



WHETHER USING LEGAL CURRENCY TO PURCHASE RANDOMIZED VIRTUAL GOODS IS CONSIDERED GAMBLING?

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SUMMARY

With the age of technology, new ways to gamble have become possible. Enterprises offering services through virtual platforms have started selling virtual goods to persons of any age. By adding an element of chance and making the virtual good randomized, the user who is spending legal currency to purchase it does not know what he is going to get. Naturally, once a person does not receive his desired virtual good, he is more likely to purchase another virtual good and thus in the process risk getting addicted and suffering side effects of compulsive gambling.

Consequently, in the first paragraph, the author analysed definition and legal regulation of a virtual good in the context of gambling. It was established that a virtual good is an intangible object, which only exists in a digital form and can be purchased with legal currency, but can only be used in an online system or any other similar platform by a single person at the same time. Furthermore, the author found that countries are reluctant to regulate the sale of randomized virtual goods with an exception to a few selected countries.

Secondly, the author analysed the definition of gambling and its negative effects on a person. The author found that gambling consists of three elements: an element of chance; an element of prize and an element of consideration. If one element is removed, the activity can no longer be treated as gambling. Moreover, after conducting an overview of related research, it was established that addiction to gambling can cause biological, psychiatric and social consequences to a person.

Finally, in the last paragraph the author analysed the online gambling regulations in the European Union. The author found that online gambling regulations scope and reach varies from country to country, with each country having different limitations on gambling.

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KEY WORDS

Gambling, online gambling, virtual goods.

INTRODUCTION

Novelty and relevance

Gambling is one of the fastest-growing international commercial industries in the world.² Today a person can choose from a vast array of different types of gambling games.³ The most popular ones include (but are not limited to) casino-style cards games, dice games, electronic games, betting on sporting events, pitching quarters, lottery tickets, raffle tickets, bingo and the rest. While some of the aforementioned games involve strategy or set of skills, majority are based on luck. To date, one of the most popular forms of gambling is online gambling.⁴ In Europe alone, the online gambling market is expected to rise from €16.5 billion in 2015 to €24.9 billion in 2020.⁵ One of the main reasons why online gambling is so popular is the easy accessibility. A person (if he chooses so) is provided with anonymity and may access gambling sites from any part of the world, as long as he has two main components: (1) a device, which is capable of accessing internet (i.e. a computer, a mobile phone, etc.) and (2) internet. Moreover, the two aforementioned components make it difficult for the legislators to regulate online gambling, therefore leaving many areas unregulated. And while some countries do fully regulate online gambling, majority do not.⁶ Despite the fact that there are many legal issues regarding online gambling, the author's main focus is going to be on examining the issues regarding the purchase of randomized virtual goods, by using legal currency.

In essence, gambling is defined as operating a game of chance or playing at or betting on any game of chance at which money, property or other things of value is a bet, whether the same be in stake or not.⁷ Although it is just one of the possible definitions of gambling, it defines the main aspect of gambling - buying a chance in order to win a certain prize. Because people purchase this chance with legal currency, it is one of the strictest regulated areas. People who frequently engage in this activity tend to develop a gambling addiction, which can be harmful not only to the person himself or herself, but to his or her family as well. Due to the potential harmful

² L. Graham, *Gambling revenue grew rapidly in 2014, but difficulties lie ahead* (2015 05 28); <<https://www.cnbc.com/2015/05/28/gambling-revenue-grew-rapidly-in-2014-but-difficulties-lie-ahead.html>>; [accessed 2018 05 05].

³ R. Ray, *Different Forms of Gambling Compared* (2016-12-16); <<https://www.gamblingsites.com/blog/different-forms-of-gambling-compared-14775/>> [accessed 2018 05 05].

⁴ S. Despot, *A Hawk-Eyed View of the European iGaming Industry*; <<https://www.twispay.com/blog/european-igaming-industry-overview>> [accessed 2018 05 05].

⁵ *Ibid.*

⁶ *The Top 10 International Online Casinos for 2019*; <<http://www.bestcasinosites.net/blog/gambling-laws-worldwide.php>> [accessed 2018 05 05].

⁷ FindLaw, *North Carolina Gambling Laws*; <<http://statelaws.findlaw.com/north-carolina-law/north-carolina-gambling-laws.html>> [accessed 2018 05 05].

effects to a person, many countries have a minimum age requirement, which all the gambling operators must follow in their respective jurisdictions. In Europe, the minimum age requirement usually varies between the age of 18 and the age of 21⁸. Due to the peculiarities of internet gambling, many teenagers can easily bypass this minimum age requirement and engage into gambling activities (e. g. lying about their age, name, surname, etc.). And while countries tend to regulate internet gambling, by applying the same laws that they apply to conventional gambling, there are types of internet gambling that is often overlooked. One of these areas are video games or any other similar platform, where users can purchase randomized virtual goods by spending legal currency.

The problem regarding the purchase of randomized virtual goods arises when a person does not know what he is going to receive. In the event that a person does not receive the desired virtual item, he will insist (usually) on buying more randomized virtual goods in order to finally get the desired item. The difference between internet gambling and the sale of randomized virtual goods is so slim that different countries cannot come to a unanimous decision, whether the sale and (or) purchase of randomized virtual goods should be considered gambling and therefore regulated accordingly or not. For example, New Zealand's gambling regulator – the Gambling Compliance office of its Department of Internal Affairs – claims that randomized virtual goods do not meet the legal definition of gambling.⁹ Meanwhile, Hawaii's legislators have introduced two sets of bills, which aim to prevent the purchase (and sale) of randomized rewards and (or) virtual items to people who are under the age of 21¹⁰. Moreover, taking into account that technology used to sell randomized virtual goods is constantly changing, the area is becoming harder to regulate. Due to the lack of literature regarding the discussed topic (mainly because the issue is quite new), many countries tend to take a conservative approach on the matter and adopt wait and see approach (as in New Zealand's example). This indicates the **novelty** of this topic.

At first glance, it could appear that the problem is not relevant, because existing gambling regulations could apply. Nevertheless, many countries are reluctant to apply the current gambling regulations to this area due to various reasons (e. g. not all countries treat virtual goods similarly). In addition, majority of current gambling laws do not apply to the sale of randomized virtual goods, because it is not treated as gambling, under the existing legislations. This means that at the current moment the sale and (or) purchase of randomized virtual goods is **not** regulated. A person of just about any age can freely purchase randomized virtual goods. By allowing companies to continue selling randomized virtual goods in video games or similar platforms, without a clear distinction (or the lack of) from gambling, the safety of public order is not guaranteed.

Finally, to fully realize the relevance of the problem it is important to mention that gaming industry is one of the fastest growing industries in the world¹¹. Since virtual goods are mostly

⁸ GamblingCompliance, *Analysing age requirements in Europe*;
<<https://gamblingcompliance.com/infographic/analysing-age-requirement-europe>> [accessed 2018 05 05].

⁹ K. Cross, *New Zealand says lootboxes 'do not meet the legal definition of gambling'* (2017 12 11);
<https://www.gamasutra.com/view/news/311463/New_Zealand_says_lootboxes_do_not_meet_the_legal_definition_for_gambling.php> [accessed 2018 05 05].

