



To: European Commission, DG Internal Market

From: Ron Goudsmit, Chairman, European Casino Association

Subject: European Casino Association comments on the report on the application of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

Date: June 11, 2012

Dear Madam, Dear Sir,

The European Casino Association (ECA) would like to thank the European Commission for this opportunity to comment on the report on the application of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing published on 11 April 2012.

Specifically relating to gambling, the report:

- urges for the broadening of the scope beyond the existing obliged entities
- explains that consultations have indicated “general support in favour of a broader definition of gambling in the Directive, but with the precise scope to be determined on a risk-based basis at national level.”
- states that “Consideration could be given to capturing gambling activities which pose higher AML/CFT risks, while avoiding the imposition of an excessive burden on lower risk activities”.
- announces that it will take a consistent approach in parallel of the Commission’s Action plan on on-line gambling.

Please find here-with the ECA’s comments in key points. Detailed explanations on these points can be found in the annex of this document.

1. **The ECA and its member casinos fully support the idea of helping to detect and to prevent money laundering and the financing of terrorism.** We find it crucial that policy makers are properly informed about the real money laundering (ML) or financing of terrorism (FT) risks and typologies¹ to be found in licensed land-based casinos that we represent, particularly as the money laundering risks and the measures undertaken to prevent them are a heavy burden and can be detrimental for the operation of casinos.

¹ Typology is the common term used in the FATF documents, which relates to the systematic classification of types of money laundering that have characteristics or traits in common.

- 2. The ECA welcomes the fact that in the report the Commission urges for the broadening of the scope beyond the existing obliged entities, to cover *all* sectors of gambling.**

As the European level of standards to combat ML/FT is so high, and has, as a consequence, led to the creation of an environment within the European casino industry where money laundering risks barely exists nowadays (and where it does, mostly for limited amounts), these standards should be extended to all forms of gambling, specifically to the sectors where it has been proven that the risks of money laundering are higher, such as sports betting, AWP's and online gambling.

- 3. The ECA recognizes the wide variety of sectors covered by the Directive and the subsequent difficulty of adapting the provisions to very distinct realities. However, the ECA believes that the report does not take the full reality of the European casino industry into account.**

A. EUR 2,000 - Too Low Threshold for Casino industry

Since the casino industry, especially the European casino industry, is a strictly regulated environment² in comparison with the majority of the other designated sectors, the ECA believes that a lower threshold for identification is not necessary, considering that identification is performed automatically upon entering the casino premises.

In addition, even the FATF establishes a higher threshold (3000 EUR) even though the control and regulation over the casino sector in the average FATF members is much lower than in Europe.

Policy makers, law enforcement and regulators should have a deep knowledge of our industry, in order to enable a realistic evaluation of ML/FT risks inherent in casinos and to find cooperative arrangements relating to the obligations that derive from them. We recommend that the real risks of ML/FT in licensed land-based casinos be objectively evaluated in cooperation with experts within the industry. We fail to understand why, under European conditions, our members' casinos are required to apply thresholds that differ from those that apply to other DNFBPs (designated non-financial businesses and professions).

Thresholds per se, have proven to be ineffective measures to prevent and detect money laundry³. On the top of that, it is a very onerous burden for casinos to implement the threshold system.

B. Need for a balance between a Rules-based approach and Risk-based approach

With the low threshold of 2000 EUR, there is sufficient amount of evidence that the current AML obligations generate a great deal of work and costs both for the casinos and authorities, without, achieving the desired results in terms of combating ML/FT even if brought to court. The system as it is today is not cost-efficient.

² See attached document: ECA's submission to the European Commission in the context of the Review Third Anti-Money Laundering Directive

³ See typology in Vulnerabilities of Casino Sector. Asia Pacific Group

Key principles ECA would suggest:

1. Higher threshold level with a rules-based approach: apply the general CDD measures to transactions from a much higher threshold upwards which would be common to all businesses concerned.
2. Underneath this higher threshold, the risk-based approach would be much more effective.

This would:

1. Reduce the costs in relation to AML/CFT procedures which are generated by the obligations to perform general checks from such a low threshold of EUR 2,000.
2. Improve results by concentrating the administrative and burdensome efforts on checks relating to higher-risk customers or transactions.

