

European Gaming and Betting Association (EGBA)

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Brussels, 10 January 2017

Subject: Updated from 28/12/2016 version: Written comments – consultation on the Draft Law for the implementation of the Fourth Anti-Money Laundering Directive

Dear ██████████,

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 you our comments to the consultation on the Draft Law for the implementation of the Fourth Anti-Money Laundering Directive (hereinafter the '**Directive**')¹. 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's Member States is crucial.

It is therefore of the utmost importance that Member States transpose the provisions of the Directive by 26 June 2017 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.

¹ 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.

At the same time EGBA believes 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 alike. Our experience with regulation in numerous EU Member States has shown that an effective consumer protection and well-functioning market can only be achieved if consumer demand is effectively channelled towards licensed and regulated offer. Thus, unnecessarily burdensome AML provisions that go beyond the Directive should be avoided as they may have ultimately an adverse effect without ensuring more security in the process.

Taking into account those preliminary remarks, we would like to address our main concerns regarding the German Government's "*Entwurf eines Gesetz zur Umsetzung der Vierten EU-Geldwäscherichtlinie, zur Ausführung der EU-Geldtransferverordnung und zur Neuorganisation der Zentralstelle für Finanztransaktionsuntersuchungen*" (hereinafter '**the Draft**').

Firstly, §6(1) of the Draft requires from the management of gambling operators to appoint a money laundering reporting officer (hereinafter 'MLRO'). The MLRO is directly subordinated to the management and has to report on the compliance of the gambling operator's activities with money laundering rules. §6(5) of the Draft further requires from the MLRO to have their residence in Germany. This requirement constitutes a violation of both the free movement of services and the freedom of establishment, both fundamental freedoms of the European Union, by restricting cross-border provision of services via the Internet. German authorities do not elaborate on a potential argumentation justifying such a restriction.

Secondly, it appears from the explanations to §2(15) of the Draft that the terrestrial lottery sales are exempted from AML rules. This exemption goes against the principle of equal treatment and non-discrimination enshrined in the Treaty on the Functioning of the European Union. It is, moreover, not justified on any grounds. Exemptions from the Directive need to be properly notified to the European Commission and justified as to why a deviation is necessary on the basis of the proven low risk posed by the nature and, where appropriate, the scale of operations of such services. Germany would also need to conduct an analysis of the level of risk that the activity poses and explain to the European Commission why they aim to exempt such a service. In the risk assessment, Germany would have to indicate how it has taken into account any relevant findings of the European Commission's supranational risk assessment according to Art. 6 of the Directive. EGBA is not aware of any such assessment having been concluded in Germany regarding terrestrial lottery sales, or any other gambling sector services. If however such risk assessment exists, we would be very grateful if you could share the respective findings with us. If such risk assessment is yet to be conducted, EGBA stands ready to provide its expertise in this area and would kindly ask to be invited to according hearings.

Thirdly, EGBA calls on the German authorities to adapt the players' identification process to online gambling. Before allowing players to gamble online, their identity has to be naturally be checked. However, such a process can represent a burden if the verification process is time-consuming and/or impractical. There is a strong risk that the players migrate to the unregulated offer allowing them to play immediately and not go through any overly burdensome procedures. An adapted and tailored real-time identification (based on video technology or database banks) for online gambling would constitute a considerable improvement and will enable Germany to channel the consumer towards the legal offer.

Also, EGBA would like to recommend the use of temporary accounts as an effective way of avoiding too heavy identification procedures. Temporary accounts allow the player to gamble immediately after a basic registration (consisting in giving name, date of birth, nationality, email address and mobile

number). In the meantime, the identity verification process could take place. Standard practice in regulated EU markets for this procedure to be completed is 30 days. Payouts would only be allowed once the verification process is completed, preventing any risk money laundering risk.

Finally, we would like to point out that nowadays most online gambling operators are cross-border and hold multiple licenses in multiple EU 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**. Again, 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. As an example, 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.

In the annex to this letter, you may find a guidance document that can be used by the German Government towards an effective and workable implementation of the Directive, as applicable to online gaming operators regulated and licensed in the EU.

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 German 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 Germany, specifically with a view to efficient and effective instruments for identification and authentication, if so requested. Finally, EGBA would like to point out the unsuitability of the holiday time period and the very short duration of this consultation. Due to this EGBA reserves the right to make further comments at a later stage and after further assessment.

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



Secretary General

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