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The prohibition of online sports betting: a comparative analysis of Germany and the United States

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This paper examines online sports betting in Germany and the USA, two countries that differ from the global trend that has been moving toward the legalization and liberalization of the sector. The following research questions are asked: Which joint factors led to the prohibition of online sports wagering in Germany and the USA? In what ways do the cases differ? After explaining the methodology of this research and conducting the case studies, the paper discusses the similarities and differences between the two countries, such as the official and unofficial reasons behind the bans, the administrative responsibilities of the issue, different policy instruments for implementing the bans, exceptions to the prohibition, the important role of courts in the debate, external pressure to change the respective national regulations, and the powerful role of sports governing associations that offer, in both cases, the main reasons for recent policy-making decisions.

Keywords: sports betting; gambling; comparative politics; Germany; the USA

Gambling has a rich history and dates back several thousand years (Carter, 2011, p. 155). As of the mid-1990s, the Internet has been providing this industrial sector with new opportunities for growth. According to the gambling industry's leading consulting and data team H2 Gambling Capital

In absolute terms online gambling remains a small part of the global betting market: a mere 8% in 2009, with revenues of about \$26 billion [. . .] But last year it rose even as the overall market fell. In the coming years it is expected to grow even more: 13% a year [. . .] with revenues rising to \$36 billion by 2012. ('A special report on gambling', 2010)

Opponents of online gambling refer to the wide range of social, economic, and psychological problems associated with pathological gambling. Advocates of online gambling emphasize that it is a leisure activity that should be legally offered. They also refer to the fact that 'the gambling instinct is born in all normal persons' ('A special report on gambling', 2010) and that a vast majority of users are able to play responsibly without becoming addicted. Furthermore, they believe that online gambling may have positive socio-economic impacts such as generating additional tax revenue and support for charity, and creating opportunities to divert business away from organized crime. On the other hand, critics such as the US government

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fear that online gambling gives the mafia an additional space for money laundering. Critics also argue that the integrity of sports is at line if sports betting were to be legalized. They maintain that the incentive to make money through betting may lead to cases of match fixing. Advocates of online sports betting like the German professional sports leagues disagree and claim that electronic monitoring systems give new opportunities to detect unusual movements in the sports betting markets thereby facilitating preventive intervention ('A special report on gambling', 2010).

In Europe, there are professional soccer leagues that are named after gambling companies that offer online sports wagering: The Norwegian Tippeligaen ('The Betting League') and the Austrian 'Tipp3-Bundesliga powered by T-Mobile.' This stands in opposition to the anti-gambling policies adopted by Germany and the USA. Both countries have forbidden online sports wagering.

The main research questions of this paper are the following: Which joint factors led to the prohibition of online sports wagering in Germany and the USA? What do the two cases have in common? Which variables differ in the discourses on sports betting in both countries? This paper focuses on bets on team sports (such as football and soccer) and excludes individual sports (such as tennis and golf), and horse racing. Whereas some arguments pro and contra the legalization of online sports betting presented at the beginning apply to all kinds of gambling, others are more specific for this kind of betting. For example, fixing is much more relevant for football games than for Video Lottery Terminals (VLTs), whereas in the case of pathological gambling it is the other way around. Therefore, one needs to distinguish carefully between the type of gambling (team sports, individual sports, horse racing, VLT, poker and blackjack, etc.), and the regulation of each sector needs to be discussed separately from each other.

Literature review

For this paper the literature on general aspects of gambling (see, e.g., Collins, 2003; McMillen, 1996) and specifically on sports wagering (see, e.g., Littler 2007; Thompson, 1997) as well as single case studies on sports betting in the USA (see for example Carter, 2011, pp. 147–171; Davies & Abram, 2001; Frey, 1998; Hichar, 2009; Hosmer-Henner, 2008; Rose, 2009; Thompson, 2001) and in Germany (see, for example, Albers, 2008; Albers & Hübl, 1997; Börnsen & Schmidt, 2010; Gebhardt, 2008; Nolte, 2010) was reviewed. The new dimensions provided by this research are the comparative analysis of both countries and the inclusion of recent developments such as the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) in the USA and the Interstate Gambling Treaty (IGT) of 2008 in Germany. Finally, general analyses on sports and politics in transatlantic comparisons were very helpful for the preparation of this work (see Kuper & Szymanski 2009, pp. 157–178; Markovits & Rensmann 2007).

Methodology

This work applies to comparative politics, a branch of political science. Along with political theory and international relations, comparative politics is a main subfield of political science. Comparative politics analyzes empirical questions and thereby differs from political theory which primarily investigates normative and theoretical

questions. The difference between comparative politics and international relations is that the latter deals with connections between countries, whereas the former analyzes interactions within political systems. Caramani (2008, p. 3) sheds light on the academic approach adopted by comparative politics and writes, 'Comparative politics does not ignore external influences on internal structures, but its ultimate concern is power configurations within systems.' According to Almond et al.:

Comparison [...] is the only way we can fully understand our own political system. Comparing our experience with that of other countries deepens our understanding of our own institutions. Examining politics in other societies permits us to see a wider range of political alternatives. It illuminates the virtues and shortcomings of our own political life. By taking us beyond our familiar arrangement and assumptions, comparative analysis helps expand our awareness of the possibilities of politics [...]. Comparisons have greatly enriched our understanding of politics (Almond, Powell, Dalton, Strøm, & Dalton, 2010, p. 28)

Comparative politics is not experimental; it examines different cases. Research is performed in three steps: first, similarities and differences are described; second, similarities and differences are explained; third, predictions are formulated (Caramani, 2008, p. 5).