Detailed explanations can be found in the annex.

C. Politically exposed persons (PEP): up-to-date PEP databases to be provided by official public sources + scrutiny only to apply to specific higher thresholds.

The ECA believes that PEPs (politically exposed persons) should indeed be cross-checked against PEP databases as long as up-to-date common PEP lists are provided by official sources and if PEPs gamble for high or substantial amounts.

Therefore, the ECA is of the opinion that for an adequate legal certainty, the FATF or the EU should work on public list of PEPs, as it was done for terrorism.

Detailed explanations can be found in the annex.

On behalf of the ECA, I would like to thank you for your attention and consideration.

Best regards,



Ron Goudsmit
Chairman ECA

ANNEX

The ECA welcomes the fact that in the report the Commission urges for the broadening of the scope beyond the existing obliged entities.

- Online and land-based operations are “similar” services. Online simply offers another means of distribution of the gambling activities. For this reason, the ECA agrees in calling for an **extension of AML/CFT** regulations to all gambling operations, including land-based and online operations⁴.
- The European Court of Justice also considers online and land-based gambling operations to be in the same market. Most recently, in the so-called “Zeturf” ruling (C-212/08) of 30 June 2011, it was clearly stated in paragraphs 75, 77, 81 that internet constitutes a simple channel through which games of chance may be offered, and that the market should therefore be considered in its entirety, independently of the question whether gambling activities are offered by traditional channels or by the internet.
- Most recently, the issue of land-based and online gambling being treated as “similar services” has been dealt with in the so-called **Danish stated aid case**⁵. This case involves the Danish Gaming Duties Act which introduces a new tax regime that imposes a differential tax treatment between online and land-based gambling operators.
 - After conducting an in-depth state aid investigation, the Commission concluded that, while the selective tax treatment constitutes state aid, this measure is compatible with the internal market. In its examination of the presence of state aid and the selective nature of the tax regime, the Commission explicitly touched upon the issue of “similar services”, assessing whether the measure favours certain undertakings in comparison with other undertakings which are in a legal and factual situation that is comparable in the light of the objective pursued by the scheme in question.
- Although the Commission acknowledges that there are objective differences (addiction risks, market evolution, socio-economic profiles of consumers) between land-based and online gambling, these differences, of factual and economic nature, do not constitute a sufficient decisive and substantial distinction between the land-based and online operators. From a legal and factual point of view, online and land-based gambling are considered to be in a comparable situation. Several elements can be taken into account to determine the “similar” nature of both services, such as the equivalence of the presentation of the games, the social experience in both platforms, the offer and nature of games, the consumers’ profiles, the technological platforms and parameters and the fact that both constitute gambling, regardless of their settings.

4 The WTO Appellate Body as well as the WTO Panel consider Internet gambling to be just another “similar” distribution method of a gambling service whereby the supply is taking place on cross border basis. This was clearly stated during the recent legal dispute between Antigua and the USA about the cross border supply of Internet gambling services, where the WTO dispute settlement organs decided that Internet Gambling was legally not different than terrestrial gambling and that the Internet was nothing more than another distribution method.

5 C35 / 2010 - Denmark - Duties for Online Gambling in the Danish Gaming Duties Act
http://ec.europa.eu/competition/state_aid/cases/238735/238735_1251212_269_3.pdf

- The Commission follows the line of thinking of the Court of Justice in that it considers online gambling as another channel of distribution. In that regard, the Commission emphasizes the substantial efforts carried out by online casinos to simulate the land-based casino experience in such a way that online players would have the feeling to play in land-based casino surroundings, rather than in virtual environments.

Need for a balance between a Rules-based approach and Risk-based approach

3rd EU AML Directive⁶

Art 10(1):

Member States shall require that all casino customers be identified and their identity verified if they purchase or exchange gambling chips with a value of EUR 2000 or more.

Art 10(2):

Casinos subject to State supervision shall be deemed in any event to have satisfied the customer due diligence requirements if they register, identify and verify the identity of their customers immediately on or before entry, regardless of the amount of gambling chips purchased.

The current rule-based approach – which involves thresholds set at EUR 2,000 and EUR 15,000 coupled with obligations to report transactions to the FIU and to proceed to CDD and enhanced CDD measures respectively – is well known amongst criminals and is easy to circumvent.