¹⁰ *Hawaiian state bill would ban sale of loot box-enabled games to minors*;
<<https://www.digitaltrends.com/gaming/hawaii-bill-bans-loot-box-enabled-games-minors/>> [accessed 2018 05 05].

¹¹ André Marchand and Thorsten Hennig-Thurau, “Value Creation in the Video Game Industry: Industry Economics, Consumer Benefits, and Research Opportunities”, *Journal of Interactive Marketing*

sold in video games, the global virtual goods market value is estimated to reach \$189,76 billion by 2025¹². With the continuing rapid development of technologies, more and more people will have access to internet, new technologies and thus to the virtual gaming industry. Therefore, it is **relevant** to analyse whether purchasing randomized virtual goods with legal currency is considered gambling.

Scientific problem: It is not clear whether the purchase of randomized virtual goods with legal currency is considered gambling.

Goal of the research: To establish whether the purchase of randomized virtual goods with legal currency is considered gambling and should be regulated accordingly.

Methods and materials: Following the recommendations of K. Kardelis, R. Tidikis and E. Babbie¹³ **desk research** method will be used to analyze the concept of a virtual good and its legal regulation in various states. In addition the author will also analyze various studies in order to distinguish the main elements of gambling, its negative effects on a person and online gambling regulations in European Union.

DEFINITION AND LEGAL REGULATION OF A VIRTUAL GOOD IN THE CONTEXT OF GAMBLING

Before discussing whether using legal currency to purchase randomized virtual goods is considered gambling it is important to establish the concept of a virtual good and its legal regulation. Therefore, in the following paragraph, author will discuss: (i) definition of a virtual good and its difference from digital goods and (ii) legal regulation of virtual goods.

Definition of a Virtual good

Despite the fact, that the foundations for digital technology had been laid in 1948, the idea to distribute digital goods started proliferating in the late 1990s – with the rise of the internet.¹⁴ Users started looking for ways to distribute content online, which eventually led to the development of virtual download, which made distributing music or videos through digital means possible.¹⁵ Shortly, music and videos were not the only digital goods, which the users could

27, 141-157 (2013); Research and Markets, *Global Video Games Industry Report 2019: Strategies, Trends & Opportunities for the \$96 Billion Market* (2019 04 05); < <https://www.prnewswire.com/news-releases/global-video-games-industry-report-2019-strategies-trends--opportunities-for-the-96-billion-market-300825458.html>> [accessed 2019 09 01].

¹² Adroit Market Research, *Rising Popularity of Social Networks Gaming To Drive the Virtual Goods Market At a CAGR of 22.3%* (2019 03 08); < <https://www.adroitmarketresearch.com/press-release/virtual-goods-market>> [accessed 2019 09 01].

¹³ R. Tidikis, *Socialinių mokslų tyrimų metodologija*. Vilnius: Lietuvos teisės universitetas, 2003; K. Kardelis, *Mokslinių tyrimų metodologija ir metodai*. Šiauliai: Lucijus, 2005; E. Babbie, *The Practice of Social Research* (10th ed.) Belmont: Thomson Wadsworth.

¹⁴ Digitaldownloader, *The History of Digital Distribution* (2011 04 18) <<https://digitaldownloader.wordpress.com/2011/04/18/the-history-of-digital-distribution/>> [accessed 2018 05 06].

¹⁵ *Ibid.*

access online. To name just a few, e-books, internet radio, streams, online ads, internet coupons, cloud-based applications, digital subscriptions, mobile apps, virtual goods and other digital goods became available to users all across the globe. The main idea behind digital goods is that they can only be accessed through a computer or other similar device. Due to the peculiarity of digital goods, different countries have adopted different definitions. The European Commission Taxation and Customs Union describes digital goods as “services which are delivered over the Internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology”¹⁶. Meanwhile Parliament of Australia defines digital goods as intangible supplies such as supplies of digital content, games and software¹⁷. Although the definitions vary, the concept of a digital good stays the same. Digital goods are intangible objects, which only exist in a digital form, but can be purchased with legal currency. Having established the definition of digital goods, the author will further discuss the definition of virtual goods.

At first glance, it may seem that a virtual good is just another synonym for digital good. Nevertheless, while all virtual goods are digital goods, the converse is incorrect. The main difference between virtual goods and other types of digital goods is that virtual goods solely rely on an online system and (or) platform for their existence¹⁸. Furthermore, it is important to note that unlike other types of digital goods (such as music, software and stream) virtual goods are rivalrous: one person’s use of a virtual good excludes others from using it.¹⁹ To make the distinction from other digital goods more clear, the author uses an example of a Netflix account (Netflix is a streaming service that allows customers to watch a wide variety of movies, TV shows etc.). A maximum of four people can use a Netflix account. At the same time, while using the same account, four different people can be watching the same show, separately from the rest. Meanwhile, only a single person can “own” or use a virtual good. A conclusion can be made that, what are being bought and sold on the virtual goods’ market are therefore not data, services or objects, but permissions: the exclusive right to use a feature or a corner of an online environment²⁰.

What a person initially purchases is not the good itself, but only the permission to use a virtual good in an online system or a similar platform. Which means that the providers reserve the right to revoke the permission if a person violates terms and conditions of an online system or a similar platform. Considering the abovementioned, it can be concluded that a virtual good is an intangible object, which only exist in a digital form and can be purchased with legal currency but can only be used in an online system or any other similar platform by a single person at the same time. Having established the definition of a virtual good, the author will analyse legal regulations (to date) of virtual goods.

¹⁶ *Electronically supplied services*; <https://ec.europa.eu/taxation_customs/individuals/buying-goods-services-online-personal-use/buying-services/electronically-supplied-services_en> [accessed 2018 05 06].

¹⁷ K. Sanyal, *Applying GST to digital products and services imported by consumers*; <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201516/Digital> [accessed 2018 05 06].

¹⁸ B. Brinkman, A. F. Sanders, *Ethics in a Computing Culture* (Boston: Cengage Learning, 2013), p. 122.

¹⁹ V. Consumption, *Virtual Consumption*; <<http://vili.lehdonvirta.com/files/thes3988/Virtual-consumption-thesis.html>> [accessed 2018 05 06].

²⁰ Ibid.

Legal regulations of virtual goods.

One of the main reasons why countries debate whether to regulate the purchase of randomized virtual goods is the system that is used to generate virtual goods. Essentially, when a consumer commits real-world funds to purchase randomized virtual goods, he does not know what he is going to receive. In addition, usually it is not possible to improve the chances of getting the desired virtual good. The only option that a person is left with is to buy even more randomized virtual goods and try his luck again. To date, only a few countries attempted to regulate the purchase of randomized virtual goods. Author will further discuss the four main countries which have issued specific laws which in one way or another try to fill the legal vacuum surrounding the purchase of randomized virtual goods.