For the description of the investigated cases, a conceptual framework is needed. This work applies to the 'Most Similar Systems Design,' which is also called the 'Method of Agreement' (Caramani, 2008; Keman, 2008). This methodological approach is used on the grounds that there is a global tendency to legalize and liberalize sports betting (EU Parliament, 2008, p. 18); however, Germany and the USA stand in stark opposition to this global trend. In Germany, land-based sports wagering is, under certain circumstances, allowed (if it is performed via the state monopoly sports betting agency, 'Oddset'). In almost all US states (exceptions are Nevada and parts of Delaware) there is no legal opportunity to place sports bets.

The Most Similar Systems Design method tries to explain similar outcomes. The objective of this method is to identify common factors among cases that are otherwise very different from each other (Caramani, 2008, p. 14). According to Keman (2008, pp. 72–73), 'the more circumstances the selected cases have in common, the more feasible it is to locate the variables that do differ and which can be considered as part of the explanation.'

The research design of this study with two cases only allows for in-depth analysis, whereas from studies with many cases 'we [...] know very little about the historical, cultural, and socio-economic context of the countries' (Caramani, 2008, p. 15).

This work is based on 20 interviews (see Table 1); a review of the academic literature on gambling in general and on sports betting, in particular; and on an evaluation of selected magazines and newspapers.

Due to differences of the cases and to the difficulties in the research process, some stakeholders could not be interviewed in both countries. In Germany, stakeholders who strictly oppose all kinds of gambling for moral reasons could not be identified; a well-known anti-gambling NGO does not exist in Germany as in the USA, and churches do not publically comment on the issue. In the USA, it was not possible to interview a representative of the executive branch of the government. As demanded, questions in written form were submitted but remained unanswered, in spite of

Table 1. Interviewed stakeholders.

Name	Position	Country	Interview
M. Abbott	President, Major League Soccer (MLS)	USA (New York)	02-Nov-10
Dr. N. Albers	German Bookmaker Association	Germany (Hannover)	20-Sep-10
S. Angel and D. Spillane	Senior Vice President, League Operations and Officiating National Basketball Association (NBA); Assistant General Counsel National Basketball Association (NBA)	USA (New York)	03 January 2011
D. Baberowski	Pinnacle Sports (online gaming company in Netherland Antilles/Curaçao)	Netherland Antilles/Curaçao (via online chat)	19 January 2011
L. Bernal	Executive Director, Stop Predatory Gambling (SPG)	USA (via phone)	19 November 2010
Dr. H. Blask	Attorney at law, senior in-house counsel, German Soccer League (DFL)	Germany (Frankfurt/Main)	28 September 2010
Dr. R.O. Davies	Distinguished Professor, History (Author of the book 'Sports wagering in American Life'), University of Nevada, Reno	USA (via phone)	18 October 2010
E. Dienes	United Nations Office on Sport for Development and Peace	USA (New York)	02 December 2010
F. Fahrenkopf	President & CEO, American Gaming Association (AGA)	USA (via phone)	29 November 2010
D. Garner	National Football League (NFL), director of player services in the NFL security department	USA (New York)	02 December 2010
G. Hanna and K. Cepelak	Department of Investigations Major League Baseball (MLB)	USA (New York)	02 December 2010
K. Larkin	Staff of Representative Barney Frank (D-MA)	USA (via phone)	15 November 2010
B. Meyer and Dr. M. Schiller	Ministry of the Interior of Lower Saxony, Department for elections and gambling	Germany (Hannover)	04 October 2010
P. Morrison	Counselor Trade in Services Division, World Trade Organization (WTO) in Geneva/Switzerland	Geneva/Switzerland (via phone)	04 February 2011
J.H. Oram	Member, the international law firm Proskauer	USA (via phone)	01 December 2010
T. Sorge	In-house counsel, sports association of Lower Saxony (LSB)	Germany (Hannover)	29 September 2010

Table 1 (Continued)

Name	Position	Country	Interview
Dr. R. Stypmann	Executive Director lottery Lower Saxony	Germany (Hannover)	20 September 2010
Dr. M. Vesper	Director General of the German Olympic Sports Confederation (DOSB)	Germany (Frankfurt/Main)	28 September 2010
Dr. F. Wedegärtner	Hannover Medical School (MHH), Outreach clinic for pathological gambling	Germany (Hannover)	18 January 2011
K.S. Whyte	Executive Director, National Council on Problem Gambling (NCPG)	USA (Washington DC)	18 November 2010

ongoing following up. However, interviewing the staff of a congressman (legislative branch of the government) helped to comprehend the administration's view point.

The interviews followed an explorative research design. At the beginning of the interviews, the main objective was to identify which institutions deal with the regulation at the federal and state level. Next, it was asked which actors are in favor of the current prohibition of online sports betting and which actors are against it. In the third part of the interviews, the main reasons that lead to the prohibition of online sports betting at the federal level and the obstacles facing its legalization were inquired. The main concern was about the regulations in each country, and therefore a series of questions on the most recent federal regulations were posed, such as the UIGEA in the USA and the IGT of 2008 in Germany. In the USA, the different regulations on state levels were discussed (such as in Nevada and Delaware); however, there was no need for this in Germany as the German states have a uniform regulation on sports betting. In the fourth block of questions, the international environment was discussed: Why does regulation on sports betting in Germany and the USA differ from the global trend; to what extent does the EU in the case of Germany and the WTO in the case of the US influence the domestic decision-making processes? Finally, the interviewed individuals were asked about their predictions for the future of regulation in their respective countries.

Apart from the interviews, all the issues of the weekly magazine *The Economist*, the daily newspaper *The New York Times*, the German online newspaper *Spiegel Online*, and the German online sports business platform *Sponsors* from the beginning of 2006 until the end of 2011 were analyzed. In this selected timeframe important decisions regarding online sports betting in the USA and in Germany were made: the US Congress passed the UIGEA of 2006, and the German Federal Constitutional Court decided that the German regulation on sports betting was unconstitutional and had to be modified by the German states by the end of 2007. Selective papers from other scholarly journals, magazines, and newspapers were included in the analysis as well.

