for the grey market of gambling. The absence of unambiguous criteria for estimation of the size of the grey market of gambling limits the cognitive possibilities. The available data allow for an optimistic conclusion that the grey market of gambling in Poland is gradually decreased. However, the forecasts exclude the anticipated elimination of the entire phenomenon, making allowance for cross-border nature of games on the Internet, technological progress used by the unfair businesses and difficulties of legislative process in the scope of gambling. The author of the paper hopes that the presented considerations may comprise material helpful in the course of further scientific research.

**Key words:** tax, law, gambling, grey market, public revenue.

**JEL Classification:** K34

## 1. Introduction

Legal system is a composition of legal solutions determined by political, economic and social objectives. The competitiveness of the public interest and the interest of the individual makes that “based on eternal tradition, and partly on the nature of human selfishness, every taxpayer considers the State Treasury as an enemy, against which we have to defend ourselves using all possible measures” [Bieliński 1876: 110]. The needs of the state for measures that constitute budgetary resources require intervention in the sphere of private property of citizens.

Nothing is simple when it comes to gambling. Prohibiting gambling is not simple either. The prohibition results that the need for gambling being the natural consequence of the human nature is satisfied in the shadow economy. Legal authorisation for gambling is not a simple task. The social criticism of gambling and the state obligation to protect the ethical, religious and cultural values, to protect individuals and families require selection of methods and resources both for the rationing, as well as control of this form of activity. In this context, due to ambiguous role of the state, the research regarding the phenomenon of the grey market of gambling leading to a loss of public revenue for gambling activities that are difficult to estimate seem interesting.

An attempt to evaluate the dynamics of change of the grey market of gambling in Poland is the main research purpose. Making hypotheses on counteracting the grey market of gambling requires making allowance for the specific relationships between phenomena and determination of optimisation method [Adamkiewicz 2018: 63-65]. Therefore a basic research issue was specified, coming down to a question, whether the conditions identified

in the Polish legal system regarding the nature and structure of government revenue for gambling activities make an effective mechanism counteracting the grey market of gambling. The considerations on counteracting the grey market of gambling need to recognise that legal solutions regarding the support of legal gambling should comply with solutions aimed at combating shadow economy. Radical actions for the purpose of implementation of tax revenue comprise a source of anxiety and objections that take different forms. In general, such forms consist in failure to comply with legal requirements.

The purpose of the research is to verify a thesis that restrictive limitation of access to legal gambling is not a solution effectively influencing the size of the grey market of gambling. The assumption that the grey market of gambling is also shaped by the gamers interested in participating in a game that is not controlled by the state also comprises a research thesis. An essential thesis consists in claiming that estimation of the size of the grey market of gambling is burdened with a large margin of error.

## **2. The concept of grey market of gambling**

The phenomena of illegal activities, regarding gambling, are inconsistently described as “shadow economy”, “black market”, “non-observed economy”, “black economy”, “second circulation economy”, “non-registered area”, “underground economy”. Each of these terms actually refers to the phenomenon of the failure to comply with or abuse of a legal regulation, as a result of which an economic entity has a disposable income that are not entered in the accounts of public levies [Counteracting shadow economy in Poland by effective justice]. Shadow economy is an economic category. The absence of a uniform definition makes the matter more complicated. In general, all non-registered business activities that influence the GDP are identified as shadow economy [Cichocki 2006: 38-40]. They are composed of both illegal, as well as legal activities that have not been officially reported according to the law. It is essential to indicate that the non-observed economy definition adopted in the European accounting system includes illegal, hidden and informal activities [Guidelines of the European Commission regarding the national accounts system in the European Union, 2010]. A common definition is aimed at collection of comparable data illustrating the shadow economy and preparation of statistical statements regarding the scale of this phenomenon.

Tax obligation is a specific burden that influences the economic result of economic activity. The grey market of gambling results in a loss of budgetary revenue. The entities acting illegally fail to pay any tax. The income from illegal activity has no impact on the amount of

the tax gap. The entities that operate the games of chance illegally have no status of payers of gambling tax; hence they are not liable to taxation. Only legal activity is subject to taxation. The tax gap emerges as a result of behaviour of entities obliged to pay taxes on games. If such entities fail to disclose data essential for establishment of legal bases the gambling tax that they pay does not respond to the actual size of the conducted activity. Payment of tax in decreased amounts generates the so-called tax gap [Fundowicz, Łapiński, Wyżnikiewicz 2018]. Generally speaking, the result of the grey market of gambling is a loss of budgetary revenue caused by lower value of actually earned tax income than the values expected in relation to the actual scale of economic effectiveness.