On 2017-05-01 the Notice on Regulating Online Game Operation and Strengthening Concurrent and Ex-Post Supervisions entered into force²¹ (hereinafter – the **Notice**) in the People’s Republic of China (hereinafter – **China**). With the Notice China attempted to regulate the purchase of randomized virtual goods by adding obligations to the developers of virtual platforms. First of all, the Notice indicates that online games’ operators shall timely and truthfully disclose the odds of obtaining and all information regarding the potential virtual items or value-added services that may be obtained through treasure box [virtual goods] features, including the names, functions, content and quality of such virtual items or value-added services. Essentially with this regulation China obliges publishers/providers of virtual goods in video games to publicly disclose the probability of obtaining a specific item. To see how the law translates into practice, the author provides several examples of companies announcing the probability of getting a specific item in their respective video games.²² As seen from the examples, the companies provide only a minimum amount of information about the probability to get a specific virtual item.

Furthermore, the information itself does not reveal how exactly the probability is calculated but only shows the percentage chance to get that specific virtual good. A conclusion can be made that the Notice is not specific enough, thus creating a legal vacuum where companies can formally comply with the provisions of the Notice. Moreover, the information that the companies provide is already known. The consumers, frequently using each of the respective virtual platforms, already know whether a specific virtual item is rare or common. What the consumers lack information in is how to increase the chances to get that specific virtual item other than buying more randomized virtual goods.

Secondly, the Notice broadens the scope of “online game virtual currency” and includes both (i) platform virtual currency, and (ii) in-game purchased virtual currency²³. Previously it was not allowed to spend platform virtual currency, purchased with legal currency, to purchase treasure boxes (virtual goods). But with the release of the Notice, it is also no longer possible to

²¹ G. Pilarowski, C. Yu, S. Gintel, *China’s New Digital Game Treasure Box Rules Become Effective* (2017 06 06); <<http://www.pillarlegalpc.com/en/news/wp-content/uploads/2017/06/Pillar-Legal-China-Regulation-Watch-Treasure-Box-Rules-2017-06-06.pdf>> [accessed 2018 05 06].

²² <http://lol.qq.com/webplat/info/news_version3/152/4579/4581/m3106/201704/578901.shtml> [accessed 2018 05 06]; <<https://pbs.twimg.com/media/C-aCnIJW0AAQ5Rq.jpg>> [accessed 2018 05 06]; <<http://www.leagueoflegends.co.kr/?m=news&cate=notice&mod=view&schwrd=&page=1&idx=255533#.XA6Fdtv7SM9>> [accessed 2018 05 06].

²³ *Supra* note 21.

use in-game virtual currency, purchased with legal currency, to purchase treasure boxes (virtual goods). While it is a progressive way to solve the legal vacuum surrounding the virtual goods, it does not eliminate the problem. The Notice does not prohibit the players to exchange in-game or platform virtual currency, purchased with legal currency, for in-game **earned** virtual currency²⁴. This way the players are allowed to indirectly continue using the legal currency to purchase virtual goods and thus take part in gambling-like activities. A conclusion can be made that, while China has limited the ability to spend legal currency on randomized virtual goods, the exchange method, used to exchange purchased currency to in-game earned currency, completely voids all efforts made by China and thus allows the companies to continue abusing the legal vacuum surrounding the sale and (or) purchase of randomized virtual goods.

The second country that has prohibited purchase of virtual goods is The Netherlands²⁵. In order to understand why the Netherlands declared that some of the virtual goods are considering gambling, author will explain the main principles of the Netherlands' Betting and Gaming Act and other related acts. Pursuant to article 1(a) of the Dutch Betting and Gaming Act (hereinafter – **BGA**), game of chance is defined as “an opportunity to compete for prizes or premiums if the winners are designated by means of any calculation of probability over which the participants are generally unable to exercise a dominant influence”.²⁶ A conclusion is that similarly to how the author has established in the introduction of this article, game of chance (or gambling), according to the BGA, has to consist two elements: (i) the outcome should be determined by a chance and (ii) a prize can be won.

However, the BGA does not provide a clear answer whether the contents of virtual goods can be regarded as a “prize”, therefore the author has to look into the Dutch Gambling Taxation Act (hereinafter – **GTA**). The GTA defines “prizes” as all goods to which economic value can be assigned that accrues to the participants in the games of chance by virtue of their participation; where they do not exist in cash, prizes shall be taken into consideration at their economic value.²⁷ It can be established that a prize, in accordance with GTA, has to contain an economic value.

A question that follows is whether a virtual good contain an economic value. On 2012-01-13 the Dutch Supreme court has established that virtual goods are to be considered goods in accordance to the Dutch law and therefore are subject to theft and criminal enforcements²⁸. Essentially the Dutch Supreme court has established that a virtual good has economic value and therefore can be considered as a “good” in accordance to the Dutch laws. Considering the abovementioned, in order for a randomized virtual good to be prohibited in the Netherlands it has to fit the following criteria: (i) the outcome should be determined by a chance, (ii) a prize can be won and (iii) the prize has to contain economic value (usually can it be sold or traded outside of the virtual platform, where it was acquired). A conclusion can be established that the Netherlands

²⁴ *Ibid.*

²⁵ M. Rijks, *Loot boxes from a Dutch perspective* (2018 02);
<<https://www.taylorwessing.com/download/article-loot-boxes-from-dutch-perspective.html>> [accessed 2018 06 01].

²⁶ A. Littler, *The Gambling Law Review – Edition 3* (2018 07);
<<https://thelawreviews.co.uk/edition/the-gambling-law-review-edition-3/1170460/netherlands>> [accessed 2018 06 01].

²⁷ *Gaming micro-transactions for chance-based items*
<https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communication/s/Gamingmicro-transactions/Report/c01> [accessed 2019 04 05].

²⁸ The *RuneScape* case, Dutch Supreme Court, 31 Jan. 2012, LJN: BQ9251, J. 10/00101.

has banned virtual goods, which contains economic value outside of the platforms, where they are being sold and can be traded or re-sold by the users to the third parties.

While the Netherlands tackle the problem surrounding the virtual goods and are taking active actions to enforce it, it is only limited to those companies, whose virtual goods fall under the aforementioned criteria. Those companies, which does not allow to trade their respective virtual goods, are not affected by this new regulation and can continue selling randomized virtual goods. Furthermore, even the companies that are affected by this new regulation can simply prohibit trading of their virtual goods to circumvent the prohibitions in the Netherlands, thus making the new regulation ineffective.

The third country that the author is going to cover is the Kingdom of Belgium (hereinafter – the **Belgium**). On 2018-04-25, the Belgian Gaming Commission has determined that randomized loot boxes (virtual goods) <...> counts as “games of chance” and publishers could therefore be subject to fines and prison sentences under the country’s (Belgium’s) gaming legislation²⁹. Furthermore, the Belgian Minister of Justice Koen Greens stated that, after conducting a throughout investigation of the selected virtual platforms that sell randomized virtual goods, in almost all of the investigated virtual platforms “there is a game element [where] a bet can lead to profit or loss and chance has a role in the game”³⁰. It can be concluded that in Belgium for a virtual good to be counted as gambling the system that is used to acquire aforementioned virtual goods has to contain the following elements: (i) an element of a bet (consideration); (ii) an element of profit or loss and (iii) an element of chance. If a virtual platform that sells randomized virtual goods contains all of the aforementioned elements, it is treated to have a “game of chance” falling under the Belgium’s gaming regulation and becoming subject to fines and criminal liability. Moreover, it can be concluded that, while other countries focus on the virtual goods’ value outside of the virtual platforms, Belgium focuses on the actual gambling aspects itself. Accordingly, just months after the new regulation has been taken into force, several major enterprises were already forced to either change their business models or face substantial fines³¹.

