

New EU Anti-Money Laundering Directive to Affect I-Gaming

By Christine Duhaime

On March 11, 2014, the European Parliament approved its first reading of anti-money laundering legislative amendments designed to modernize Europe's anti-money laundering directive in what will become the 4th AML Directive (AMLD).

The AMLD adopts some of the 2012 Recommendations of the Financial Action Task Force that require a risk-based approach to anti-money laundering (AML) and counterterrorist financing (CTF) and introduces a consistent and harmonized treatment of AML/CTF across member states.

Importantly for the gambling sector, the AMLD expands the definition of "obliged entities" (i.e., those entities that report to a Financial Intelligence Unit ("FIU")) to cover all providers of gambling services. Currently, only casinos are obliged entities, and there was confusion as to whether online casinos were required to comply with AML/CTF legislation.

"Providers of gambling services" means any entity that provides any service involving wagering a stake with monetary value in games of chance (including games of chance with an element of skill) such as lotteries, casino games, poker games and betting transactions, whether land-based or electronic.

The rationale for the expansion in the scope of gambling activities is to address evidence that was presented to the European Commission of vulnerabilities of Internet gambling to money laundering and terrorist financing, and in particular, to ensure that organized crime is prevented



from laundering funds through the gambling sector.

Importantly, however, although the definition of gambling services is expanded for AML purposes, member states will be able to exclude those gambling services that they determine are low risk but only if they seek the advance consent of the European Commission.

Changes Introduced by AMLD

The AMLD, as it will apply to the gambling sector in Europe, will introduce fairly significant changes to the AML/CTF regime. The most obvious change is the expansion of AML/CTF to all gambling services, but in addition to that, there are additional changes as described below.

Customer Due Diligence

The customer due diligence requirements have been revised in the AMLD. Gambling

companies will have to apply customer due diligence measures when carrying out transactions amounting to €2,000 or more. Online gambling companies will have to conduct due diligence at the establishment of the business relationship, regardless of the threshold. The requirement for online gambling companies to conduct due diligence at the establishment of the business relationship effectively means every gambler will have to be identified. Identification is the only activity signaled out for the applicability of customer due diligence for every transaction.

PEPs

One of the most significant changes for AML compliance purposes is an expansion of the provisions on dealing with politically exposed persons ("PEP"). PEPs represent a higher risk of potential corruption and money laundering by

virtue of the political positions they hold. In addition to foreign PEPs with functions outside the EU, the AMLD now covers domestic PEPs (i.e., individuals who have been entrusted with an important political function in a EU Member State), and PEPs affiliated with international organizations. Essentially, these PEPs are directors, deputy directors and members of the board or an equivalent function of the international organization. Generally, the PEP definition includes, among others, heads of state, members of government, members of parliaments and judges of supreme courts pursuant to the Implementing Directive 2006/70/EC. Also included are family members, including spouses, partners, children and their spouses, parents and close associates. The gambling sector will now be required to apply enhanced due diligence to PEPs and international organizations, and there is concern that the expanded definition of PEPs widens the group of potential persons required for compliance purposes immeasurably and may render compliance unmanageable. Moreover, the changes regarding PEPs include the requirement that obliging entities consider former PEPs as high risk and apply enhanced due diligence to their transactions, even though their term of political office may have expired.

Beneficial Ownership Database

Another change is to corporate beneficial ownership. To address ongoing issues of the lack of corporate transparency and secrecy of beneficial ownership, the AMLD requires entities and trustees to maintain adequate, accurate and up-to-date information on beneficial ownership and to make it available to obliged entities and regulatory agencies. Each member state will now publish lists of all the shareholders and beneficiaries of trusts and private companies. With respect to gambling services providers, changes in beneficial ownership will have a significant impact because the owners and controllers of all of the I-gaming entities will now be in the public domain. Places like British Columbia, Canada, Hong Kong and Vietnam will remain among the few jurisdictions where corporate secrecy is protected.

Risk Assessments

Perhaps the most significant change is the application of a targeted and risk-based approach in the AMLD. This means that obliging entities will need to understand the money laundering and terrorist

financing risks that apply to their sector and, specifically, to their operations, and adapt their AML/CFT compliance programs to address the nature of these identified risks. The aim of moving to a risk-based approach is to allow obliged entities to target their resources more effectively and apply preventative measures that correspond to their specific risks by developing tailored compliance plans to address risks. The exercise for compliance purposes will involve taking appropriate steps to identify and assess money laundering and terrorist financing risks by taking into account factors such as customers, countries or geographical areas, services provided, types of monetary transactions and payment methods, and delivery channels. Gambling services providers will then be required to have in place, policies, controls and procedures to mitigate and manage effectively the money laundering and terrorist financing risks identified at the level of the obliged entities. The policies, controls and procedures will be required to include standard compliance risk protocols such as steps for customer due diligence, reporting obligations, record keeping requirements, internal control systems, structure and operation of compliance management, and employee screening and training in respect of AML/CTF training. If necessary, the compliance program should also include an audit function to test internal policies, procedures and controls.

FIU Cooperation

Under the AMLD, FIUs will enter into MOUs for improved cooperation and information sharing in all matters related to the goal of combatting money laundering and terrorist financing. FIUs receive, analyze and disseminate information and reports about suspicions of money laundering and terrorist financing from obliging entities but thus far have not engaged in sharing that information cross-border as effectively as was anticipated. With respect to gambling services providers, the AMLD also requires that competent authorities have additional supervisory powers, including the ability to conduct on-site inspections to combat money laundering and ensure compliance with national laws implementing the AMLD.

What Happens Next?

The AMLD will go before the EU Council for consideration. It is possible that more changes will be implemented before the AMLD is implemented. ♣



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