Publications in *European Sport Management Quarterly* (ESMQ) have not specifically dealt with sports betting, but some papers have discussed related topics. Hill (2009, see also Hill 2010) analyzed how gambling corruptors fix football

matches. Lee (2008) discussed the gambling scandal in professional baseball in Taiwan in 1997. This pertains to this paper in that the motivation to fix matches is high due to the large sums of money that can be earned in the international sports betting markets. In a special issue, ESMQ analyzed ‘The Dark Side of Sport’ (Petroczi, 2009) which does not only include match fixing but also includes abuse, doping, violence, and corruption. Maennig (2005) provides an overview of the ‘forms, tendencies, extent and countermeasures’ of corruption in modern sports. Rodenberg and Lima (2009) established a model for estimating the impact of referee bias on team performance in the National Basketball Association (NBA).

The research is relevant for two reasons: first because of the transatlantic comparative study and secondly because it ‘enhance[s] our understanding of the role of (...) sport bodies in social life and the way social, political and economic forces and practices affect these organizations’ (ESMQ, n.d.). It is one of the main findings of this paper that the influence of the sports governing associations is in both cases the main explanation for the most recent policy-making on sports betting.

The following case studies on Germany and the USA have the same structure. After the legal framework is described, the case studies follow the approach of Houlihan (2008, pp. 213–227) who differentiates between ‘politics and sport’ and ‘politics in sport.’ Politics in sport analyzes the role of sports governing bodies. Sport bodies resolve political issues that arise within sports itself such as commercialization, gender equality, anti-doping policy, or whether players and referees are allowed to place sports bets and whether or not the clubs can advertise for gambling companies.

Examples of policy interventions (politics and sport) are investments in sport facilities; the use of international sports to project a positive image of the nation abroad; making sports a diplomatic resource; using sports as a type of sanction; or, under the lens of this research, the current legal framework on sports wagering in Germany and the USA.

First case study: USA

Legal framework

The prohibition of online sports wagering in the USA is based on the UIGEA of 2006. UIGEA was part of the Security and Accountability for Every Port Act of 2006 (henceforth Safe Port Act). When interviewed, the staff of Congressman Frank (Democratic Party) said:

It was strategically very clever of Peter King [a republican congressman from New York] to insert the prohibition of online gambling into the Safe Port Act. The Safe Port Act was a must pass bill and online gambling had nothing to do with port security. The majority of the members of Congress were not aware of the content of UIGEA and without inserting the UIGEA into the Safe Port Act, it would have never passed. (Larkin, personal communication, November 15, 2010)

The UIGEA delegates the responsibility of the ban to financial institutions. Financial institutions are forbidden from transferring money to online sports betting companies. Online fantasy sports, online lotteries, and horse racing are excluded; wagering on all kinds of human sports is included in the prohibition. After

the House and Senate passed the Safe Port Act on 30 September 2006, and President George W. Bush signed the Act into law on 13 October 2006, it took much more time than expected by the proponents of the law for the responsible administrations, the Federal Reserve System and the Department of the Treasury, to implement applicable provisions of UIGEA. The compliance date of the final regulation was 1 December 2009. After regulated financial institutions and members of Congress petitioned the agencies for a one-year extension, they were only given a six-month extension that ended on 1 June 2010 (Federal Reserve System & Department of the Treasury, 2009, pp. 62687–62688).

When interviewed, the representative of one of the leading online betting companies Pinnacle Sports in Netherland Antilles/Curaçao stated, 'We do not accept any bets from the U.S. anymore and our turnover went down since 2006' (Baberowski, personal communication, 19 January 2011). Foreign gambling companies avoid offering their business in the USA because the country is actively implementing its online gaming prohibition. For instance, the British CEO of BetonSports, while switching planes in Texas, was arrested because his company, while operating from England and Costa Rica, had been accepting internet sports bets from the USA ('Out of luck', 2006).

Land-based sports betting is also forbidden in the USA. This dates back to the Professional and Amateur Sports Protection Act of 1992 (PASPA) that made it illegal to conduct betting, gambling, or wagering operations on human sports with a few exceptions (Carter, 2011, p. 156). These exceptions were made for Nevada (in which the country's gambling capital, Las Vegas, is located), Delaware, Montana, and Oregon. These states were exempted because they already had offered different kinds of sports lotteries before PASPA was passed. Only Nevada and Delaware make use of their right to offer land-based sports betting, while online sports bets are in both states illegal, as in the rest of the country. Even the use of telephone calls to place bets is illegal; due to the Federal Wire Act of 1961 one has to be physically present in the betting facility in Nevada and Delaware (Federal Wire Act of 1961).

For a long time, Delaware did not exercise its right to offer sports bets. It started its scheme on 13 September 2009. According to *The Economist*, this 'was the first day in 33 years that bets on football matches could legally be placed anywhere in America other than in Nevada' ('Gambling in Delaware', 2009). Whereas in Nevada bets on different college and professional sports can be placed in various ways, wagering in Delaware is only possible on the National Football League (NFL) matches as a parlay bet. For a parlay bet in Delaware, players have to bet on at least three matches and are dependent on all of those wagers winning together. Delaware also wished to allow single-game bets; however, in May 2009, the United States Supreme Court declared that the state's new sports betting lottery had to be similar to the betting format used in a failed 1976 NFL lottery ('Delaware loses', 2010).

Politics and sports

Regarding their response to planned or existing legal frameworks at the federal and state levels, it is obvious that the four main professional sports leagues – the NFL, the NBA, the Major League Baseball (MLB), and the National Hockey League (NHL) – have cooperated and acted in a similar fashion. The Major League Soccer (MLS), which has become more and more popular in recent years, was not involved.

When interviewed, the MLS president said, ‘We have no position on sports wagering, but we do not advocate it’ (Abbot, personal communication, 2 November 2010). The other sports governing associations have held clear positions in the past and have disapproved of sports betting. Recently, however, divergent statements were issued by the NBA commissioner.