The last country, whose legal regulations, regarding the purchase of randomized virtual goods, the author is going to analyse, is The United Kingdom of Great Britain and Northern Ireland (hereinafter – the **UK**). While for the time being it is not illegal to purchase virtual goods with legal currency in UK, on 2019-09-12 the department for Digital, Culture, Media and Sport’s (hereinafter – the **DCMS**) parliamentary committee have published a thorough inquiry regarding the immersive and addictive technologies³² (hereinafter – **IATI**). The mentioned inquiry analysed psychological and financial harms of immersive technologies. DCMS stated that “[w]e consider

²⁹ K. Orland, *Video game loot boxes are now considered criminal gambling in Belgium* (2018 04 25); <<https://arstechnica.com/gaming/2018/04/video-game-loot-boxes-are-now-considered-criminal-gambling-in-belgium/>> [accessed 2018 09 03].

³⁰ *Loot boxes in video games declared as illegal gambling in Belgium* <<https://technology.inquirer.net/75306/loot-boxes-in-video-games-considered-criminal-offense-in-belgium/amp>> [accessed 2018 09 03].

³¹ R. Valentine, *Rocket League nixes loot boxes in Belgium, the Netherlands* (2019 04 16); <<https://www.gamesindustry.biz/articles/2019-04-16-rocket-league-nixes-loot-boxes-in-belgium-the-netherlands>> [accessed 2018 09 03].

³² The Digital, Culture, Media and Sport Committee, *Immersive and addictive technologies* (2019 09 12); <<https://publications.parliament.uk/pa/cm201719/cmselect/cmcumeds/1846/184602.htm>> [accessed 2019 09 10].

loot boxes [virtual goods] that can be bought with real-world money and do not reveal their contents in advance to be games of chance played for money's worth³³ and should be regulated under section 6 of the Gambling Act 2005. While the inquiry claims that the current evidence is enough to prohibit virtual goods from being sold to underage children at the same time it accepts that a clear and casual link between virtual goods and negative effects of gambling has yet to be established, supporting independent research on long-term effects of gaming.

All of the discussed jurisdictions in one way or another have established that a purchase of randomized virtual goods is considered gambling and should be regulated accordingly. Together with the aforementioned countries, only 3 other countries (Republic of Korea, Commonwealth of Australia, and the United States of America) have released legislations regarding the purchase of randomized virtual goods. Majority of other countries are still conducting investigations into the matter while others are adopting a wait-and-see approach (e. g. New Zealand). But even though more and more countries are starting their own investigation into the matter and releasing regulations, it is only happening on a domestic-level, i.e., there are no **international** agreements, laws or regulations.

That being said, on 2018-09-17 fifteen gambling regulators from Europe and one from the United States of America have signed a declaration dedicated to address the risk created by the blurring of lines between the gaming and gambling³⁴ (hereinafter – the **Declaration**). According to one of the signatories – chief executive of the United Kingdoms' Gambling Commission, Neil McArthur, one of the main aims of Declaration is to help “parents to be aware of the risks and to talk to their children about how to stay safe”³⁵. Furthermore, Neil McArthur stated that “games' providers must also ensure that features within games, such as loot boxes [randomized virtual goods] do not constitute gambling under national laws”³⁶. A conclusion can be made, that the signatories of the Declaration acknowledges the problem and are willing to work together in order to amend existing gambling laws and to establish new laws, not only on the national level, but internationally as well.

Overall, it may be said that, while aforementioned countries argue that purchase of randomized virtual goods should be considered gambling and regulated accordingly due to its similarity to gambling, there are quite a few governments and major enterprises that argue against it. In 2018, November UK's Gambling Commission published a report regarding a research study among 11-16 year olds in Great Britain³⁷. In this report, the Gambling Commission stated that it did not find a link between loot boxes [virtual goods] and gambling. Main reasons for that, according to Gambling Commission's chief executive Neil McArthur, is that there are no official

³³ *Ibid.*

³⁴ Gambling Commission, *Declaration of gambling regulators on their concerns related to the blurring of lines between gambling and gaming* (2018 10 17); <<https://www.gamblingcommission.gov.uk/PDF/International-gaming-and-gambling-declaration-2018.pdf>> [accessed 2018 09 03].

³⁵ *15 European Gambling Regulators Unite To Tackle Loot Box Threat* (2018 10 17); <<https://evostrix.com/15-european-gambling-regulators-unite-to-tackle-loot-box-threat/>> [accessed 2018 09 06].

³⁶ *Ibid.*

³⁷ Gambling Commission, *Young People & Gambling 2018* (2018-11); <<https://www.gamblingcommission.gov.uk/PDF/survey-data/Young-People-and-Gambling-2018-Report.pdf>> [accessed 2019-09-01].

channels for monetizing loot box rewards, i. e., in order to qualify as gambling, prizes offered must either be money, or have monetary value³⁸. Meanwhile Electronic Arts, one of the companies which conduct the sale of randomized virtual goods, stated that virtual goods are ethical and act as a “surprise” mechanic, therefore not falling under the definition of gambling³⁹. To sum up, it is clear that there are strong arguments in support of randomized virtual goods regulation and against it. Accordingly, since majority of the argument revolve around the definition of gambling and its negative effects, the author will further discuss the concept of gambling and its effects on a person.

DEFINITION OF GAMBLING AND ITS NEGATIVE EFFECTS ON A PERSON

In the following paragraph the author will examine (i) the concept and particularity of gambling and (ii) negative effects of gambling.

Gambling – concept and particularity

Gambling or just “gaming” usually refers to an activity that involves playing a game of chance with the end result being either a gain or a loss in profits. Usually for an activity to be regarded as gambling three elements must be present: (i) chance; (ii) consideration and (iii) prize⁴⁰. Take one element out and an activity will not be considered gambling, for example: replace chance with skill, i.e., the outcome is determined by the decision and skill of each of the participant; replace a prize which contains real-world value with a prize that contains no actual value for you or others; replace consideration with a free entry. It is important to keep in mind that whether an activity is gambling or not depends on a case-to-case basis and that not always does an activity need to contain all three elements in order to be recognized as gambling. Consequently, in order to examine the particularity of gambling the author will cover each of the aforementioned elements.

Firstly, an element of chance. “Chance” is an unpredictable random event – or X-factor – that can affect winning⁴¹. When an element of chance exists, a participant usually cannot control the outcome of an event. If the participant *removes* the element of chance, he is not taking part in gambling. For example, in the case of *United States v. Bergland* one of the defendants would transmit by radio the results of a particular race to a co-defendant, stationed outside of the race track; these results would then be immediately transmitted by long distance telephone to a co-defendant in another place and then this co-defendant would place a bet with that place’s

³⁸ Andy Chalk, UK Gambling Commission says (again) that loot boxes aren’t gambling (2019 07 23); < <https://www.pcgamer.com/uk-gambling-commission-says-again-that-loot-boxes-arent-gambling/>> [accessed 2019-09-01].

³⁹ Ana Diaz, EA calls its loot boxes “surprise mechanics,” says they’re used ethically (2019 06 21); < <https://www.polygon.com/2019/6/21/18691760/ea-vp-loot-boxes-surprise-mechanics-ethical-enjoyable>> [accessed 2019 09 01].