An essential negative aspect of the existence of the shadow economy of gambling is distortion of the market mechanism of competitiveness of business activity. Tax evasion, typical for shadow economy, enables the unfair operators of games to offer better economic conditions for participation in games. The shadow economy influences the financial revenue, since it has got impact on the reduction of receipts and disturbs competitiveness mechanism on the market due to disparate economic situation of companies subjecting to tax rigour – and as a result unfavourable impact on the economy eliminates legally operating businesses from the market [Enslé, Schneider 2000: 77-114, Thiessen 2016: 481-509]. The basic function of the gambling tax: fiscal function related to provision of budgetary income, stimulation function related to impact by means of exemptions, benefits, different tax rates, as well as redistribution function guaranteeing flow of money between taxpayers and the state that may be subject to disturbance because of the shadow economy phenomenon [Gudowski 1996: 17 -19].

### **3. Reasons for the grey market of gambling**

In relation to gambling we may ask a question of how to resolve the issue of public revenue from activity not accepted by the society. Nevertheless, we may consider whether gambling is actually not socially accepted. It seems that the answer should be found in the social interest in such type of services. Gambling is a common entertainment, which constitutes a prerequisite for making an opinion about social acceptance of gambling. Only negative effects of gambling are not accepted by the society, related to addiction, pauperisation of gamers from groups particularly vulnerable to improper assessment of economic possibilities related to participation in games and operation of the shadow economy of gambling, leading to a loss of public income.

Counteracting shadow economy of gambling is not possible without determination of the reasons for this phenomenon. Complete analysis of this matter goes beyond the framework of this elaboration. However, it is necessary to signal the fundamental observations in this scope. A question arises regarding the factors affecting the emergence of the grey market of gambling. Shadow economy comes into existence as a result of relationship of three entities the state, organiser of a game and a gamer. Legal restrictions connected to getting access to legal gambling market, excessive tax burdens, ineffective control, legal regulation defects, technological progress ahead of the rate of legislative changes and low social awareness may be indicated as the main reasons of this phenomenon.

The size of the shadow economy depends on the level of social acceptance of participation in illegal activities. The grey market of gambling does not exist without gamers interested in the offer of illegally working operators, despite the fact that the currently applicable legal threats of penalties for participation in illegal games is aimed at decreasing the grey market of gambling [Grotkowska 2008: 12].

The grey market of gambling is also a response to the needs of gamers. Part of people want to avoid the registration obligation disclosing sensitive data that provides for the participation in legal games.

The grey market of gambling is also affected by the level of acceptance – by entities conducting activity in the field of gambling – of legal provisions on gambling organisation and taxation. In general, they are related to legal regulation of the market of gambling and gambling tax. In simple terms it may be stated that entities that failed to acquire access to the limited, restricted legal gambling market and entities that intend to avoid the obligations related to the gambling tax operate in the shadow economy.

The registered entities, having an authorisation or concession legalising their presence on the market are obliged to comply with obligations specified in such a decision. Yet, legal activity is subjected to restrictions. Legal market entities pay gambling tax. Legal regulations include not only the entities allowed to operate on a legal gaming market, but also legal game catalog. Organisation of games and betting services other than legally permitted may not be a subject of legal activity. Legal requirements concern the game catalog and regulations for their organisation. Limitations also regard locations and game equipment, professional requirements for persons responsible for the course of games are strictly specified. The scope of legal intervention in organisation of gambling services sets

the boundaries for legal gambling. Every instance of exceeding such boundaries constitutes operation within shadow economy [European Commission, COM(2012) 596 final: 24-29].

#### **4. Estimation of the grey market of gambling**

The grey market of gambling remains hidden; hence it is only possible to obtain estimates. The number of undisclosed entities, operating within the field of gambling is unknown. No data is available regarding the bases for the gambling tax hidden by registered entities. Shadow economy estimation methods require the use of various criteria, enabling to obtain adequate level of approximation to actual values [Cichocki 2006: 40-43, Schnider, 2011:43-51]. The applied methods include direct and indirect ones. Direct methods are based on microeconomic data, acquired from surveys, declarations and individual statements of entities. Indirect methods are based on research regarding objective economical values, for example energy consumption or cash resources, allowing for calculation – in reference to a specified source of income – loss in the field of public revenue. The research regarding gambling services requires application of mixed methods. A structural model may be supported by a model using data from sources other than the official ones, in particular the results of scientific research and analyses [UN Global Compact Network Poland, Counteracting shadow economy in Poland 2018/2019]. During the estimation process it is necessary to make allowance for the multiple reasons of occurrence of such a phenomenon and difficulties in pointing out effective legal solutions counteracting illegal activities. Such factors significantly limit the possibility of specification of losses in the field of public finance, related to a loss of budgetary income.

The available statistical elaborations have empirical value. An essential deficiency is connected with collection of information by various entities in collections gathered according to different criteria. We should notice the lack of chronological continuity of data corresponding to the adopted research standards. The problem regarding the grey market of gambling is limited by the level of measurability. In reference to the grey market of gambling the significance of making hypotheses must be pointed out as well as the fact that available justifications does not guarantee unequivocal result must be accepted.