In hearings on gambling in the US Congress, the big four professional sports leagues strictly opposed any legalization of sports betting. This is why even proponents of legalization such as Barney Frank have modified their legislative proposals. Frank drafted a law proposal in 2007 that aimed to legalize the gambling market including sports wagering; this was excluded from his 2009 proposal for liberalizing the gambling market. His staff explained that the reason behind this modification was the professional sports league’s rejection of the idea.

The most recent example of cooperation between the big four leagues was the above-mentioned case of Delaware. The Supreme Court’s decision was arrived at after the big four sports leagues and the National Collegiate Athletic Association (NCAA) had sued Delaware. The leagues and the NCAA argued that Delaware’s sport-betting plan ‘would irreparably harm professional and amateur sports by fostering suspicion and skepticism that individual plays and final scores of games may have been influenced by factors other than honest athletic competition’ (Associated Press, 2009). According to the interviews with representatives of NFL, NBA, and MLB, the NFL took the lead in the suit against the state of Delaware. The leagues were cooperating and their official positions had not changed by the time that this work was completed (at the end of 2011). However, unity on the issue was destroyed when, in a press interview, the NBA commissioner, David Stern, said:

The betting issues are actually going to become more intense as states in the U.S. and governments in the world decide that the answers to all of their monetary shortfalls are the tax that is gambling [. . .] I’m going to leave the slate clean for my successor. But it’s fair enough that we have moved to a point where that leap is a possibility, although that’s not our current position. (cited from Thompson, 2009)

When interviewed for this research, the two representatives of the NBA tried to downplay Stern’s statement, ‘David was only describing the global trend in the regulation of sports betting’ (Angel and Spillane, personal communication, January 3, 2011). They emphasized that the official NBA position has not changed, and that there are no plans to lobby for a legalization of sports betting.

Politics in sport

The sports governing associations agree upon sports betting policies. According to Deena Garner, the NFL representative who was interviewed, one of the reasons is that the Federal Bureau of Investigation (FBI) has formed a ‘racket hearing analysis unit’ that consists of representatives of the big four leagues that meet once a year to coordinate their anti-gambling policies. Garner explained that the sports governing associations share best practice. She added, ‘The NFL has for example learned from the NBA to check the criminal backgrounds of the referees’ (Garner, personal communication, 2 December 2010). As a result of this coordination, the four big

leagues' betting policies are quite similar, and there are only minor differences that will be elucidated below.

According to the NFL 'Coaches and players 2010 guide to personal security' players and coaches are not allowed to bet on any NFL game (NFL, 2010). Possible consequences of betting on NFL games are 'banishment from the NFL' and 'loss of post-NFL career opportunities.' Regarding Internet gambling the NFL handbook states, 'Betting on the Internet not only violates NFL gambling policy but is also illegal.' The MLB's position differs from that of the NFL as it differentiates between whether a player is betting on a game that he is involved in ('shall be declared permanently ineligible') or not ('shall be declared ineligible for one year') (Major League Baseball, n.d.).

In the NBA, players, referees, and NBA league and team employees are:

prohibited from betting on any NBA game – including any exhibition, regular season, or playoff game – and on any game played in a league associated with the NBA, such as the Women's NBA or the NBA Development League. There are no exceptions to this rule [. . .] [They] may not participate in anyone else's NBA betting activities. (National Basketball Association, n.d.)

The NBA's anti-gambling rules are the most detailed ones among the professional sports associations. Beside the rules prohibiting betting, there are rules that prohibit 'fixing' and 'tipping'. The 'No Fixing' rule refers to something that is unique to NBA and college basketball matches – the point shaving scheme. Point shaving makes it exciting to bet on matches between an underdog and a successful team where the winner seems to be known. A player can fix a game without causing his team to lose, thereby ensuring that his team wins by a margin that is less than the betting point spread. According to the NBA's anti-gambling rules players 'may not influence or manipulate any NBA game so that the outcome is determined by anything other than its merits'. Finally, there are the rules on 'No Tipping'. 'Disclosure of confidential information, any violation of the no fixing rule, and any involvement with betting on NBA games will subject [a person] to disciplinary action, including termination of [his/her] employment and/or disqualification from further association with the NBA and its teams, as well as civil or criminal penalties' (NBA, n.d.).

The NCAA has launched a website called 'Don't bet on it.' It targets athletes in college leagues and explains to them issues such as problem gambling, the link of illegal betting to organized crime, and the penalties athletes face if involved in illegal gambling (National Collegiate Athletic Association, n.d.).

Second case study: Germany

Legal framework

Sports wagering in the Federal Republic of Germany (FRG) is overseen by the 16 states, but a uniform regulation under the IGT exists. Sports bets can only be placed at branches of the land-based state monopoly-betting offer, 'Oddset.' Online sports wagering has been forbidden since 1 January 2009. Apart from that recent change, after the Second World War the legal framework was stable and witnessed minor changes.

Certain forms of gambling (lotteries, land-based sports wagering) are one of the last monopolies in the German economy. Only some casinos, the gaming machine sector and the horse racing business are privately owned (Albers & Hübl 1997, p. 126). One of the few changes that took place in the legal framework of sports betting in Germany was related to the German reunification. Before the end of the German Democratic Republic (GDR) and the entry of the new states into the FRG, the GDR authorities had granted four private concessions for sports betting that were based on the GDR Trade Regulations (Gebhardt, 2008, p. 285). One of the licenses was bought by Europe's leading private sports betting company Bwin from Austria (Albers, 2008, p. 59). Bwin was the main competitor of 'Oddset.' The reason behind Bwin's success was the emergence of the Internet in the mid-1990s; this challenged the monopoly that had worked well for decades. Whereas the German lotto pool remained successful, sports betting lost significant market shares to the foreign competitors who could offer much better odds than the German state companies. The reason is that the state lotteries have to pay a lottery tax as well as a concessional levy to the states that is used to finance charity. As such, they can only give back about half of their pool to the betters as opposed to the foreign online companies that can distribute up to 90 percent of their pool.