⁴⁰ *The Three Core Elements That Make Up Gambling*; <<https://business-law.freeadvice.com/business-law/gambling-law/the-three-core-elements-that-make-up-gambling.htm>> [accessed 2018 09 06].

⁴¹ *Ibid.*

bookmakers who were unaware that the race was over and a winner had been declared⁴². In other words, the defendants knew the result beforehand and were programmed to always win, while the bookmakers were determined to always lose. The court ruled that, by knowing the results of the races, the uncertainty of the transaction between the defendants and the bookmakers was eliminated and with it the crucial element of chance.⁴³ A conclusion can be made, that the defendants *could* control the outcome of an event, in this case, a race. Originally, that outcome was dependent on a racer, i.e., the person who participated in the race. But because the defendants removed the element of chance, it was no longer constituted as gambling and therefore the indictment related to gambling was dismissed.

Secondly, an element of consideration. One of the first definitions of “consideration” was set forth in the case of *Currie v Misa (1874)*⁴⁴. In this case the Court held that consideration must consist either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other⁴⁵. A conclusion can be made, that consideration is an exchange of bargained-for promises between two or more parties, i. e., one party promises something of value in exchange for another party’s promise to give something of value in return. Similarly, in gambling consideration is usually defined as “something” of value which a person puts up or in to participate in the activity⁴⁶. Moreover, the amount of money or the value of the item that has been placed as a bet does not matter. The value of the bet can be as low as 1 euro and it will still count as gambling despite the low wager.

Usually if the element of consideration is remove, it will not be considered gambling (e. g., free entry sweepstakes). But it is important to keep in mind that at the start of a free entry contest/game or any other activity all participants have an equal right to win the main prize. When the winner is announced, majority of the participants lose their right to win the main prize. Thus, while technically free entry games are not considered gambling, an element of consideration is not completely removed because giving up the right to receive money is the same thing as giving up the money itself (i. e., the right to do or receive something of value itself has value and serves as consideration)⁴⁷.

Finally, something might have value and be consideration even if it does not officially have value but you could reasonably expect to find someone willing to pay for it⁴⁸. One of the most basic examples where this rule is applied are virtual platforms and (or) video games, where players can trade and (or) sell virtual items, and (or) virtual money for legal currency or any other type of valuable item.

Thirdly, the element of prize. “Prize” (or reward) is usually considered anything of value (e. g., money, property, things of value, goods, merchandise, allowance, credit that a player has a chance to win if he wins a bet. While a prize usually is tangible, there are cases where intangible things can also hold value. For example, in the case of *Westerhaus v. City of Cincinnati*

⁴² J. L. Reiter, *Gambling: The Element of Chance* (Milwaukee: 46 Marq. L. Rev. 537, 1963), p. 537-538.

⁴³ *Ibid.*

⁴⁴ *Currie v Misa (1874) LR 10 Ex 153.*

⁴⁵ *Ibid.*

⁴⁶ *Supra* note 40.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

the court ruled that “amusement is a thing of value”⁴⁹. The court argued that “were it not so, it would not be commercialized <...> [t]he less amusement one receives, the less value he receives; and the more amusement, the more value he receives”⁵⁰. This case is specifically important in determining whether “free replays” can be constituted as a prize in the context of gambling. According to the court, “whatever amusement is offered through the return of tokens is added amusement which a player has an uncertain chance of receiving; [t]his added amount of amusement...is a thing of value”⁵¹. To sum up the court decision the prize (or reward) is free replays (as in the case of a pinball machine) the element of prize exists in the form of amusement, meaning that a prize is not always tangible. Having discussed the concept and particularities of gambling and its elements, the author will examine gambling’s effects on a person.

Negative effects of gambling

Gambling can negatively affect a person. One of the biggest negatives effect of gambling is that it can cause a mental disorder, which is characterized by frequent and recurrent urge to game, when a person becomes addicted, gives up his social, material, labour, family values and commitments⁵². Naturally, pathological gambling has its own side effects. According to T. W. Fong, there are three different types of negative consequences that pathologic gambling can have on a person: (i) biological, (ii) psychiatric and (iii) social consequences⁵³. Following the order indicted above, author will review T. W. Fong’s research conducted on each of the pathological gambling’s side effects on a person, while underlining the main points.

Biological consequences of pathological gambling. One of the biggest reasons why gambling is dangerous to a person is that, once a person gets addicted to gambling, he is more likely to smoke, drink alcohol, use drugs, overeat, be sleep-deprived and suffer from higher levels of chronic stress⁵⁴. When a person becomes addicted, he undergoes a tremendous amount of stress, mainly due to his new lifestyle. Naturally, in order to cope with the increased amount of stress (due to gambling), a person tends to indulge himself into aforementioned bad habits. While some of aforementioned harmful habits can be cured without any damage done to the body, others permanently damage the person’s body. For example, alcohol always injures or destroys a certain number of cells in the person’s brain, liver and other organs⁵⁵. Moreover, high consumption of alcoholic beverages can cause a mental illness – alcoholism. A conclusion can be made that, when a person develops addiction to gambling, he is more likely to develop additional addictions as well, which might irreversibly harm a persons’ body. Therefore, biological consequences caused

⁴⁹ R. J. Urban, *Gambling Today via the “Free Replay” Pinball Machine* (Milwaukee: 42 Marq. L. Rev. 98, 1958), p. 110.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Gaming Law of the Republic of Lithuania (2001 05 17, Nr. IX-325), Article 2, Part 22.

⁵³ T. W. Fong, *The Biopsychosocial Consequences of Pathological Gambling* (2005 03); <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3004711/>> [accessed 2019 01 05].

⁵⁴ Ibid.

⁵⁵ J. Dvelienė, *Alkoholis, jo poveikis paauglio organizmui ir elgesiui, vartojimo priežastys ir pasekmės* (2013-02-21), <<http://gabijos.lt/H/r/preven/WP/2013-02-21-alkoholio-poveikis/alkoholio-poveikis-paaugliui.pdf>> [accessed 2019 01 14].

by said addictions may dramatically impact the morbidity and mortality of pathological gamblers⁵⁶.

Psychiatric consequences of pathological gambling. Addiction to gambling is often associated with mental health problems, such as: anxiety, mood disorders, depression, obsessions. Even though mental health problems are usually related to a psychological and (or) psychiatric problems, a recent research has shown that the activity of gambling physically alters the structure of the brain and makes people more prone to depression and anxiety⁵⁷. Thus, depression and anxiety is not only a psychiatric consequence of pathological gambling but biological consequence as well. Additionally, pathologic gambling can also directly affect impulsivity of a person⁵⁸. Since pathological gamblers usually have to deal with rapidly deteriorating financial situation, gamblers become more desperate. Their actions become impulsive, they are more willing to take risks and are more likely to act on a whim, desperately trying to fix their finances. Gamblers, who start acting impulsively, usually fail to realize the state of their finances or assess the risk that they are taking by gambling even more in order to stabilize their losses. This type of behaviour usually leads to another psychological consequence – cognitive distortion⁵⁹. Gamblers usually hold onto a thought that gambling will solve all of their problems through the ”big win”⁶⁰ and in result continue to gamble despite negative results. This type of behaviour worsens the financial state of a gambler and enhances other negatives effects of gambling, such as anxiety, depression.