The grey market of gambling in Poland is evaluated by different entities. The attempts of estimating the grey market of gambling are present in the reports of the Polish Supreme Chamber of Control, information of the Minister of Finance and elaborations of independent organisation UN Global Compact. The published information reveal problems related to presentation of statistical data. Compilations include approximate and

incomplete data and are limited to illustrating legal background and general assumptions regarding the existence of the grey market of gambling, omit the final figures and do not contain a description of adopted estimation method. Regardless of any differences all the publications confirm gradual decrease of the grey market of gambling in Poland. The results dependent upon the adopted estimation method of the size of shadow economy are comprised by arguments used in the assessment of the applicable law.

Division of the gambling market between legally operating entities and entities generating the grey market of gambling is the subject of analyses. The activities regarding the increase of attractiveness of legal games are positively evaluated. Legal acceptability of offering games on the Internet, ensuring safe game conditions, activation of online checkouts, withdrawal from locating gaming machines only at casinos constitute an essential change. It is obviously necessary to make allowance for the fact that data is estimative.

The only official data published by the Minister of Finance regard the grey market of online games. Such data is developed with consideration of information acquired by an independent analytical company H2 Gambling Capital as at 20 February 2020 [ Ministry of Finance, Participation of the shadow economy on the market of gambling activities rendered via the Internet in Poland and European Union. 2020].

Comparison of the years 2016-2019 regarding the shadow economy in Poland in the form of betting services online confirms that the shadow economy amounting to at the beginning of the analysed period 63.5% decreased gradually, to the amount of 8.8% in the year 2019. Situation in Poland is presented in the context of approximate EU data. In 2016r the shadow economy of betting services online in EU amounted to 37%, reaching the level 25.2% in 2019r. Based on the data published by the Minister of Finance it therefore results that in Poland the acquired effectiveness of counteracting the grey market of gambling is larger than the average one. Statistical compilation also includes the casino games organised online, legally available in Poland from 2018. The effect observed after a year is a decrease of the grey market of gambling in terms of casino games online in Poland from 98.2% to 55.3%. At the same time the EU achieved the effect of counteracting shadow economy in the casino game sector organised via the Internet from 53.8% to 45.2%. The data regards the proportion of income of the grey market of gambling in the participation of the shadow economy in relation to the net revenue for any gambling activities online in the net revenue in gambling in total rendered via the Internet. The presented calculations illustrate the success achieved in Poland in the field of counteracting the grey market of gambling resulting from the effectiveness of the adopted legal solutions aimed at counteracting this phenomenon. The estimation method was not

explained, activity of a specialist entity based on the data was only designated. The elaborations of the independent entity include less optimistic conclusions. The effect of complete effectiveness of the adopted legal solutions is questioned [UN Global Compact Network Poland, Counteracting shadow economy in Poland 2018/2019].

The "iceberg" principle may be referred to the shadow economy of gambling. The tip of the iceberg allows only for estimation of the hidden size. The statistics concerning the grey market of gambling are purely hypothetical. The assumption that the data regarding legal gambling comprise an essential element in estimation of the size of the grey market of gambling is not fully convincing. Increase of the turnover of entities operating legally on the gambling market constitutes a prerequisite indicated in elaborations for concluding the change in proportions in the game market division. However, the assumption should also make allowance for economic parameters, particularly the level of inflation. Simulation may be carried out based on data on behaviours subject to sanctions that shape the grey market of gambling as well as evaluate the size of non-registered activity. Likewise, also the data regarding the revealed tax violations or crimes constitute exclusively the basis for estimation, and not confirmation of the size of the grey market of gambling.

### **5. Counteracting the grey market of gambling**

In Poland one act on gambling activities includes both the provisions on organisation of gambling, as well as provisions on the gambling tax [Act of 9 November, 2009 on Gambling]. To illustrate this, one could say that the act is a military training area for distribution of gambling profits. Competing are those entities that organise the games with gamers and the State Treasury. The act specified the level of participation of the State Treasury in profits of the branch. The fiscal purpose of the act on gambling was a subject to assessment by the Constitutional Court [Trybunał Konstytucyjny, K 5/03, K 45/01, K 2/01, SK 12/03, K 4/11]. In general, the view is still up-to-date that restrictions consisting in the increase of tax or limitation of the freedom of economic activity do not violate the right to economic freedom, for they are essential to protect the society and guarantee state control of this field of economic activity. Seeking economic balance between the amount of tax generating fiscal revenue and the necessity to avoid the effect of discouraging entrepreneurs from activity on the market of legal games makes that the statutory tax models are permanently discusses and changed.