Another disadvantage was that sports betting in Germany consisted of a large pool of games to be predicted, whereas foreign companies offered the opportunity to bet on single matches. The German Lotto and Totoblock, 'a lottery consortium formed by all 16 German states in order to increase the population base and to rule out rivalry between the states' (Albers & Hübl, 1997, p. 127), decided to make changes in German sports betting starting February 1999. Under the new name 'Oddset,' it offered bets on a smaller number of matches (and as of February 2002 it even included single match bets) and legalized betting over the Internet. While land-based sports wagering is still possible in around 25,500 agencies in the whole country, online sports betting was halted on 1 January 2009. This was due to a judgment issued by the German Federal Constitutional Court in March 2006 that the German sports monopoly is considered unconstitutional because it does not seriously deal with pathological gambling. A private bookmaker from Munich had gone to court because the state of Bavaria forbid her from offering sports wagering opportunities by companies that are legal in other EU Member States. She argued that this would violate her freedom to choose an occupation. The Federal Constitutional Court presented the German states with an ultimatum: it either had to keep the monopoly and strictly fight compulsive gambling or it had to legalize private sports wagering companies (Pfanner, 2010). In the IGT of 2008 (Glücksspielstaatsvertrag, 2007), the 16 German states decided to accept the first option and this led them to stop their own online sports wagering and limit their advertisement.

After the IGT of 2008 went into effect, the states started to shut down private betting offices that had been offering, via the Internet, sports wagering by foreign companies. According to the representatives from the Ministry of the Interior of Lower Saxony who were interviewed for this research, the Ministry had closed down 435 private sports wagering offices by September 2010.

The state of Saxony (in which Bwin was registered) withdrew the concession from Bwin before the beginning of the 2006/2007 Bundesliga season. As a result, Bwin had to stop all of its sports sponsoring. Some professional soccer clubs lost their main advertisement partner (Koopmann, 2008, p. 30). However, the company did not stop

its online sports wagering offers before August 2009 after a court in Munich threatened it with penalty payments. Since then, there has been no *bwin.de* website in Germany; however, it was still possible to access the website *bwin.com*. Germany did not adopt measures to forbid financial institutions from transferring money to Bwin and other companies abroad (as is the case in the USA), and individuals are not penalized for betting with Bwin and other betting companies abroad.

Other states took similar actions and began shutting down illegal betting agencies and made advertising of foreign online sports wagering companies illegal. The representatives of the Ministry of the Interior of Lower Saxony explained, 'The gambling regulation authorities in the German states closely cooperate. We have working groups with which we coordinate' (Meyer and Schiller, personal communication, 4 October 2010).

There are different interpretations of the online sports wagering ban. The executive director of the lottery in Lower Saxony said:

We really would have loved to further offer online sports betting. The mistake was made in the IGT of 2004, which mainly justified the state monopoly by associating it with the combat against addictive gambling. After the Federal Constitutional Court judgment from 2006, we had no other choice but to ban Internet gambling. If private online sports wagering had been allowed, the next step would have been also to liberalize other lotteries which would have limited our ability to pay taxes to the states and support charity. (Stypmann, personal communication, 20 September 2010)

However, the chairman of the German Bookmaker Association said:

The Federal Constitutional Court made it clear that the states could legalize private sports wagering companies. This will not affect the state monopoly in other lotteries. By ending their online sports wagering offer, they have merely sacrificed a pawn. They are able to keep their monopoly over all the other state lotteries and combat local and domestic competitors. (Albers, personal communication, 20 September 2010).

The IGT of 2008 had a four year term and needed to be reevaluated in 2011. Thirteen out of the sixteen Prime Ministers of the German states have had to agree before a new treaty could have become effective (a consensus had been usually reached in the past). In April 2011, 15 out of 16 German states presented a common draft for a new IGT of 2012. The state of Schleswig-Holstein voted against the proposal of a five-year testing phase, criticizing the other states for planning to place a limitation on the number of concessions for private betting companies and for the fact that the proposed tax would be too high which makes legal private companies less attractive as compared to illegal offshore companies. Instead, in September 2011, the parliament of Schleswig-Holstein passed a law to legalize and liberalize the online sports wagering market within Schleswig-Holstein by March 2012. The other states criticized this decision claiming that it signaled the 'termination of the solidarity among the states' ('Kieler als Vorbild nehmen', 2011). After the governing parties lost the state elections in May 2012 the new government of Schleswig-Holstein decided to join the other states. Taking into account comments from the EU notification process, the 15 states decreased their initial restrictions by increasing the number of issued licenses and decreasing the proposed tax ('Private Wettanbieter wollen nur in Schleswig-Holstein investieren', 2011). The starting date

of the new IGT was July 2012, and 20 concessions are scheduled to be issued by early 2013.

Why were major changes in sports wagering legislation approved in Germany? These changes are, on the one hand, externally driven. Gambling is not regulated by sector-specific rules at the EU level, and Member States remain free to determine their approach in accordance with EU law (European Commission, 2011, pp. 12–13). However, in September 2010, the European Court of Justice ruled that Germany's regulation was not consistent with its gambling policies. Germany had undermined its consumer-protection clause by letting state-run operators engage in 'intensive advertising campaigns' and by permitting the proliferation of automated gambling machines that the court considered highly addictive. The court stated, 'In such circumstances, the preventive objective of that monopoly can no longer be pursued, so that the monopoly ceases to be justifiable' (Pfanner, 2010).

On the other hand, there are also internal drivers for these probable changes. At their meeting in March 2011, the prime ministers of the German states generally agreed that the new IGT of 2012 should liberalize the sports wagering market, but retain its lottery monopoly. The prime minister of the state of Rhineland-Palatinate, Kurt Beck (Social Democrats), justified this decision by explaining that, '90% of the sports wagering market is taking place illegally and the states are losing billions of possible revenue' ('Sportwettenmarkt soll geöffnet werden', 2011).