Social consequences of pathological gambling. The most concrete social consequences of pathological gambling are usually bankruptcies, increased crime, emotional hardships faced by the families of gambling addicts⁶¹. In order to highlight the size of social consequences caused by gambling, National opinion Research Center calculated that the annual cost of social consequences (bankruptcy, arrests, imprisonment, legal fees for divorce and so forth) caused by pathological gambling are approximately \$5 billion per year, in addition to \$40 billion in estimated lifetime costs⁶². Despite the high number, the research did not include the financial costs of any gambling related incidences of theft, embezzlement, suicide, domestic violence, child abuse and neglect and the non-legal costs of divorce⁶³. Naturally, the cost of pathological gambling is much higher than indicated above, stretching over multiple different areas and affecting various different people. A conclusion can be made that while pathological gambling can bring dire social consequences to a gambler (bankruptcy etc.) and his family members, it also affects society – increased demand on services and support (e. g., when gamblers can no longer maintain the place they live at and are forced to live in shelters provided by the government) and increased costs of public order (i. e., arrests, embezzlement and other costs which are directly

⁵⁶ Supra note 53.

⁵⁷ H. Bodkin, Gambling physically alters the brain, making people more prone to anxiety and depression, study finds (2018 04 08); <<https://www.telegraph.co.uk/news/2018/04/08/gambling-physically-alters-brain-making-people-prone-anxiety/>> [accessed 2019 01 19]

⁵⁸ Supra note 53.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

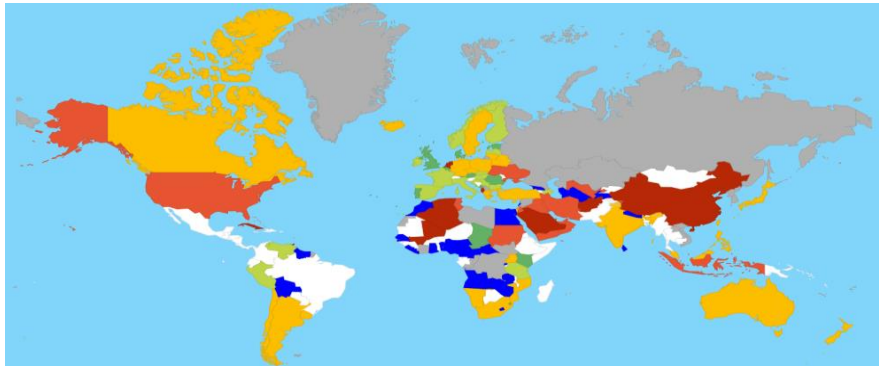
⁶² *National Gambling Impact Study Commission Final Report*; <<https://govinfo.library.unt.edu/ngisc/reports/fullrpt.html>> [accessed 2019 01 19].

⁶³ Ibid.

covered by the taxpayers). Having discussed the negative effects of gambling, the author will analyse existing legal regulations of online gambling.

ONLINE GAMBLING REGULATIONS IN EUROPEAN UNION

Due to aforementioned negative effects of gambling, countries have established laws in order to regulate the gambling industry. Worldwide gambling markets are governed on the level of sovereign states through legislations enacted by the national legislature.⁶⁴ Some of these regulations include: minimum age requirement, mandatory licenses for enterprises and private persons, accessibility to gambling offered by both domestic and (or) foreign operators⁶⁵ and so forth. That being said, gambling regulations scope and reach vary from country to country. They can either ban online gambling entirely or have heavy, moderate, light levels of limitations or in some countries have none limitations at all. Below is the list of online gambling regulations in all of the world countries:



Levels of online gambling regulation: Green – Little/None; Lime – Light; Yellow – Moderate; Orange – Heavy; Red – Banned; Blue – None; White – undefined.

As seen from the chart posted above, around 14 countries have banned online gambling indefinitely (e. g., China), 17 countries have heavily limited online gambling (e. g., United States of America), 33 countries have moderately limited online gambling (e. g., Lithuania); 18 countries have light limitations on online gambling (e. g., Finland); 18 countries have little/none limitations on online gambling (e. g., Portugal); while 33 countries have none limitations on online gambling at all. Due to a large number of countries, the author will mainly analyse European Union's hereinafter – EU online gambling regulation.

⁶⁴ Last Casino Bonuses, *Worldwide Gambling Legislation*; <<https://lcb.org/restrictions>> [accessed 2019 01 19].

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

Gambling regulation in the EU. Despite the fact that European market is the largest market for online gambling worldwide⁶⁷, there is no EU policy that offers regulatory guidelines for online gambling, forcing each member state to regulate online gambling individually. When establishing online gambling regulations EU member states must comply with the fundamental freedoms established under the Treaty on the Functioning of the European Union (hereinafter – the **TFEU**). The most important freedom established under the TFEU, in the context of online gambling, is the ability to conduct business in any other member state without any disadvantages. That being said, EU member states may impose restrictions on aforementioned freedom (such as a monopoly or a limited number of licenses) if such restrictions can be justified by imperative requirements in the general interest (e. g., consumer protection, fraud prevention, preservation of public order)⁶⁸. That is why, even within EU, different member states have different levels of restriction on online gambling. Having that in mind, that author will cover the selected EU member states and their legal regulation on online gambling.

United Kingdom was the first EU member state that released explicit regulations for online gambling⁶⁹ by adopting the Gambling Act 2005 (hereinafter – **GA**). GA describes remote gambling as a gambling in which persons participate by the use of remote communication, such as: (i) the internet; (ii) telephone; (iii) television; (iv) radio or (v) any other kind of electronic or other technology for facilitating communication.⁷⁰ While it includes gambling through any form of remote communication (listed above) it, however, does not include gambling conducted through postal services (e. g., sale of lottery tickets)⁷¹. Under GA, an operator must first acquire a remote gambling license⁷² before he can start offering online gambling services. Equally, a remote operator may be licensed by the gambling commission to offer gambling services to citizens in any jurisdiction in the world using equipment located in the United Kingdom.⁷³ Thus, if an operator wants to organize both remote and non-remote gambling activities in United Kingdom, he must acquire two licenses because a single license only permits either remote or non-remote gambling. In addition, a person is not required to acquire a non-remote gambling license in order to receive remote gambling license. Furthermore, foreign operators are not prohibited from providing gambling services to United Kingdom’s citizens, as long as they acquire the necessary licenses in accordance with GA.

In United Kingdom the minimum age requirement to gamble is 16 (national lottery, scratch cards, football pools)⁷⁴ and 18 (casinos or other licensed gambling premises)⁷⁵, with a couple exceptions where no age requirement applies (prize gaming at a non-licenses family

⁶⁷ *Online Gambling Laws in Europe* (2018 01 23); <<https://www.trulioo.com/blog/online-gambling-laws-europe/>> [accessed 2019 01 19].

⁶⁸ The Association of Charity Lotteries in Europe, *Charity lotteries in Europe*; <<https://www.acleu.eu/index.php/the-eu>> [accessed 2019 02 10].

⁶⁹ *Supra* note 67.