The assessment of the impact of the adopted taxation model on the proportions of legally offered services and the services in the shadow economy constitutes a key aspect in



considerations regarding the dynamics of the grey market of gambling in Poland. Maintenance of economic borders of the amount of tax influences the course of economic activities, the amount of budgetary income, and as a consequence the capability of implementing the public authority tasks, thanks to resources coming from the sources of taxation. Counteracting the grey market of gambling requires specification of tax rates bases in compliance with constitutional standards. It seems that nominally lower taxes constitute an incentive to legalise business activity. Although lower taxation mechanism leads to reduction of burdens for specific entities conducting activity covered by gambling tax, but it also impacts the increase of the number of taxed entities, which generates higher budgetary revenue. Gradual decreasing of the number of entities carrying out activity in the shadow economy takes place. As a result it is possible to limit expenses for combating illegal gambling activity. The final amount of tax depends not only on the selected method of establishing the taxation basis, but also on the level of tax rates. The amount of tax is proportional to taxation basis. Tax rate specifies the proportion of submitting levy to a beneficiary, since the amount of tax is basically calculated as tax base and tax rate quotient. Economic and sociological knowledge enables to look for the optimum tax rate, allowing for earning of budgetary income without violating the source of tax. The application of 0% rate and 100% rate excludes earning of budgetary resources. The 0% rate makes that no amount of payable tax is determined, whereas the 100% rate eliminates the source of budgetary income. Rates in such amounts exclude implementation of business activity objective. It results in complete acquisition of the economic effect of such activity, making it impossible to earn a profit. In theory the increase of rates ensures the growth of tax resources, however exceeding of taxation limits will be noticeable, if such assumption should not be implemented. Decreasing tax rates may generate higher tax income translating into activation of economy. The increase of the market of legally offered games would be a consequence of limitation of the shadow economy of the gambling sector, which as a result, due to the possibility of taxation of legally operating entities, would cause growth of tax revenues. Legislative solutions entering low tax into force and minimising registration requirements comprise a mechanism counteracting gross disproportions of burdens for entities operating on various domestic markets.

Rationalisation of tax burdens may also consist in tax method selection. The basic tax methods that include taxation of rates paid in by gamers and taxation of the income that constitutes a difference between a sum of rates of the game and the paid out prizes, are subject to economic analyses. Prizes are a cost of the activity in the gambling branch. Taxation using income approach making allowance for prizes as costs not subject to the

gambling tax results in the increase of competitiveness of legally operating entities. Taxation method should provide an incentive to conduct legal activity.

Legal gambling activity is possible in the conditions of tax rate level, which is adequate in terms of economy. Differentiation of tax rates in Poland on specific games raises doubts. The highest tax rates are related to games organised at casinos. Casino games in Poland are burdened with tax rate amounting to 50%. Depending on a country they are shaped at the level from 90% to 0% [Meagher, S.: *The Ultimate Guide to Gambling Tax Rates Around the World*, 2019]. The tax rate on casino games in Poland is qualified as a high rate. This raises a question about intentions of the legislator. It seems that the amount of tax rate should be shaped making allowance for the level of social and political acceptance of this form of activity. Tax rates reflect expectations of the specific countries in relation to budgetary income from the gambling tax. Activities in favour of business and support of sustainable development should be undertaken both at the level of legislation and national initiatives, as well as at the level of international projects. The absence of common, harmonised legal regulations regarding tax burdens and organisation of gambling stimulates location of such activity in shadow economy.

Since 2017 new legal solutions have been introduced in Poland concerning online gambling in particular. They comprise implementation of the program of counteracting grey market of gambling in Poland [UN Global Compact, *Counteracting Shadow Economy 2014 – 2020*]. It is legally acceptable to organise betting and gambling services via the Internet. Conducting such an activity is possible, provided that an authorisation is granted by a competent minister of public finance and technical conditions are complied with, related to the rigour of assignment of a highest level national domain to Polish websites. Amendment of the act expanded technical and organisational obligations on the processing and archiving of gambling data and game participants. Provisions of the resolution of the European Parliament of 10 March 2009 on the integrity of online gambling were implemented. The resolution paid attention to the risks related to this form of access to games and called for pursuit, within the limits of autonomy of the national legislation making provision for traditional values, of protection of gamers from participation in illegal gaming market, of counteraction of frauds related to money laundry and earning profits by entities financing illegal undertakings [European Parliament, 2008/2215(INI)]. Entities operating in accordance with laws other than Polish law regulations do not automatically receive legal game operator status on the territory of the Republic of Poland. Offshore operators are obliged to disclose national authorisations to organise games in Poland or organise games with participation of persons on the Polish territory, and to address gaming

offer to entities on the Polish territory. The regulation within this scope confirms the obligation to comply with separate provisions, therefore also provisions concerning gambling sector entities. Offshore entities operating on the market of betting services are not legal participants of the market of gambling and betting services unless they subject to the rigours of the Polish law and pay taxes on games and betting services outside the Polish borders [Provision of electronic services, Art. 5] .

The adopted legal solutions may significantly limit the shadow economy of gambling [Kaszubowski, Obzejta 2002: 23-25]. The entities organising gambling services via the Internet are obliged to use exclusively a website that a highest-level national domain of which is assigned to Polish websites. Such entities are obliged to provide competent bodies with a possibility of inspection activities. Transactions should be carried out through a payment account. Making transactions through a payment account enables to systematise the settlements in a manner increasing the supervision of authorised national institutions and influencing the reality of control of flow of financial assets [Czyżak 2011: 302-303]. Intermediation of a bank account in settlements of online game organiser with other entities guarantees payment of public levies, claim recovery, safety of players participating in games and limits the international procedure of using such type of activity to money laundry.

