

**European Gaming and Betting Association (EGBA)**

Rue Gray 50

1040 Brussels, Belgium

Email: [egba@egba.eu](mailto:egba@egba.eu)

Phone: +32/2/554.08.90

**Finansdepartementet  
Finansmarkedsavdelingen (FMA)**

Postboks 8008 Dep

0030 Oslo

Norway

Attn.: General Director Geir Åvitsland

Brussels, 31 March 2017

**Subject: Written comments – consultation on the Draft Law for the implementation of the Fourth Anti-Money Laundering Directive**

Dear Mr. Åvitsland,

We, the European Gaming and Betting Association ('EGBA'), the association representing the leading online cross-border licensed gaming and betting operators in the European Union ('EU'), are hereby sending our written comments on the **Second Interim Report – New legislation on measures to combat money laundering and terrorist financing (NOU 2016: 27)**, in order to implement the expected forthcoming EEA rules as results of the transposition of the Fourth Anti-Money Laundering Directive (hereinafter the '**Directive**')<sup>1</sup>. The Directive represents a crucial pan-European instrument to fight money laundering and to establish harmonised rules across the EU. Thus, EGBA believes that its correct implementation in the national legislative framework of the EU/EEA Member States is crucial.

It is therefore of the utmost importance that Norway transposes the provisions of the Directive while **taking the necessary measures to enable online gambling operators to tackle and detect fraudulent transactions in the most effective manner**, in order to maintain the safety and integrity of the online gambling environment and to minimise the cost of fraud and money laundering. In the annex to this letter, you may find a [guidance document](#) that can be used by the Norwegian Government

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<sup>1</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, OJ L 141, 05/06/2015.

towards an effective and workable implementation of the Directive, as applicable to online gaming operators regulated and licensed in the EU.

First of all, while EGBA welcomes the **inclusion of the whole gambling sector within the scope of the 4<sup>th</sup> AMLD** which creates greater legal certainty and consistency EU-wide, we also believe that gold plating, i.e. going beyond the measures foreseen in the Directive during the implementation into national law risks to harm both operators and consumers. Over regulation can easily derail the channelling of consumers especially in the area of online gambling, where offers from Asia are just one click away.

Our experience with regulation in numerous EU/EEA Member States has shown that an effective consumer protection and well-functioning market can only be achieved through a safe, competitive and regulated offer, in line with EU/EEA law. Such an offer will prevent players from gravitating towards unregulated websites operated by companies established outside the EU, that do not adhere to European consumer protection standards and do not abide by responsible gaming, anti-fraud and anti-money laundering rules. Thus, unnecessarily burdensome AML provisions should be avoided as they are not proven to work in practice.

EGBA believes that the attention of national authorities should be drawn to the fact that **the Directive already provides sufficiently stringent rules for gambling operators**, and that gold plating would be both harmful and unnecessary. For instance, the UK Government published recently the [draft Money Laundering Regulations 2017](#), now open for consultation. A previous consultation was open in 2016, to which EGBA sent its comments as well. Following the **UK Gambling Commission's risk assessment**<sup>2</sup>, the UK Government highlighted that the gambling sector deems to represent a lower risk in comparison with other regulated sector<sup>3</sup>, particularly due to the mitigating factors, *inter alia*, applied by the industry through effective systems and controls. As a result, the UK Government has decided to implement an exemption for all gambling service providers from the requirements of the Directive, except for remote and non-remote casinos<sup>4</sup>.

On this basis, we would like to point out that nowadays most online gambling operators are cross-border and hold multiple licenses in multiple EU/EEA jurisdictions, which means **they already have complied with a large number of AML rules and have established systems in place to deal with the risks**. Operators apply a wide range of tools and mechanisms in order to flag any suspicious activity which are highly traceable and easily audited, as part of the Customer Due Diligence (“**CDD**”), based on the risk-based approach. We support the continued use of a risk-based approach as we believe it is the most effective and efficient tool to prevent ML.