The ECA is in favour of a well-designed and calibrated risk-based approach that takes the costs for casino operations into account, by preventing unnecessary resources, energy and money from being used on inefficient measures, whilst preventing money from being laundered. We are convinced that **a risk-based approach would lead to improved results and reduce costs**. Most of the costs that arise in relation to AML/CFT⁷ procedures are generated by the obligations to perform general checks from a threshold of EUR 2,000 upwards. Such checks would be necessary when dealing with higher-risk customers or transactions.

General CDD measures should be applied to all transactions to a **much higher threshold upwards to be common to all businesses concerned, regardless of the level of risk**.

Underneath this higher common threshold, the risk-based approach would be much more effective.

⁶ ibid

⁷ CFT: Combatting financial terrorism

Politically exposed persons (PEP): up-to-date PEP databases to be provided by official public sources + scrutiny only to apply to specific higher thresholds.

The ECA believes that PEPs (politically exposed persons) should indeed be cross-checked against PEP databases as long as up-to-date common PEP lists are provided by official sources and if PEPs gamble for high or substantial amounts.

- Once the identity of a particular guest is known, further investigations can be undertaken in relation to the origin of his/her money (beneficial ownership, enhanced due diligence, etc). Guests can be asked questions as they are physically present in the casino.
- Casinos use security services and systems in order to avoid criminal activities. This allows the tracking of criminal activities, such as cheating or fraud inside of the casinos.
- Many of our members have subscribed to third-party databases that provide information on PEPs or individuals that have been involved in criminal activities or terrorist financing. However these lists often lack data for immediate reliable on site identification.
- Although we understand the importance of identifying PEPs, we cannot see a reason for the obligation to perform PEP checks in respect of customers who are not involved in dubious transactions or only gamble small amounts of money. All customers – including PEPs – are subjected to CDD measures if they begin to gamble substantial amounts. It is more likely to disclose information on a customer's background and status by accessing publicly available information on the internet than by searching for the customer in PEP databases. CDD checks automatically indicate whether or not a customer is a PEP. Moreover, these services are expensive and are not particularly effective. Our members' casinos spend a huge amount of money on these services, without any notable results. Even some of the larger casino groups have obtained very few or no hits when using these databases.
- We also believe that the obligations regarding to PEPs are difficult to fulfil.
- Most importantly, the absence of an official list issued by the EU or the FATF creates enormous costs and burdens for the operators. We wish to highlight the lack of support provided by the authorities with regard to the implementation of AML/CFT rules – e.g., the non-provision of the relevant databases or registers. We would therefore urge the authorities to provide casinos with a common standardised worldwide list of the people who are already suspected of suspicious behaviours to help casinos check these people's identity. This would make the system much more effective and would remove the heavy burden which is currently on the casinos.

The European Casino Association

The European Casino Association (ECA) represents national associations and individual operators of licensed land-based casinos in Europe. Some of our members offer online services under strict regulations for example Austria, France and Italy.

To date, the ECA represents the interests of about 800 casinos and over 60.000 employees in 22 countries across Europe: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Greece, Germany, Hungary, Italy, Lithuania, Luxemburg, Poland, Portugal, Romania, Serbia, Slovenia, Spain, Sweden, Switzerland, The Netherlands.

Founded in the early 1990s as the European Casino Forum, the ECA has grown steadily over the years and today includes members from nearly all EU Member States, as well as Switzerland and Serbia.

The ECA members have decades of experience and expertise in the casino industry, offering services including poker and poker tournaments, slot machines, and casino games.

Based on the principles of integrity and professional business management, the casino industry in Europe has moved forward in a gradual and responsible manner to, over the years, adjust to economic, regulatory and technological changes in society. Particularly in recent years, the landscape in which casinos operate has changed dramatically, and so have the casino business models in Europe. These have evolved from mere table games, including poker, to a much wider casino concept, which also includes slot machines, games of skill, bars, restaurants, hotels and entertainment. While the concepts and the range and scope of services as well as the pace in which the business of our members evolve vary, a clear trend towards the creation of real entertainment centres offering customers the full gaming, leisure and entertainment experience is emerging. The means of distribution of our services have changed over time as well: from a single land-based source the distribution method has in some countries expanded to the internet as well as other multiple technology-based channels.