Harmonisation of payment services in the European Union was recommended in the Directive 2007/64/EC on 13 November 2007 on payment services in the internal market. The act of 1 March 2018 on preventing money laundry and terrorism financing constitutes implementation by Poland of the Directive of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial for the purpose of money laundering or terrorism financing . The control including entities operating within the field of gambling may result in undertaking official activities, preventing continuation of activity. The above-mentioned act lowered the economic limit- limit of transactions settled by means of cash, exceeding of which results in subjection to procedural rigours related to preventing money laundry. The current amount of the limit amounts to EUR 10,000.

Telecommunication entrepreneur, rendering Internet access services, is obliged to free of charge prevention of access to websites using names of Internet domains entered in the register. It is carried out by their removal from IT systems of telecommunication entrepreneurs, used for exchange of names of Internet domains for IP addresses. Removal should take place not later than within 48 hours from making entry in the register. A mechanism of free of charge redirecting was implemented, referring to the names of Internet domains entered in the register, to a website maintained by the minister

competent in the field of public finance. A message is published on a website addressed to Internet access receivers. This message includes in particular information on entry of the searched name of Internet domain in this register and on entities legally offering gambling services on the territory of the Republic of Poland, as well as a notification about the penal and fiscal liability for a participant of games that are organised contrary to the provisions of the act. Restrictive time rigours require strict compliance with procedures with the use of existing technical possibilities. It seems that the adopted solution may implement the assumed objective of elimination of illegally operating entities from the market. Entry into force of an obligation of immediate actions, resulting in deprivation of such entities of technical possibility of operation is very crucial. This solution is consistent with the law enforcement mechanism and ensures effectiveness of entry into the Register.

Nevertheless, it is difficult not to notice the statistics of entries in the register. In 2017 1278 domains were entered in the register, in 2018 - 4099 domains, in 2019 - 3714 domains, in 2020 (as at 6 October) 3714 domain, namely 12,183 domains in total [Register of domains used for offering gambling activities contrary to the act].

The statistics of entry of domains in the register may be interpreted as confirmation of efficiency of detecting illegal activities. However, the number of domains entered in the register reveals constant activity of entities operating in the shadow economy of gambling on the Internet. The number of interventions acknowledges the scale of this phenomenon. The introduced limitations on offering online gambling are commonly known. It is hard to assume the accidentally of activities of law-infringing entities. Starting a business activity is preceded by market research and profit calculation. Common awareness of legal remedies at the disposal of a country undertaking actions aimed at combating shadow economy does not influence abandonment of activity by the entities operating in the grey market. It can be presumed that such entities use new technologies to reduce the effectiveness of actions undertaken based on legal provisions. A question is raised whether it is possible to create law counteracting the creativity of the entities of the grey market of gambling. Obligations of payment service providers related to entry into register are of similar importance. Combating grey market of gambling is implemented by means of depriving an entry entered in the register of access to technical service of the cash flow. As a result, such an entity earns no profit from the conducted illegal activity. It is forbidden to make payment services available by payment service providers on websites using names of Internet domains entered in the register in the event of provision of payment services on a website using name of an Internet domains entered in the register. A payment service

provider is obliged to cease provision of such services within 30 days from entering a domain in the register.

The above-mentioned legal instruments are aimed at limitation of the grey market of online gambling in Poland. Globalisation of services offered on the Internet makes that operations on external markets also influence the situation on the Polish market. Among the instruments also the restrictions entered into force in the British legislation are also mentioned, consisting in withdrawal of licences from entities earning income on the so-called non-regulated markets [Skwirowski 2018: 8]. An example of cooperation may also include the activity of the British Skrill service. This service enables the players to transfer cash to casinos, bookmakers and poker service without the necessity of using credit cards. In 2015 the Skrill service implemented transactions with the use of Polish gamers to a total amount of PLN 726,9 million. In the scope of cooperation regarding combating the grey market of gambling the Skrill in 2017 refused provision of financial services to entities operating on the Polish market without a licence conforming to the Polish law. Preventing the use of this "electronic purse" for handling bookmaker services in the shadow economy on the Polish market had a significant impact on limitation of unfavourable proportion between the legal and illegal market [Czubkowska 2017: 12].

Elimination of the shadow economy requires the use of measures that may as a result threaten the guarantees granted to persons conducting gambling activity as entities potentially subject to penal procedure restrictions [Warsewicz 2018: 61]. Implementation of the assumption of social protection against gambling, especially illegal gambling, takes place inter alia by means of entering the ban on advertising and promotion [Ehrenberg 2004: 61]. Advertising and promoting cylindrical, card, dice and machine games is forbidden. Advertising betting services organised based on authorisation is acceptable, provided that protection of minors is provided. It is forbidden to refer to positive or negative emotions in an ad in relation to impulses influencing the level of addiction. Exclusion of advertising gambling activities is perceived as preventing negative effects of gambling in compliance with provisions of the Directive of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce in the internal market and Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, as well as act of 18 June 2006 on provision of electronic services.