In addition, EU regulated online gambling providers – due to the nature of the online service – do not operate with cash, but rather through highly regulated financial institutions, adding an additional layer of security. Since **gambling transactions over the internet are traceable, recorded and transparent due to the digital footprint** (presenting less risks than cash payment or face-to-face identification), it hence offers more possibilities to detect and prosecute fraudulent activities than offline transactions. For instance, Europol published the EU Serious and Organised Crime Threat Assessment (SOCTA

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<sup>2</sup> <http://www.gamblingcommission.gov.uk/PDF/AML/Money-laundering-and-terrorist-financing-risk-within-the-British-gambling-industry.pdf>

<sup>3</sup> <https://www.gov.uk/government/consultations/money-laundering-regulations-2017>

<sup>4</sup> <https://www.gov.uk/government/consultations/money-laundering-regulations-2017/money-laundering-regulations-2017>

2017) which covers the impact of criminal activities through the use of new technologies by organised crime groups in the EU. The report acknowledged that cash remains at the core of the money laundering business<sup>5</sup>, while at the same time, it did not identify the online gambling sector as a facilitator to money laundering.

We would like to reiterate that both fraud and money laundering are manageable problems for online gambling operators due to the stringent controls and internal procedures to ensure criminals are not given any opportunities to launder proceeds of crime.

In conclusion, EGBA calls on the Norwegian Government to take into consideration the suggestions put forward in our guidance document. As we have done in numerous other jurisdictions, EGBA would like to provide our expertise and knowledge to assist in the creation of a sustainable regulatory framework in Norway, if so requested.

We thank you in advance for your consideration of our letter and we remain at your disposal for any further questions.

Yours sincerely,



Maarten Haijer  
**EGBA Secretary General**

**Annex:** Guidance document towards a proper implementation of the Fourth Anti-Money Laundering Directive

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<sup>5</sup> <https://www.europol.europa.eu/newsroom/news/crime-in-age-of-technology-%E2%80%93-europol%E2%80%99s-serious-and-organised-crime-threat-assessment-2017>

**Guidance document on a proper implementation  
of the Fourth Anti-Money Laundering Directive**

**March 2017**

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## Introduction

We, the European Gaming and Betting Association (“**EGBA**”), the association representing the leading online cross-border licensed gaming and betting operators in the European Union (“**EU**”), present this guidance document on the transposition of the Fourth Anti-Money Laundering Directive (hereinafter the “**Directive**”)<sup>1</sup>, which Member States must implement by 26 June 2017.

The main objective of this note is to provide Member States with guidance and clear recommendations for an effective transposition of the provisions contained in the Directive. EGBA would thus like to share our expertise and knowledge to ensure a safe and sustainable anti-money laundering regulatory framework across the EU.

Firstly, we will focus our comments on the low risk nature of online gambling linked to the 4<sup>th</sup> AMLD provisions setting out a possibility for exemption (1). Secondly, we will elaborate on the Customer Due Diligence (hereinafter “**CDD**”) requirements (2). Lastly, we will conclude by highlighting the costs and impacts incurred by gambling services providers when implementing the Directive (3).

### 1. The low risk level of online gambling

Article 2(2) of the Directive provides for the possibility for Member States to define, in the national legislation, exemptions to certain proven low risk gambling activities, which will have to be notified to the European Commission together with a justification based on the specific risk assessment. In their risk assessment, Member States shall assess the degree of vulnerability of the applicable transactions, including with respect to the payment methods used.