Politics and sports

Why did the prime ministers of the 16 German states change their opinion? Apart from the above discussed external driver there was an important internal driver: The German Soccer League (DFL) and other professional sports leagues, as well as the German Olympic Sports Confederation (DOSB) that represents major sports associations, had been strongly lobbying against the monopoly in sports betting and in favor of opening the market for private betting companies. The Director General of DOSB emphasized, 'We were already in favor of liberalizing the sports betting market before the judgment of the European Court of Justice' (Vesper, personal communication, 28 September 2010). In 2007, the DOSB (which receives about one-third of its budget from payments from the state lotteries) had already initiated a working group on gambling that included, among others, representatives of the German Football Association (DFB) and of some state sports associations.

In order to better evaluate the IGT, the conference of the prime ministers of the German states had solicited the opinion of German sports associations. In May 2010 (five months before the judgment of the European Court of Justice), DOSB and DFL submitted their 41-page-long statement. The initiative for professional sports in Germany (IPD), a common lobby group for the DFL and three other professional sports leagues (ice hockey, basketball, and handball), supported the statement by DOSB and DFL (IPD, 2010). Being a member of both groups, the DFL facilitated this support.

There are two reasons behind the proposal of this dual system (keeping the monopoly on lotteries, while liberalizing the sports betting market). The first reason pertains to the integrity of sports: if betting were done legally it could be better monitored and matches would less likely be fixed. The second reason pertains to the professional and competitive sports sector's finance that arguably can be improved if

such legislation were to pass. By maintaining their monopolization of lotteries, they can sustain their tax payments and support for charity (including co-financing the state sports associations). A new player on a liberalized sports betting market will have to pay a concession fee in order to support the state sports associations to the minimum extent that the payments from Oddset in 2005 had provided (80 Mio Euro) (DOSB, DFL, & Deutsche Stiftung Sporthilfe, 2010). A new regulatory authority should be responsible for overseeing the sports betting market and granting the concession fees. The concession fee should be relatively low so that it does not tempt people to place their bets at illegal companies that grant better offers. The Director General of DOSB explained

Once a legal market with many players exists, only a small percentage of the market will be controlled by illegal companies. Violations will always exist, but with this model we should be able to reduce the illegal market from its 95 percent dominance to around one quarter. (Vesper, personal communication, September 28, 2010)

The senior in-house counsel of the DFL, Holger Blask, gave a similar prediction and explained, 'It is not realistic to expect 100% of the market to be legal, but we should be able to legalize around 70-80% of it' (personal communication, 28 September 2010).

In addition to the concession fees by the new private companies, the professional sports will have an additional benefit – sponsorship by the new betting companies. Blask stated, 'We need to be competitive with clubs from Spain, Italy, England, and France' (personal communication, 28 September 2010). Some European clubs are advertised by companies such as Bwin (Real Madrid, AC Milan until 2010), Betclac (Olympic Lyonnais), and 188Bet (Bolton Wanderers). Germany was the only 'Big Five' country in Europe in which advertisements by sports betting companies were considered illegal prior July 2012.

Politics in sports

In April 2005, after the Hoyzer scandal (Hoyzer is the name of a referee who fixed, on behalf of gamblers, some soccer matches), the parliament of the DFB, the DFB-Bundestag, voted in favor of prohibiting players, referees, and club administration from placing sports bets ('DFB-Bundestag', 2005). The DFL, which deals with the first and second professional soccer league (whereas the DFB is responsible for all the other leagues and the national teams), adopted this decision by prohibiting sports gambling in players' prototype work contract that is sent out to the 36 professional football clubs. Accordingly, players are forbidden from placing bets that are related to the league in which their clubs are licensed, and they are not allowed to accept bonuses from people outside the club.

Besides changing their prototype work contract for the players, the DFL has started two initiatives to prevent players from betting and to counter match fixing. The DFL has been cooperating with the company Sportradar that has developed an early warning system. Sportradar monitors all available data on bets that are placed on professional football matches in Germany and informs the DFL if there are any suspicious changes of odds, and if there are any unusual high amounts of money

placed on certain results of specific matches (regarding the limitations of this system, see Buschmann 2011).

In 2010, the DFL initiated a project with the German section of Transparency International. The key elements of this project are the development of guidelines and information material, the organization of workshops, and the introduction of a confidential help-desk for players and club administration staff ('DFL startet Präventionsprojekt', 2010).

Comparative analysis

The major difference between the two countries is the relevance of the topic. While in Germany a broad public debate on legalizing and liberalizing online sports wagering took place, this did not occur in the USA where the topic took a backseat and received significantly less media coverage. Apart from this general observation, this research has revealed that the same policy outcomes in Germany and the USA were only in part motivated by the same reasons. Both countries have some factors in common, but due to their different historical, cultural, and socio-economic context, there are also variables that differ between them. This limits the possibility of this research to reach broad generalizations; another limiting factor is that this research only examines two countries. Other countries that prohibit online sports wagering might have reasons that have not occurred in this study. Nevertheless, the small-N research design of this work is advantageous in that it provides in-depth analysis and a deep understanding of the cases.

In this section the joint factors that led to the prohibition of online sports wagering in Germany and the USA as well as the variations across the cases will be described and explained.

In spite of the ban, illegal sports betting still takes place in both countries. Table 2 shows the amount of money wagered in both countries on sports events. Even if the National Gambling Impact Study Commission (data for the USA, mainly based on surveys) and the consulting firm Goldmedia (data for Germany, based on company reports and interviews) might have employed different methods to generate their estimations, and despite the fact that their data do not differentiate between land-based and online wagering, the data reveal similar tendencies: the amount of money that is wagered is huge and sports betting mainly takes place illegally. Some of the stakeholders who were interviewed argued that the data clearly reveal that the online sports wagering ban failed in both countries. Others argued that the size of the market would have been even larger had the ban not been instilled. According to

Table 2. Sports betting in the USA and Germany – amount wagered in 2009 (Sources: Börnsen & Schmidt, 2010; American Gaming Association, 2011).