Contribution to states

Taxation: In nearly all the European countries the level of taxation on land-based casinos is extremely high. For the majority, over 50% of the revenues are injected into the States' budgets.

Employment: Land-based casinos are a considerable player as far as employment is concerned. This high level of employment in the land-based casinos has been significantly increased with the development and/or obligations to have a restaurant, hotel, cultural entertainment facilities which create even more employment possibilities and offer jobs for a variety of skills. The costs involved for land-based casinos are therefore often substantially higher than the costs of the internet casino operators. Land-based casinos include employment and social costs, obligations to have and social costs, training of employees, etc. Internet casino operators do not always have these costs.

ECA KEY PRINCIPLES

1. PROTECTION OF CONSUMERS:

In order to ensure the high level of protection to consumers while offering services in a fair competitive environment, ECA stands by the following principles:

a. SUBSIDIARITY:

- The ECA emphasises the importance of ensuring that the moral, ethic, religious and cultural particularities of each country and the social order and health objectives are met through the control of the offer by each Member State. Licensed operators can easily be monitored and, if necessary, interventions can be made to change the scope or quantity of the offer.
- Member States must have the discretionary power to set the consumer protection standards they believe are necessary and appropriate to attain the desired level of protection of the consumers within their territory.
- This is in line with the existing EU framework applying the principle of subsidiarity to the gambling market and the country of destination principle to gambling services. The latter is particularly important with a view to maintain national control of gambling activities and in doing so, protecting the consumers in each Member State.

b. COUNTRY OF DESTINATION: LICENSING REQUIREMENTS, SUPERVISION & CONTROL WITHIN THE JURISDICTION OF THE COUNTRY OF DESTINATION:

- The applicable law must be the law of the country where the gambling service is received.
- It is crucial that regulators have a clear picture of the market within their jurisdictions to enable efficient control of the activities.
- Regulators already know and trust the long-existing land-based operators in their jurisdictions. They are aware of the number of operators, the scope, the supply of services, the operators' assets, and the revenue streams in their jurisdictions.
- Games accessible through the Internet involve different and more substantial risks of fraud by operators against consumers compared with traditional markets for such games. The link to land-based casinos allows for direct contact between the consumers and the operators, for example, in those cases where the identification of a customer needs additional control or where the legitimacy of a transaction needs to be checked.
- **ADVERTISING** - In order to safeguard fair, legal and regulated advertisement of gambling by all operators, Member States where the services are offered, should be able to impose limited and controlled advertising policies.

2. LEVEL PLAYING FIELD – CONSUMER PROTECTION vs FRAUD AND ILLEGAL OPERATIONS

- Online casino services should be provided only by authorised operators.
- Over the years licensed land-based casinos have enabled consumers to operate in a trusted and transparent online gambling market.
- Currently in an unregulated and uncontrolled online gambling market there is a growing number of unknown and illegal providers.
- As regards player protection mechanisms, preventing that consumers using online gambling services are victims of fraudulent or criminal practices is crucial for land-based casinos. The ECA is concerned by the growing number of unregulated and unknown online providers whose “operations” are neither audited nor approved and whose revenues and profits are neither traced nor published.
- To prevent illegal providers from taking advantage of their users, the ECA believes that only licensed operators should provide online casino gambling services. In this context, the ECA believes that all online gambling services that are provided illegally should be prohibited and should be prevented from entering the national markets of EU Member States by all available means.

3. LEVEL PLAYING FIELD –TAXATION

- Online and land-based casino services are “like” services. Online gambling is another means of distribution of gambling services.
- Land-based casinos, contrary to online services, are able to maintain national control of incomes from online gambling activities including general taxation of gambling revenues. This is a very important asset assuming that national governments want to integrate the internet gambling revenues generated through the Internet into their tax framework.

4. EXTENSIVE EXPERIENCE OF LICENSED LAND-BASED CASINOS:

- ECA emphasises the extensive experience of licensed land-based casinos in complying with national rules as well as in cooperating with authorities to help refine the rules to the evolution of the market.
- Land-based operators’ experience and knowledge in complying with existing rules and national laws related to consumer protection and anti-money laundering as well as the principles for operating responsibly are a major asset.