Following the amendment of the gambling, the objective of which was to limit the shadow economy, sports poker tournaments are legally organised outside casinos by entities that do not have a licence for running a casino. The adopted legal solution is consistent with

the policy combating the grey market of gambling. The reason for rationing of activity in the scope of gambling is "preventing the negative results that are connected with total lack of rationing of activity in the scope of specific fields" [Stawowy 2018: 151-158]. Rationing entails market balance, if it is adjusted to the reality of the common market and when it corresponds to the social interest in gambling. Poker is a popular game. The extension of the possibility of participating in this game in the form of tournament games complies with the social need that has been signalled for many years. Sports poker tournaments may be organised under the legal condition of offering low prizes. At present the entities that have no licence to run a casino may organise poker game tournaments with low prizes. However, they are not entitled to organise tournaments on the Internet.

Market needs are not fully met in the scope of machine games. The noticed social risks resulted in a radical change of law in 2010. A prohibition to organise such games outside casinos was introduced. At present such games are also available in amusement arcades. Location of arcades, limited number of machines, necessity of registering the players and offered prizes make it easier for the grey economy entities to organise machine games based on conditions more favourable for the gamers.

An absence of a stable, acceptable legal environment may be a threat to the legal gambling market. Legal stability postulate regards in particular the consistency of legal possibilities of requesting extension of legal activity. The doubts in interpretation of the applicable provisions also destabilise the legal gambling market. The uncertain outcome of interpretation results in a risk of undertaking business activity violating the law.

When it comes Poland the experience related to machine games is essential. Such games are characterised by high risk of addiction for the players. Activities aimed at protecting the society against negative effects of machine games were undertaken not only in Poland, but also in many countries. As a result of defective legislation infringing the UE provisions notification of the draft of technical provisions included in gambling act was abandoned. As a consequence a situation of the absence of legal stability and certainty occurred in Poland. It led to the increase of the grey economy in this gambling sector. Legal uncertainty resulted in continuation of machine game activity based on present terms, despite the fact that the legislator's intention was to introduce a ban on such games outside casinos.

Gambling constitutes both a manifestation of activity of individuals participating in games and betting services, as well as business activity of entities conducting economic activity consisting in organisation and offering participation in games and betting services. Potential risks related to addiction of the players led to separation of a defined disease unit

[WHO, International Statistical Classification of Diseases and Related Health Problems ICD]. The level of interest in this field of economy and entertainment confirms that the need for gambling results from established custom, which may not be ignored during legislative works. There is a view that “gambling, despite the related series of negative social phenomena may not be completely forbidden, since there is a specifically defined demand for it, resulting from the weakness of the human nature. The total prohibition would take it underground, and as a consequence would result in intensification of all related negative social phenomena (together with concentration of crime-inducing factors). Therefore it must be highly taxed and its size must be limited, at the same time performing its strict supervision and control by the state” [ WSA in Warsaw, III SA/Wa 1197/12]. The above-mentioned judicial opinion has a complex nature, hence it refers to both the effects of gambling, to model solutions in the field of organisation of the gambling branch as well as the gambling tax, perceived as element shaping gambling and bet services market. There is a striking confidence, comprising a so-called summary of the assessment contained in the judicial decision that high taxation, taxation being a burden to this specific business activity and levy in favour of the society should be the remedy for the negative effects of gambling. It seems that this view makes no allowance for the experiences related to combating grey market of gambling. Nevertheless, there is nothing left, but to agree with the opinion about the social interest in gambling. Acceptance of the gambling as a phenomenon established based on customs is the reason for criticism of models eliminating or limiting the legal gambling market. Negative effects of gambling justify the search for legal solutions, aimed at protection of players against participation in illegal games. The grey market of gambling does not exist without players interested in the offer of operators acting illegally or participating in such games without being aware of their illegal nature. In order to increase the awareness of players the register of illegal Internet domains offering gambling services is kept. The register allows the players gain insight as to legality of a certain operator. A gamer, who despite availability of the information about activity in the shadow economy, decides to take part in an illegal game is subject to legal liability. The purpose of threats of penalties for participation in illegal games is to decrease the size of the grey market of gambling.

Not only the players participating in illegal games and bets are liable to penalties, but also owners of premises made available to the entities that organise illegal gambling services. In 2017 three financial penalties in the total amount of PLN 400,000 were imposed on the owners of premises, and in the period from January to September 2018 thirty four financial penalties in the total amount of PLN 5,600,000 [Polish Supreme Chamber of

Control, in relation to supervision over gambling market of 6 September 2019]. The adopted solutions are aimed at decreasing the demand for illegal gambling and limiting the supply of premises used by organisers of illegal games [WSA in Poznań, III SA/Po 347/19].

## 6. Forecasts

Does the shadow economy remain dormant? The answer is negative, because the gambling branch is characterised by the use of technological development and expected huge profits.

A key aspect includes the balance of proportions enabling the legally running operators to compete with shadow economy operators, and also with operators legally running in other countries and extending their activity illegally onto markets, on which they have not obtained a legal entity status [European Commission, COM/2011/0128 final., European Parliament, 2008/2215(INI)].