	US	Germany
Amount wagered	\$380 billion	€7.8 billion (\$10.32 billion)
Thereof legal	0.68% (\$2.57 billion) (whole amount wagered in Nevada)	3% (€234 million/\$309.43 million) (nation-wide amount wagered with the state monopoly sports bet 'Oddset')
Thereof illegal	99.32% (\$377.43 billion)	94% (€7.315 billion / \$9.67 billion)

the European Commission, 'It is [...] interesting to note that some of the largest markets in 2008 were Member States characterized by the restrictive regulative model, i.e. France, Germany, Italy and Sweden' (2011, p. 8).

Table 3 summarizes the findings of this research regarding the main differences and similarities on the regulation of online sports betting in the USA and Germany. While in the USA the federal government is responsible for dealing with this issue, in Germany this responsibility lies with the states. Both countries do not accept online sports wagering but have accepted some exceptions for land-based sports betting. In Germany, it is legal to place a bet with the state monopoly's betting service 'Oddset'; the USA allows sports betting in the states of Nevada and under certain circumstances (parlay bets on NFL matches) in Delaware.

Both countries have used different policy instruments to implement the ban: the USA forbids financial institutions to transfer money to illegal online sports betting companies; in Germany, betting offices that illegally offer sports wagering via the internet have been shut down. In addition, the German states forbid the advertisement of online sports wagering companies and any form of sponsorship by them.

The United States Supreme Court and the German Constitutional Court had a main influence on the policy debates in their countries. According to Werner and Wilson (2008, p. 357), 'The courts in the US have a degree of power in policy making [that is] unmatched in any other democracy. However, there has been a clear trend towards an increased role for the judiciary in policy making in many democracies.' Germany is certainly an example of this.

In Germany the influence of the Constitutional Court was strongly felt, when it offered the government an ultimatum in 2006. The government had to choose between retaining the monopoly while strictly fighting compulsive gambling or the legalization of private sports wagering companies. This ultimatum led to the ratification of the IGT of 2008 that prohibited online sports wagering. As explained in the case study, the UIGEA of 2006 in the USA was inadvertently passed by Congress when it was added to a law that had to pass and was not related to gambling in any manner. While the Constitutional Court in Germany was a main driver for political change, the United States Supreme Court defended the existing legislation. In 2009, the Supreme Court forbade Delaware to extend its sports wagering offer.

In both countries, the main professional sports leagues closely cooperate. The NFL, the NBA, the MLB, and the NHL cooperate in the USA, and the DFL and its partners in the Initiative Professional Sport (the professional sports leagues in handball, hockey, and basketball) have worked together and commonly acted in Germany. Another similarity between both countries is that their most popular sports leagues – the NFL in the USA and the DFL in Germany – took the lead in convincing policy makers and, in the case of the USA, in bringing the issue to court. In the USA, the FBI has formed a special unit with the sports associations in order to coordinate the professional sports leagues' efforts on gambling issues; however, such a state intervention has not taken place in Germany. The most important difference between the two countries is the attitudes they have demonstrated toward the topic. In the USA neither amateur sports nor the main professional sports leagues are in favor of legalizing and liberalizing sports betting; this is not the case in Germany. As a result, proponents of the legalization of online gambling in the USA

Table 3. The regulation of online sports betting in the USA and Germany by the end of 2010 – summary of differences and similarities (own elaboration).

	USA	Germany
Federal or state regulation of sports betting	Federal (exceptions for Nevada and partly Delaware)	State (but uniform regulation under the Interstate Gambling Treaty)
Online sports betting allowed	No	No
Land-based sports betting allowed	Only in Nevada (all main sports) and in Delaware (parlay on NFL matches). In all other 48 states forbidden	Only with the state monopoly sports bet ‘Oddset’
Main legal framework on sports betting	Professional and Amateur Sports Protection Act of 1992 (PASPA) and Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)	Interstate Gambling Treaty of 2008
Role of the Supreme/Constitutional Court	In 2009 Supreme Court forbid Delaware to extend sports wagering on NFL parlay matches to bets on single matches and on other sports	Federal Constitutional Court judgment from 2006 (either to keep the monopoly but stricter fight compulsive gambling or to legalize private sports wagering companies) leads to Interstate Gambling Treaty of 2008 and its prohibition of online sports wagering
Main policy instrument for the implementation of online sports wagering ban	Forbidding financial institutions to transfer money to illegal online sports betting companies	Shutting down betting offices that illegally offer sports wagering via the internet. Forbidding advertisement of online sports wagering companies and any sponsoring by them
Sports governing associations in favor with legalization and liberalization of sports betting	Neither college sports (NCAA) nor the main pro sports NBA, NHL, NFL, MLB, and MLS	Yes by Initiative Pro Sports (DFL, HBL, BBL, DEL) and German Olympic Sports Confederation (DOSB)
External pressure to abolish restrictions for foreign sports betting companies	Yes (WTO ruling from 2007) but not resulting in a policy change due to compensation payment to the suing country	Yes (European Court of Justice decision from September 2010)

have excluded online sports wagering from their legal proposals to Congress. In contrast, the German professional sports associations and the DOSB are in favor of legalizing and liberalizing sports betting due to the additional advertising and sponsoring opportunities that such a change provides. In the USA, kit sponsoring does not exist in the main professional sports leagues, apart from the MLS that has recently allowed it. A main explanation for this difference could be that the North

American sports leagues operate in closed markets whereas the German sports leagues are integrated in European competitions (such as the Union of European Football Associations (UEFA) Champions League in soccer) in which they compete with clubs from other countries that allow online sports gambling. These clubs (such as the Spanish Real Madrid that is sponsored by Bwin) have a competitive advantage insofar as German clubs cannot get advertisement money from the growing online betting market.