With regards to this provision, we first consider that online gambling in general does not constitute a high risk activity in terms of money laundering (1.1), not only due to transparency efforts made by gambling operators (1.2), but also due to the overall efforts made by the EU, private operators and national regulators (1.3). The low risk nature of online gambling is supported by money laundering prevention measures taken by online gambling operators concerning more specifically payment methods (1.4)

#### 1.1 General remarks

First, we would like to point out that, due to a number of reasons on which we will elaborate below, online gaming and betting does not present high risks in terms of money laundering. In fact, money laundering through cash, in general, makes use of larger sums of money while, on gambling websites, the risk is low, in particular, due to the traceability of all gambling activities and the commonly small sum transactions made by players. This view has been shared by the European Commission, which has stated the following:

*“As for money laundering, there is currently very limited information or evidence suggesting that licensed online gambling operators in Europe are subject to money laundering activities.”*

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<sup>1</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, OJ L 141, 05/06/2015.

*The prevailing problem is linked to unregulated operators who are offering their services at a distance from outside of the EU with either no or a very low degree of regulation and supervision*<sup>2</sup>.

Furthermore, already in 2009, a study carried out by Professor Levi, from the University of Cardiff, found that:

*“There is much mythology about e-gaming laundering risks, fed by inadequate information and a tendency to project a dislike of gaming and/or private sector involvement in it into alarm about e-crime in general and the role of gaming in this”*<sup>3</sup>.

*“In short, compared to methods of customer identification and monitoring in the offline gaming and financial services sector, the scope for substantial abuse of e-gaming for laundering purposes is modest, both for those crimes that generate cash and for those that do not”*<sup>4</sup>.

Those comments are also underpinned by all the practical means deployed by online gambling actors to fight against money laundering (below).

## 1.2. Online gambling operators' efforts

The low risk level of online gambling and betting in terms of money laundering is due to the traceability of all gambling activities and transactions. This transparency is, for instance, ensured by the recording and tracking of all customer transactions by the operators. In particular, the paragraphs below describe part of the **direct and pro-active strategy undertaken by EU licensed and regulated operators** to apply a risk-based approach in line with the Directive. This strategy involves comprehensive and continuous mitigation work on the industry risk-factors, with particular efforts around:

- **Transactions:** entirely cash-free transaction system integrated with the highly regulated EU financial services providers.
- **Visibility:** complete lack of customer anonymity, where gambling CDD processes are personalised in line with the accounts themselves.
- **Closed loop:** it must be shown that the customer owns any financial instrument used to deposit/withdraw money.
- **Audited Internal Control Systems:** operators employ advanced Internal Control Systems (hereinafter “ICS”) built on a risk-based approach and the flagging of suspicious activity for further enhanced customer due diligence. Measures such as deposit blocks and account suspensions are taken when deemed necessary.
- **Accountability:** online gambling operators use cutting-edge technology processes and routine operations by highly-trained professionals (through specific AML trainings) which are inherently highly traceable and easily audited (i.e. digital fingerprints, tracking of detailed customer action trail from log-in to log-out).

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<sup>2</sup> [Commission Staff Working Document 'Online gambling in the Internal Market'](#) accompanying the Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions 'Towards a comprehensive framework for online gambling' {COM(2012) 596 final}, 23.10.2012, p. 89.

<sup>3</sup> [Money Laundering Risks and E-Gaming: A European Overview and Assessment](#), Final Report, Michael Levi, Ph.D., D.Sc. (Econ.), Cardiff University, September 2009, p. 6.

<sup>4</sup> *Ibidem*, p. 26.

Moreover, national legislation in all Member States already imposes strict Know-Your-Customer (hereinafter “**KYC**”) requirements on online operators. These requirements aim at the verification of the identity of players, and oblige online gambling operators to request and verify a number of documents for each of their players<sup>5</sup>.

For instance, following the **UK Gambling Commission’s risk assessment**<sup>6</sup>, the UK Government highlighted that the gambling sector deems to represent a lower risk in comparison with other regulated sectors<sup>7</sup>, particularly due to the mitigating factors, *inter alia*, applied by the industry through effective systems and controls. As a result, the UK Government has decided to implement an exemption for all gambling service providers from the requirements of the Directive, except for remote and non-remote casinos<sup>8</sup>.