⁷⁰ Gaming Act 2005, Part 1, S. 4

⁷¹ C. Rohsler, *The Gambling Law Review – Edition 2* (2017 07); <<https://thelawreviews.co.uk/edition/the-gambling-law-review-edition-2/1144073/united-kingdom>> [accessed 2019 03 14].

⁷² *Supra* note 70, S. 67.

⁷³ *Supra* note 71.

⁷⁴ *Supra* note 70, S. 45, 46.

⁷⁵ *Ibid.*

entertainment centre⁷⁶, travelling fair⁷⁷ and so on). In 2019 the United Kingdom's gambling commission announced that companies that offer gambling to United Kingdom's citizens must now verify the age of any customer before they make a deposit or a bet⁷⁸. Until the aforementioned regulation was announced, a person was allowed to verify his age within 72 hours, essentially creating a legal vacuum where an underage person could sign up, deposit and bet within those 72 hours without verifying his true age. With the introduction of aforementioned regulation, another layer of protection was added in the United Kingdom in order to protect a young person from experiencing negative effects of gambling.

The second EU member state whose remote gambling regulation the author is going to analyse is the Republic of Lithuania (hereinafter – **Lithuania**). In Lithuania gambling control is carried out in accordance with the Law on Gaming law of the Republic of Lithuania (hereinafter – **GLL**). Lithuania defines gambling as a game or mutual betting in accordance with established regulations, where the participants, seeking to win money, voluntarily risk losing their stakes and where winnings or losses are determined by chance, the outcome of an event or a sport competition⁷⁹. As seen from the definition, Lithuania's definition of gambling has all three elements of gambling: (i) consideration (playing a game or mutual betting); (ii) chance (determined by chance) and (iii) prize (seeking to win money). Meanwhile, the minimum age requirement in Lithuania to gamble is 18, with the exception for gaming establishment (casinos), including those organized remotely, where the minimum age requirement is 21⁸⁰.

In 2016-01-01 the GLL was amended, enacting regulations for online gambling for the first time in Lithuania's history. The amended law released several guidelines and regulations for legal person, who wish to organize remote gambling in Lithuania. Firstly, a legal person willing to organize remote gambling activities in Lithuania, must acquire at least one of the licenses, listed in paragraph 1 of article 5 of GLL (e. g., table games and category A machine gaming; category B machine gaming; bingo; totalisator; betting)⁸¹. Secondly, he ought to establish at least one gaming establishment (casino) or at least 5 totalisator offices for organizing horserace totalisators, or at least 10 machine halls, or at least 20 betting offices, or at least 20 totalisator offices and provide gaming services therein.⁸² Thirdly, a legal person must acquire a permit to organize remote gambling in accordance with GLL⁸³. Once a legal person has fulfilled the aforementioned steps, he can start organizing remote gambling activities in Lithuania. In addition, should the legal person wish to organize all types of remote gambling, its authorized capital must be at least EUR 1.158.000⁸⁴. A conclusion can be made that Lithuania puts high emphasis on remote gambling permits, licenses and the financial stability of a legal person, who aims to organize remote gambling in Lithuania.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *New rules to make online gambling in Britain fairer and safer* (2019 02 07);

<<https://www.gamblingcommission.gov.uk/news-action-and-statistics/news/2019/New-rules-to-make-online-gambling-in-Britain-fairer-and-safer.aspx>> [accessed 2019 03 14].

⁷⁹ Gaming Law of the Republic of Lithuania (2001 05 17, Nr. IX-325), Article 2, Part 11.

⁸⁰ *Ibid.*, Article 10, Part 10.

⁸¹ *Ibid.*, Article 5.

⁸² *Ibid.*, Article 8¹.

⁸³ *Ibid.*

⁸⁴ *Ibid.*

The last member state, whose online gambling regulations author is going to analyse, is the French Republic (hereinafter – **France**). On 2010-05-12 Law No. 2010-476 was enacted. The aforementioned law was responsible for opening the online gambling and betting market to competition and regulation, acting as the main regulatory act of all online gambling activities in France⁸⁵. Currently, all forms of online gambling are legal in France with the exception of online casino games and betting exchanges⁸⁶. The main reason why online casinos and betting exchanges were not legalized in France is because of the highly addictive nature of aforementioned games. As mentioned previously in the article, gambling can negatively affect not only young persons, but a person of any age. With that in mind, France’s legal stance against online casinos is a progressive way in limiting online gambling, without banning it entirely.

In summary of aforementioned legal regulations of online gambling, a conclusion can be made that countries enforce various limitation on online gambling. Some limitations include minimums age requirement to gamble (which too can vary from country to country), complex procedures in order to acquire the needed permits or licenses for organizing online gambling, mandatory verification of age or even monopolies, where foreign legal persons cannot organize remote gambling in respective countries. The reasons for aforementioned limitations also varies. Some countries put emphasis on negative effects of gambling (e. g., France, United Kingdom); financial stability of companies organizing remote gambling (e. g., Lithuania) or even cultural acceptance. With the release of new technologies (e. g., cryptocurrency, virtual goods, etc.), new ways of gambling becomes possible. Due to, peculiarity of internet (e. g., absence of national borders), countries can no longer afford to individually regulate online gambling. Only by harmonizing online gambling regulations, countries can hope to protect the public order of their respective countries.

RESULTS AND DISCUSSION

While analysing whether using legal currency to purchase randomized virtual goods is considered gambling, the author analysed and reviewed: (i) definition and legal regulation of a virtual good in the context of gambling, (ii) definition of gambling and its negative effects on a person and (iii) online gambling regulations in the European Union. The study found that:

1. virtual good is an intangible object, which only exists in a digital form and can be purchased with legal currency but can only be used in an online system or any other similar platform by a single person at the same time;
2. on the one hand, countries that treat randomized virtual goods as online gambling recognize that *there is a game element [where] a bet can lead to profit or loss and chance has a role in the game*. In addition, some of these countries have limited legal regulations to the category of randomized virtual goods which can be traded outside of virtual platforms, i. e., has economic value. On the other hand, countries that argue against legal regulation of randomized virtual goods argue that there are no official channels for monetizing randomized virtual goods, i. e., in order to qualify as gambling, prizes offered must either be money or have monetary value.

⁸⁵ Online Gambling Sites in France (2019 06 12);
<<https://www.gamingzion.com/france/gambling/gambling-sites/>> [accessed 2019 06 13].

⁸⁶ France: Gambling 2019 (2018 11 20); <<https://iclg.com/practice-areas/gambling-laws-and-regulations/france>> [accessed 2019 06 13].

With that in mind, to date, more and more countries are recognizing the threat of randomized virtual goods and are actively conducting investigations in order to find out whether the purchase of randomized virtual goods can be considered gambling;

3. an activity is treated as gambling if it consists the following three elements: the element of chance; the element of prize and the element of consideration. If one element is removed, the activity, most of the time, can no longer be treated as gambling;
4. gambling can negatively affect a person, resulting in the following negative consequences: (i) biological, (ii) psychiatric and (iii) social. While some of the aforementioned consequences can be reversed, some of them are permanent. Furthermore, young persons are four times more likely to suffer the aforementioned effects;
5. online gambling regulations scope and reach vary from country to country. Countries can set: minimum age requirement, mandatory licenses for enterprises and private persons, accessibility to gambling offered by both domestic and (or) foreign operators and mandatory verification of age.