The scale of shadow economy phenomenon comprises the measure of assessment of functioning of a legal model. According to a presented view “fiscal policy determines the grey economy rhythm” [Gomułowicz, Mączyński 2016: 139-142]. Postulates for creation of legal solutions at the level of material and procedural law and the law enforcement system for the purpose of combating grey economy are generally formulated. The shape of the adopted legal regulations should constitute an incentive and motivation for legal activity.

The forecasts regarding the capability of limiting the grey market of gambling are not easy to make. Conciliation of contrary interests: of the public and private citizens is a difficult task of the state in the field of tax. The individual level of acceptance of tax purposes creates an individual situation, whereas a general situation is determined by the public interest considering the potential social risks related to gambling at the level of taxation. At the general level, the increase of the level of taxation in the field of the gambling tax and betting services is noted as positive. The state of acceptance is affected by the necessity of preventing negative social effects of gambling indicated by the legislator. It may be stated that national procedures and structures guarantee the performance of tax obligations. However, it is not difficult to notice that only properly constructed tax regulation provides for a relationship of compliance of individual interest with the public one. The result includes voluntary performance of the obligation.



The gambling tax is calculated in different ways, depending on the type of game. Its amount depends on the method of establishment of the taxation basis and the tax rate. Legislative process documents do not present any explanation on the method of calculation of such amounts in Poland. As a consequence, legally operating entities report critical remarks regarding the adopted solutions. In particular, encumbrance with taxes higher than in other EU countries has been noted. The absence of explanations regarding calculation of the tax rate and taxation basis does not comply with the expected transparency standards of the legal drafting process.

The program counteracting and combating economic crime for the years 2015-2020 adopted in Poland comprises implementation of the common obligation of bearing the burdens and public expenditure, including taxes, specified in Art. 84 of the Constitution of the Republic of Poland, however it does not directly refer to the problems of the gambling sector. General observations contained in this document regarding the ability of grey economy entities to seek any possibilities of law circumvention by the use of applicable regulations, legal gaps and poor enforcement of legal obligations, may also be referred to the gambling sector [Act nr 181 Councils of Ministers of 5 October, 2015 on Program on counteracting and combating economic crime for 2015–2020].

Combating tax frauds is a program priority of the OECD and European Commission. Recommendations regarding counteracting shadow economy include cooperation between administrative and judicial bodies of the EU, implementation of legal solutions related to taxation of digital activity, transparency of the black list of countries refusing to cooperate for the purpose of preventing money laundry and creation within the EU of Financial Intelligence Unit [Wiśniewski 2019: 12].

Activities in favour of business and support of sustainable development should be undertaken both at the level of legislation and national initiatives, as well as at the level of international projects. It can be presumed that the absence of common, harmonised legal regulations regarding organisation of gambling activates putting this type of activity in the shadow economy. The absence of harmonisation entails independent legislation of the specific countries in the matter of organisation and taxation of gambling. The multiplicity of organisational solutions in the scope of systems based on monopoly or a system of authorisations and licences with different taxation methods contributes to the ease of searching for the possibility of optimisation of the conducted business activity, focused on profits.

In the previously mentioned official reports on the grey market of gambling in Poland the solutions regarding games offered on the Internet are evaluated as effectively counteracting the shadow economy. Nevertheless, it is hard not to note the statistics of entries in the register. In 2017 1278 domain were entered in the register, in 2018 - 4099 domains, in 2019 - 3714 domains, in 2020 (as at 6 October) 3714 domain, giving in total 12183 domains. The statistics of entering domains in the register may be interpreted as confirming the effectiveness of detecting illegal activities. However, the number of domains entered in the register reveals constant activity of entities operating in the grey market of gambling on the Internet. The awareness of legal remedies at the disposal of the state does not influence abandonment of illegal activities. Shadow economy entities use new technologies allowing for creation of games attractive to players.

A question is raised whether it is possible create law counteracting jest the creativity of the entities operating in the grey market of gambling. This question actually refers to the forecasts related to the grey market of gambling in Poland. The amendments of the gambling act may be assessed positively. Solutions were entered into force, which are aimed at the increase of attractiveness of legal games. At present the legal game catalog includes online casino games, gaming machines available outside casinos and poker tournaments. A precondition for success in combating grey market of gambling is provision of legally operating entities with competitiveness when competing with grey economy entities. Informing about the guarantees of safe participation in legal games may significantly impact verification by gamers of the legal status of an entity organising the game. Universality of access to the Internet and cross-border nature of gambling makes that combating the grey market of gambling requires international cooperation. The objective should include pursuit to harmonisation of legal regulations. The principles regarding gambling services shaped in the decisions of international tribunals enable to elaborate law harmonisation drafts in the scope of gambling at the minimal level.