### 1.3. EU, private operators and national regulators’ efforts

The risk of gambling-related money-laundering is becoming even lower, in recent years, due to the actions taken in the field of electronic verification by EU and national regulators, and by private operators.

The **eIDAS Regulation**<sup>9</sup> puts forward relevant provisions for gambling operators as a mean for a more reliable player’s identification, KYC and funds control. The procedure of player’s identification can be overly burdensome when the verification process established in each Member State is time-consuming and/or impractical. Hence, an adapted and tailored real-time identification (based on video technology or database banks) for online gambling would constitute a considerable improvement which, at the same time, favours the channelling of consumers towards the regulated offer.

Concerning the public sector, initiatives are being taken in order to improve/harmonise **electronic identification systems and procedures**. These initiatives include for instance, the issuing of e-ID cards by some Member States such as Spain, Estonia, Portugal and Belgium. Regarding the private sector, companies more and more are launching **identity verification services**. Examples of that are BankID<sup>10</sup> in the Nordics or webID<sup>11</sup>.

Further, the underway revision of the 4<sup>th</sup> AMLD, the 5<sup>th</sup> AMLD, will introduce amendments to properly identify and verify parties to a transaction and/or payment, when opening a bank account or accessing funds and/or tracing electronic transactions. In particular, it will reduce the risk exposure of anonymous/pre-paid cards by lowering the threshold from €250 to €150. The Directive will then be updated to take into account the new legal framework on the mutual recognition of notified eID schemes and eliminating any potential incompatibilities.

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<sup>5</sup> For an extensive explanation of the KYC process please *see* EGBA’s Online Gambling Regulation Manual, 24 May 2016, 3rd Edition, pages 4-9.

<sup>6</sup> <http://www.gamblingcommission.gov.uk/PDF/AML/Money-laundering-and-terrorist-financing-risk-within-the-British-gambling-industry.pdf>

<sup>7</sup> <https://www.gov.uk/government/consultations/money-laundering-regulations-2017>

<sup>8</sup> <https://www.gov.uk/government/consultations/money-laundering-regulations-2017/money-laundering-regulations-2017>

<sup>9</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, OJ L 257, 28.8.2014.

<sup>10</sup> <https://www.bankid.com/en/>

<sup>11</sup> <https://www.webid-solutions.de/en/>



Finally, it is worth mentioning that **consumer trust is a key asset for online gambling operators**, which seek to be distinguished by consumers in what relates to, *inter alia*, gambling-related crime prevention. **Most consumers are reluctant to play with operators believed to be linked with criminal or terrorist organisations**. For this reason, private operators have also put in place initiatives to bring the fight against fraud one step beyond.

For instance, the [CEN Workshop Agreement on responsible remote gambling measures](#) (2011) obliges EU regulated operators to constantly monitor and report suspicious transactions to the relevant authorities. The CEN Workshop Agreement, which includes more than one hundred measures dealing mostly with consumer protection and fraud and gambling-related crime prevention, is based on a recommendation on online gambling issued by the European Commission on 2014<sup>12</sup>.

#### 1.4. The low degree of vulnerability of applicable transactions

Nowadays most online gambling operators are cross-border and hold multiple licences in multiple jurisdictions; they are therefore obliged to comply with a large number of rules for combatting money laundering, according to the license requirements established by each national regulator.

As a standard, **EU - licensed and regulated - online gambling providers**, due to the nature of the online service and in order to comply with the 4<sup>th</sup> AMLD, fraud prevention and responsible gaming standards, **do not operate with cash but rather through highly regulated financial institutions, adding an additional layer of security to their processes**. On the contrary, the use of cash by land-based gambling activities does not require any registration or customer identification, leading some users to turn away from easily traceable digital payment options.