The sports associations in the USA fear risking the integrity of sports, while their German counterparts argue that a legalization would offer better monitoring opportunities of sports betting that takes place anyway. Besides the above-mentioned internal driver, an external driver (Pfanner, 2010) strongly influenced and finally changed the position of the Prime Minister conference of the German states. External pressure exerted upon the USA from a WTO ruling in 2007 has led it to offer the suing country a compensation payment, but has not led to any policy changes in the country.

In both the USA and Germany, the sports governing associations have the power to influence the policy-making process. In Germany, the states are under pressure from the sports governing associations to allow online sports wagering and to liberalize the market; while in the USA sports governing associations' strict opposition to such a move is reflected in the government's negative stance toward the issue. This confirms the hypothesis that policy making is the 'result of interactions between mutually dependent governmental and non-governmental actors, including interest groups' (Werner & Wilson, 2008, p. 355). The German sports associations made use of a 'policy window which allows advocates of a certain issue to put it on the policy agenda' (Knill & Tosun 2008, p. 501). This policy window was provided by the judgment of the European Court of Justice and by the fact that the IGT is only valid for four years which allows for a policy evaluation by the end of 2011. Policy evaluation is a powerful tool in the policy-making process as:

it possesses the potential to reframe an issue once thought to be resolved by policy-makers, but [...] it can also lead to the termination of public policies. In this respect, policy evaluations can pave the way for policy learning and evidence-based policy making.' (Knill & Tosun 2008, p. 501)

In the USA a similar evaluation mechanism does not exist; however, sports associations have succeeded in advancing their position.

Conclusion

The third and final step of any comparative method is to formulate predictions. On a federal level, the USA will adhere to its strict opposition toward online wagering, while Germany will join the majority of industrialized countries that have legalized online sports betting and have liberalized their markets. We are yet to discover whether or not any form of international agreement will be attained at the level of the EU. Currently, no movement towards a harmonization of online gambling regulation exists. However, the Green Paper 'On on-line gambling in the Internal Market' has stimulated debate and launched a process of consultation in 2011 (European Commission, 2011). By the end of 2011, the EU Parliament had passed a resolution

instructing the EU Commission to present a directive on online gambling ('EU erwägt Richtlinie für Glücksspiel', 2011).

The current attitude of the USA is quite surprising if the country's history is taken into consideration. By the end of 2010, 'Boardwalk Empire,' a TV series, was launched in the USA and gained recognition and received awards. The series discusses the country's policy of prohibiting the sales of alcohol from 1919 to 1933. Consequently, the government lost control over the sector: alcohol consumption did not come to an end, but prices soared, organized crime benefitted, and corruption increased. This historical incident finds modern parallels with sports wagering; the market is growing, but the government is not receiving any tax shares from the sector and fails to control it. Legalization would not only help the government's budget, but could also address the concerns voiced by critics. The integrity of sports can be upheld if legal companies were to monitor all sports bets and inform the authorities of any unusual activities. Pathological gambling could be much better addressed if the market were regulated by the government, rather than left to the black market. The government could apply certain restrictions such as a minimum age for gambling, a limit on the sum of money that can be waged, the prohibition of certain types of bets that could promote match fixing such as the point spread in basketball; the government can also oblige companies to inform customers of the risk of pathological gambling and direct their attention toward institutions that may help victims.

Why do the professional sports associations not take a more pragmatic stand toward gambling? Apart from concerns over the integrity of the game, another reason might be that the US sports sector aims to entertain its audience and to attract families. According to some of the people who were interviewed for this work, sports betting does not fit well in such an environment. Finally, the US professional sports teams are not in need of advertisement money from online sports betting companies as opposed to their German counterparts who compete with clubs from countries that have legalized Internet betting.

In Germany, in response to the judgment of the European Court of Justice, a process of change has begun. The sports governing associations were the main drivers for change and were able to convince the German states of the possible advantages of legalizing and liberalizing online sports wagering. By the end of 2011, and upon the completion of this research, the German states had decided to legalize online sports betting and were discussing the details of the liberalization process that is scheduled for 2012/2013. Germany can learn from France who liberalized its sports betting market in 2010. The pay-out rate in France is only 79%, far below the international standard. If odds are uncompetitive and bettors will suffer welfare losses, most of the market (in France 75%) remains illegal (Forrest 2012, p. 15). We are yet to discover whether the size of the online sports betting market will significantly increase in Germany and to what extent this might increase the likelihood of match fixing and the wide range of social, economic, and psychological problems associated with gambling. According to the European Commission, '[a]lthough some research suggests the existence of a positive link between accessibility and gambling addiction, the available empirical data do not always confirm this' (European Commission, 2011, p. 23). The UK, for example, has the largest gambling market in the EU but has a relatively low number of addicted gamblers (European Commission, 2011, p. 20). The main driver for the German

sports governing associations is the expected additional sponsorship opportunities. However, the European Commission (2011, p. 27) poses a legitimate question in its Green Paper on online gambling, '[w]hat risks are there that a (on-line) sports betting operator, which has entered into a sponsorship agreement with a sports club or an association, will seek to influence the outcome of a sports event directly or indirectly for profitable gain?'

Gambling will remain embedded within both German and American cultures – even if it is officially banned. Policy makers must decide under which conditions gambling will take place and which policies to develop in dealing with the apparently unavoidable side-effects such as addiction and match fixing. There are limits to national regulators. Forrest (2012, p. 11) refers to 'the fact that Asian markets are larger, even for matches taking place in Europe.' Therefore, suggestions include establishing multinational police units to increase the probability for match fixers of being caught, an international understanding to include sports corruption into national panel codes, global systems for monitoring betting activities, and educational programs around global sporting events such as the World Cup and the Olympic Games.

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