Research findings showed that chance-based nature of randomized virtual goods share several key elements with traditional forms of gambling – chance, prize and consideration. These findings go in line with research finding of Mark D. Griffiths⁸⁷. When a person conducts a purchase of a randomized virtual good, he expresses consideration to receive a randomized item. Naturally, the randomized item that he receives is treated as a prize. Even if the item holds no economic value, a person still receives amusement, which in itself has economic value. Finally, due to the nature of randomized virtual goods, that prize is picked randomly, without the ability to influence the outcome. Therefore there is a strong connection between randomized virtual goods and the concept of gambling.

CONCLUSION

1. Using legal currency to purchase randomized virtual goods is gambling. When a person pays legal currency for a randomized virtual good he expresses consideration in order to receive a prize (whether it would in tangible or intangible form), which is randomly picked. Consequently, applicable laws to gambling must be applied to companies that are conducting the sale of randomized virtual goods, e. g., these companies must verify the buyer's age; have a remote gambling license. Otherwise, underage people will continue to purchase randomized virtual goods risking to suffer negative effects of gambling.

⁸⁷ Griffiths MD, “Is the buying of loot boxes in video games a form of gambling or gaming?,” *Gaming Law Rev.*, vol. 22, no. 1, pp. 52–54, 2018.

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SANTRAUKA

AR TEISĖTOS VALIUTOS NAUDOJIMAS, ĮSIGYJANT ATSITIKTINES VIRTUALIAS PREKES, LAIKOMAS AZARTINIŲ LOŠIMŲ?

Straipsnyje analizuojama, ar teisėtos valiutos naudojimas atsitiktinės atrankos virtualių prekių įsigijimui yra prilyginamas azartiniam lošimams. Pirmoje straipsnio dalyje nagrinėjama virtualių prekių specifika. Visų pirma, buvo nustatyta, kad virtuali prekė nėra tapati skaitmeninei prekei, kadangi virtuali prekė yra skaitmeninės prekės rūšis. Be to, autorius suformavo virtualios prekės sąvoką – virtuali prekė – tai nematerialus objektas, kuris egzistuoja skaitmeninėje formoje

bei gali būti naudojamas tik virtualioje platformoje ir (ar) erdvėje ne daugiau nei vieno asmens vienu metu. Negana to, virtuali prekė gali būti įsigyta už galiojančią atitinkamos šalies valiutą. Darbe išanalizavus virtualios prekės teisinį reglamentavimą, nustatyta, kad dauguma šalių vengia reglamentuoti atsitiktinės atrankos virtualių prekių prekybą, nes neižvelgia tapatumo su azartiniais lošimais.

Antroje straipsnio dalyje autorius išanalizavo azartinių lošimų specifiką bei išskyrė priklausomybės nuo azartinių lošimų sukeltus neigiamus poveikius asmeniui. Nustatyta, kad azartinių lošimų sudaro trys elementai: atsitiktinumo, prizo bei apsvaistymo. Pašalinus bent vieną iš nurodytų elementų, veikla nebegali būti pripažinta azartiniu lošimu. Nustatyta, kad „malonumas“ asmeniui, kurį jis patiria lošdamas azartinių lošimų, gali būti laikomas prizų, taip pripažįstant veiklą azartiniu lošimu, net jeigu jokio materialaus prizo ir nėra. Toliau buvo atskleistas priklausomybės nuo azartinių lošimų pasekmės asmeniui. Remiantis T. W. Fong atlikto tyrimo rezultatais, straipsnyje išskiriamos trys azartinių lošimų sukeltos pasekmės: biologinė, psichologinė/psichiatrinė bei socialinė. Biologinė pasekmė žmogui pasireiškia tuo, kad asmuo, kuris yra priklausomas nuo azartinių lošimų, yra labiau linkęs pradėti rūkyti, vartoti alkoholi, narkotines ir psichotropines medžiagas, kentėti nuo lėtinio streso. Atitinkamai padidėja tikimybė, kad žmogui išsivystys papildomos priklausomybės, kurios negrįžtamai gali pažeisti žmogaus organizmą.

Psichologinės arba psichiatrinės pasekmės žmogui pasireiškia tuo, kad žmogus tampa neramus, išsivysto nuotaikos sutrikimas, depresija. Asmuo, priklausantis nuo azartinių lošimų, dažnai mano, jog vienas didelis laimėjimas padės išspręsti visas jo problemas ir nebesugeba įvertinti azartinių lošimų rizikos bei jam daromos žalos be išorinės pagalbos. Galiausiai socialinės pasekmės žmogui pasireiškia tuo, kad asmuo, kuris yra priklausomas nuo azartinių lošimų, neretai būna priverstas kreiptis dėl asmeninio bankroto iškelimo, kadangi nebesugeba grąžinti visų turimų skolų. Toks asmuo yra labiau linkęs daryti nusikaltimus (pvz., vogti), todėl gali sukelti papildomų sunkumų ne tik sau, bet ir savo artimiesiems. Socialines pasekmes jaučia ne tik pats žmogus, bet ir visuomenė – apsunkinamos socialinės tarnybos bei padidėja viešosios tvarkos išlaidos (t. y. suėmimai, įkalinimai ir kitos išlaidos, kurias tiesiogiai padengia mokesčių mokėtojai.).

Trečioje straipsnio dalyje autorius išanalizavo internetinio lošimo teisinį reglamentavimą Europos Sąjungoje. Buvo nustatyta, kad kiekviena Europos Sąjungos valstybė narė internetinių lošimų reglamentuoja individualiai, t. y., nacionaliniu lygiu. Todėl net ir Europos Sąjungoje internetinis lošimas yra reglamentuojamas skirtingai, tačiau laikantis bendrųjų Europos Sąjungos principų. Nustatyta, kad valstybės narės, siekdamos apsaugoti nepilnamečiams sukeltas azartinių lošimų pasekmes, yra nustatę amžiaus cenzą ir (ar) apribojimus tam tikroms azartinių lošimų rūšims, pavyzdžiui, reikalauja priverstinio amžiaus patvirtinimo ir panašiai.

Galų gale nustatyta, kad teisėtos valiutos naudojimas atsitiktinės atrankos virtualių prekių įsigijimui yra prilyginamas azartiniais lošimams, nes tokia veikla turi visus azartinių lošimų elementus: atsitiktinumo, prizo bei apsvaistymo. Šiuo metu atsitiktinės atrankos virtualias prekes gali įsigyti bet kokio amžiaus žmogus. Todėl, siekiant apsaugoti nepilnamečius nuo azartinių lošimų sukeltų neigiamų padarinių, būtina įpareigoti įmones, kurios užsiima atsitiktinės atrankos virtualių prekių prekyba, įvesti amžiaus cenzą (savo prekėms) bei priemonę, kaip tą amžių patikrinti, įpareigoti išsiimti azartinių lošimų licenciją bei laikytis kitų taikytinų įstatyminių normų, kurios yra taikomos azartinių lošimų organizatoriams.

REIKŠMINIAI ŽODŽIAI

Azartiniai lošimai, internetinis lošimas, virtualios prekės.