Europol published recently the ‘EU Serious and Organised Crime Threat Assessment – Crime in the age of technology’<sup>13</sup> (SOCTA 2017) which gives an overview about the sectors and activities most affected by organised crime. Europol identified document fraud, money laundering and the online trade in illicit goods and services as the three cross-cutting threats that enable and facilitate most types of serious and organised crime. Hence, the report does not identified the online gambling sector as a facilitator to money laundering. Yet, **the report confirms that cash remains at the core of the money laundering business**.

Please find below a table including information from one of our members on the payment methods used by customers to make a deposit:

Deposit methods	Split per frequency	Split per amount
Bank	0.1%	0.5%
Cards	49.1%	51.1%
eWallet	2.5%	7.8%
Instant	42.5%	37.2%
Prepaid	5.8%	3.3%
Grand Total	100.0%	100.0%

<sup>12</sup> Commission Recommendation of 14 July 2014 on principles for the protection of consumers and players of online gambling services and for the prevention of minors from gambling online, 2014/478/EU, OJ L 214, 19.7.2014.

<sup>13</sup> <https://www.europol.europa.eu/activities-services/main-reports/european-union-serious-and-organised-crime-threat-assessment-2017>

Most of the funds that are credited to gaming accounts are already in the banking systems, meaning that they are in general transferred from a bank account. If that is not the case (i.e. paysafecard), operators have controls in place to restrict winnings and additional checks are made before players can withdraw when they have only done limited or no playing activity, because this is flagged as a suspicious activity. In conclusion, it should be reminded that **gambling transactions over the internet are traceable, recorded and transparent due to the digital footprint** (presenting fewer risks than cash payments or face-to-face identification) and hence offer far more possibilities to detect and prosecute fraudulent activities than offline transactions.

#### **Recommendation 1**

While Article 2(2) of the 4<sup>th</sup> AMLD provides for the possibility for Member States to exempt certain proven low risk gambling activities, **we do not consider it as necessary or advisable to seek any exemption for any specific gambling activity**. Online gambling operators usually do not make any differentiation in procedures between the provision of online gaming and online betting products but apply appropriate AML procedures to all of these products equally. Such a choice is justified also by practical reasons: when offering a wide range of both online gaming and online betting products, allowing customers to use funds in their single wallets to gamble on all products is easier.

It would therefore be more sensible to assess risk by sector rather than by specific gambling activity.

#### **Recommendation 2**

Taking into account the fact that most EU online gambling services providers operate through highly regulated financial institutions, it is therefore preferable, in our view, to only allow payment methods which are offered by Payment Service Providers licensed in the EU/EEA to ensure an additional level of supervision.

## **2. The use of strict Customer Due Diligence requirements**

Chapter II of the 4th AMLD focuses on the CDD process. The implementation of such measures leaves an important margin of discretion to Member States. We therefore would like to provide our guidance not only on the implementation of the process in general (2.1) but also on what constitutes in our view the optimal timing of the CDD process (2.2).

### **2.1 General remarks on the implementation of the CDD process**

In our view, the aim of the CDD process is to mitigate the risks of fraud and money-laundering, consisting of two main steps: (i) obtaining information from the player and (ii) verifying the accuracy of the information provided. It requires information such as name, date of birth, photo, address, contacts and national ID number. Afterwards, the operator will verify this information by using different methods depending on national legislations.

**The most commonly used method**, which is also recommended by the European Commission<sup>14</sup>, **is a temporary grace period in which verification needs to be completed, but during in which the player is allowed to play**. A 30-day temporary account allows players to deposit money and play but

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<sup>14</sup> EC 2014 Recommendation, paragraph 22.

not to withdraw any money, which is only possible after the completion of the CDD Process. If the player fails to successfully prove his/her information, the temporary account will be automatically closed. An alternative method would be to conduct verification once a player has reached a threshold (risk-based approach).

More generally, two important facts need to be taken into consideration.

The first of them is that **CDD measures involve the processing of a significant amount of personal data**. In that regard and as stated in the 4<sup>th</sup> AMLD, CDD requirements must comply with Directive 95/46/EC (hereinafter “**Data Protection Directive**”)<sup>15</sup>, and must observe the right to the protection of personal data of potential players<sup>16</sup>.