## **7. Conclusion**

The research thesis stating that restrictive limitation of access to legal gambling is not an effective solution limiting the negative effects of gambling has been confirmed. The size of the legal market affects the amount of public revenue from gambling. The argument on the necessity of counteracting the socially harmful phenomena is referred to in discussions regarding the legality of gambling. Conclusion de lege lata constitutes a statement that the limits of legal gambling are strictly regimented, both in reference to the entities organising

the games, game types and participation in games. As regards the research issue it should be pointed out that in reference to the legal regulation of gambling the sustainable development principle imposing making allowance for both the need of creation of a legal gambling market, as well as the necessity of protecting players and regulations regarding gambling income is crucial.

The existence of the grey market of gambling is not possible without participation of players interested in taking part in illegal gambling. Proper estimation of the demand for gambling services is a condition providing efficiency of legal solutions. Ensuring access to attractive and safe legal games results in the decrease of the interest in illegal gambling. Determinants for participation in legal games may vary. The interest of the players in the specific games is pertinent to the adopted legal solutions. The provisions regarding access to games, the amount of the guaranteed scope of prizes, advertisement possibility, safety of games, obligation of personal data disclosure by gamers affect the demand for gambling. The subject-matter of the interest among players changes depending on the technical progress. The attractiveness of online gambling is related to common access to the Internet. The observed phenomenon of increasing the gambling offer by games called games of skill despite their random nature confirms that the present strategy of limiting the gambling market in the field of gaming machines is not favourable for the players. The persons using illegal gaming machines are basically deprived of any protection conforming to the expected safety standards.

How much can be lost or how much can be earned – these are basic questions regarding the public finance. The effects of certain legislative solutions in the scope of legal-financial regulations regard the economic sphere and have economic nature. It is possible to focus on searching the answer to the question about the size of loss due to the grey market of gambling. A competing assumption is the focus on activities aimed at the increase of income for gambling tax. Effective combating the grey market of gambling should be carried out at the level of providing favourable conditions of running legal business activity in the field of gambling. The activities with the purpose of minimising the grey market of gambling should focus on optimisation of solutions regarding organisation and taxation of legal gambling in order to create a system of incentives for undertaking legal business activity. The present level of legal protection of entities operating legally in the gambling sector significantly deviates from the standards regarding other entrepreneurs. The gambling law should support the entities intending to run legal business activity. Prohibitive actions have the opposite effect. During the legislative process concerning gambling tax, it is necessary to ensure balance between the need of creation of a stable

legal environment for the gambling market and the necessity of making allowance for dynamic technological changes in the field of gambling services. Counteracting the shadow economy may not only be equated with combating illegally operating entities. Establishment of friendly conditions of legal business activity changes the proportions of participation of the shadow market entities in the gambling market. The analysis of the research material carried out in this work enables to draw a conclusion that protection of the public finance the society against negative effects of gambling require introduction of legal solutions supporting legal gambling. The actions undertaken to protect the society against negative effects of gambling and the protect the public finance should focus not on combating the grey market of gambling, but on intensive research works allowing for creation of a friendly legal environment for entities legally operating in the gambling sector.

Different elaborations point out identical risks related to the grey market of gambling. Discrepancies occur at the stage of summary of effective measures undertaken to counteract this phenomenon. Reports of independent entities, in comparison with reports prepared at the order of public authorities are characterised by weaker statistical optimism. The assessment of effectiveness of own legal solutions performed by the body responsible for combating the shadow economy phenomenon is encumbered with subjectivism. The essential research thesis that has been confirmed regarded the problem of estimation of the size of the grey market of gambling. The data on the revealed irregularities are not a strong reaffirmation, but a prerequisite for presuming the dynamics of change of the grey market of gambling.

I believe that due to the technological progress and constant phenomenon of pursuing the highest possible profits from a business activity, in is necessary to accept the absence of legal possibilities for complete elimination of the grey market of gambling. The above-mentioned statement is not a suggestion to resign from seeking the optimum legal solutions. The knowledge of the reality of this specific branch of services requires establishment of the typification of objectives. The awareness of limitations and difficulties when combating the grey market of gambling should be provided for in the course of creating a strategy preventing illegal gambling. While trying to solve a problem we may point out the necessity of undertaking activities addressed to entities operating in the grey market of gambling. Nevertheless, we may seek different solutions. I am convinced that effective combating the grey market of gambling should be carried out at the level of ensuring optimum conditions for conducting legal business activity in the field of gambling. Any legal solutions that are aimed at direct combating the grey market of gambling are of

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secondary importance, since more important are the provisions with the effect of counteracting the extension of the shadow economy. The purpose of protection of the legal gambling market is to protect the public revenue. The phenomenon of the grey market of gambling entails a loss of public income for gambling, which is hard to estimate. Since complete elimination of the shadow economy of gambling, is not possible, the activities intended to its reduction should focus on creating a system of incentives for undertaking legal business activity related to gambling.

The estimation of the size of the grey market of gambling and effective legal solutions is a subject to the risk of error. The reports of independent entities are characterised by weaker statistical optimism than the one presented in official sources. I think that expecting complete elimination of the analysed phenomenon is unrealistic. The awareness of limitations and difficulties should be provided for in strategies for combating the grey market of gambling.

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