The second of them is that **customer experience in any e-commerce sector, such as online gambling, plays a crucial role in channelling the demand towards the regulated offer**. It is therefore, also with regard to anti-money laundering measures, crucial to take into account that the demand needs to be channelled towards the regulated offer. Therefore, the CDD process should be convenient from a player’s perspective, without being too burdensome, something that has been acknowledged by the European Commission<sup>17</sup>. Otherwise, there is a risk that the demand for online gambling services will be channelled towards the unregulated offer.

In any event, when designing CDD requirements it must be born in mind that operators are continuously having to balance and navigate through risk of conflicting legal obligation (i.e. data protection), operational feasibility (legislation against what is technically and operationally possible and financially sustainably feasible).

### **Recommendation 3**

We consider that the implementation of CDD requirements is most effective when it takes into account the protection of personal data of players and the customers’ experience as it is an element of utter importance when it comes to the channelling of consumers towards the regulated offer.

In order to make the CDD process easier, and as recommended by the European Commission, we are also of the opinion that national authorities should facilitate online gambling operators’ access to “*national registers, databases or other official documents against which operators should verify the identity details*”<sup>18</sup>.

## **2.1 The timing of the CDD process**

Article 11(d) of the 4<sup>th</sup> AMLD provides that:

*“Member States shall ensure that obliged entities apply customer due diligence measures in the following circumstances:*

*(d) for providers of gambling services, upon the collection of winnings, the wagering of a stake, or both, when carrying out transactions amounting to EUR 2 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;”*

<sup>15</sup> Data Protection Directive, Article 41(1).

<sup>16</sup> Data Protection Directive, Recital 65.

<sup>17</sup> EC 2014 Recommendation, paragraph 21.

<sup>18</sup> EC 2014 Recommendation, paragraph 18.

In order to implement this disposition, we would like to give our definition of the terms “wagering a stake” and “collection of winnings”. “**Wagering of a stake**” means depositing money, as customers usually have to wager their money before they make a withdrawal; and “**collection of winnings**” means withdrawals from the gambling wallet to the customers preferred payment method.

When defining those terms, it would be sensible from Member States to link the criteria to a time period. In our view, only real cash flows should be considered, when determining at what point of time a customer has reached the EUR 2000 threshold giving rise to the CDD process.

#### **Recommendation 4**

The CDD process should take place when real money transactions take place in the gambling operators’ wallet.

### **3. Costs and impacts incurred by gambling services providers when implementing AML measures**

The 4<sup>th</sup> AMLD, being a Directive, its implementation into national law may lead to duplication with existing AML legislation. Therefore any harmonisation would be likely to increase efficiency and reduce costs. In general, remote operators make high levels of financial and resource investments to support strong compliance and monitoring functions. This is due to stringent regulation that applies to the online gambling sector and to the fact that, as stated above, consumer trust is a key asset for online gambling operators. Operators make substantial investments in order to avoid being involved in any financial scandal.

However, we do not believe that the extension of the anti-money laundering regime to online betting would incur significant costs, especially due to the fact that in practice, EU licensed and regulated operators’ approach towards online betting already takes into account the anti-money laundering national legislations.

### **Conclusion**

The 4<sup>th</sup> AMLD represents a crucial pan-European instrument to fight money laundering and to establish harmonised rules across the EU Member States regarding which EGBA believes it is necessary for the national legislative framework to lay the appropriate foundations.

It is therefore of utmost importance that Member States bring into force the provisions of the 4<sup>th</sup> AMLD by 26 June 2017 while taking the necessary measures to enable operators to tackle and detect fraudulent transactions in the best possible manner in order to maintain the safety and integrity of the online gambling environment. EGBA also counsels against unnecessary gold plating, which would not achieve practical results but may hinder the channelling effect.