



MINISTRY OF FINANCE OF THE CZECH REPUBLIC

Financial Analysis Unit

✉ : P.O. Box 675, Jindřichská 14, 111 21 Praha 1, data box: meiq7wd

☎ : +420257044501 ; fax: +420257044502

Ref. No.: FAU-62533/2016/24

METHODOLOGICAL GUIDELINE No. 6
of the Financial Analysis Department of the Ministry of Finance
dated December 7, 2016
intended for obligated persons pursuant to Section 2⁽¹⁾(c) of Act No. 253/2008 Coll.

**IMPLEMENTATION OF CLIENT IDENTIFICATION AND CONTROL BY
GAMBLING OPERATORS**

The Financial Analysis Unit of the Ministry of Finance (until the end of 2016, from January 1, 2017, the Financial Analysis Office; hereinafter referred to as the "FAÚ") performs tasks within its remit arising from specific legal regulations on combating the legalization of proceeds from crime and terrorist financing and legal regulations governing the application of international sanctions for the purpose of maintaining and restoring international peace and security, protecting human rights, and combating terrorism.

Effective January 1, 2017, the AML Act applies not only to casinos but also to all other gambling operators (hereinafter also referred to as "operators"), with the exception of those that, based on a comprehensive risk assessment process evaluating the entire gambling sector, were assessed as low-risk in the regulatory impact assessment (RIA), specifically cash, material, instant or numerical lotteries, bingo games, and raffles. In relation to the implementation of measures against money laundering and terrorist financing, the AML Act is "lex specialis" in relation to the Gambling Act, which means that it takes precedence over the latter, as is also evident from the requirements of international law and, in particular, EU law. The relationship between these two acts can be described as follows: the Gambling Act² sets out the conditions for the operation of gambling in general for the relevant types of games, while the AML Act sets out the conditions for identification and, where applicable, other obligations from the moment such an obligation arises under the AML Act. For these reasons, the FAÚ has decided to issue **guidelines on certain activities under the AML Act for gambling operators who are also obliged persons under this Act.**

Customer identification

is a fundamental element^{of} the application^{of} AML/CFT³ measures. One of the main purposes of these measures is to record from whom and to whom funds or assets are being transferred and to keep a trail of these transfers that can be used to trace the specific persons involved. It must therefore ensure the accurate and unambiguous re-identification of the identified person throughout the entire period of retention of this information.

The AML Act regulates differently the identification of so-called one-off or occasional transactions and the identification at the establishment of a business relationship. Identification in a casino (clearly taken from the repealed Act on Lotteries and Other Similar Games), as set out in Section 71(3) of the Gambling Act, is therefore clearly in accordance with the AML Act.

¹⁾ Act No. 253/2008 Coll., on certain measures against the legalization of proceeds from crime and terrorist financing, as amended, effective from January 1, 2017 (AML Act).

²⁾ Act No. 186/2016 Coll., on Gambling, effective as of January 1, 2017.

³⁾ Anti-Money Laundering / Countering the Financing of Terrorism.

Part of the identification process is also determining whether the client is a politically exposed person (Section 4(5) of the AML Act) or a person subject to international sanctions (see, for example, Methodological Guideline No. 1 of the Financial Intelligence Unit of May 28, 2012, on the application of international sanctions, particularly in connection with terrorist financing).

In the case of a separate (one-off, occasional) **transaction**⁴⁾ the obligation to identify the client arises at the latest when it becomes apparent that the value of the transaction will exceed EUR 1,000 (Section 7(1) of the AML Act). In the area of gambling, an occasional transaction will be one in which the deposit is made by a client who is not registered within the meaning of the Gambling Act, does not have a player account, and is not otherwise registered with the operator. An occasional transaction will therefore be one in which the client participates in a game that is not subject to registration.

The transaction value limit applies to all transactions both from and to the client, i.e. both deposits (bets) and winnings. In practice, there may often be cases where the client does not have to be identified when making a deposit because the amount of the deposit does not reach EUR 1,000, but must be identified before paying out winnings exceeding this amount. This statutory limit is a basic, minimum requirement, and each obligated person, including gambling operators, should assess, based on their own risk assessment, whether to apply this statutory limit or a lower limit (but in no case a higher limit) for identification, or whether to perform identification for all transactions regardless of the amount.

Similarly, the creation of a temporary user account pursuant to Section 80 of the Gambling Act, subject to the conditions governing it, will be considered a one-off transaction within the meaning of Section 4(1) of the AML Act.

According to Section 54(4) of the AML Act, there is an obligation to add up related payments. This obligation applies to the operation of gambling whenever it is technically demonstrable or obvious from the circumstances that payments made within a relatively short period of time (within one or several days) are related to one specific client. In such a case, the total value of payments (in either direction) exceeding EUR 1,000 triggers the obligation to identify the client.

The obligation to identify the client even for a lower value of an "occasional" transaction also arises if the specific transaction is assessed as suspicious by the game operator (Section 7(2)(a) of the AML Act).

In the case of a **business relationship**, identification must always be carried out at the outset, before the first payment (deposit, bet) is made, regardless of the amount of the deposit or the value of the payment. According to Section 4(2) of the AML Act, a business relationship is defined as a contractual relationship between an obligated person and their client, the purpose of which is to manage the property of that person or provide services to that person on a recurring basis, where such recurrence is apparent at the inception of the business relationship. According to the Gambling Act, a "business relationship" can be clearly assigned in particular to the term "registration", whereby registration means the determination and verification of the identity and age of the person applying for registration, the assignment of access data or other means of access, or the "activation of a user account" on which funds, in particular deposits, bets, and winnings, are recorded.

However, a business relationship will also exist if another type of contractual relationship has been entered into with the client, e.g., the issuance of a VIP card, the opening of a player account, etc.

Operators who become obliged persons under the AML Act as of January 1, 2017, do not have to re-identify their existing clients if they have already identified them in a manner consistent with the requirements of the AML Act and have recorded the client's identification data (Section 5(1)(a) of the AML Act) and identification-related data (Section 8(2)(a) of the AML Act). If the identification carried out and recorded in this manner contains sufficient identification data to uniquely identify the person (at least first name, last name, date of birth, residential address,

⁴⁾ Section 4(1) of the AML Act.

citizenship) and the type of identity document used to verify the client's identity (at least the type and number of the document and the country that issued it), it is not necessary to repeat the entire identification process, but only to supplement the identification data in accordance with the requirements of the AML Act before the next game, bet, or deposit at the latest; most often, this will probably involve supplementing the identification data with the birth number, place of birth, and gender (if not apparent from, for example, the birth number or the form of the surname). The key point here is that the client will not be allowed to carry out any transaction (deposit, withdrawal of winnings) without providing the missing identification data. This additional identification does not have to be provided in the physical presence of the client, but any means of remote communication may be used, with simultaneous verification of the client's identity in accordance with Section 8(6) of the AML Act. At the same time, the client must be informed of the purpose of processing the personal data provided in accordance with Section 24(2) of the AML Act.

If the transitional provisions of the Gambling Act allow, in specific cases, for the registration of game participants to be introduced later than the effective date of this Act, each participation in such a game may be considered a one-off transaction under the AML Act until the time of registration, unless another type of contractual relationship has been entered into with the client, e.g., issuance of a VIP card, opening of a player account, etc., or if it is not clear from other circumstances that payments made within a relatively short period of time relate to one specific client.

Methods of identification

The AML Act considers identification in the physical presence of the client to be the basic method of identification (Section 8 of the AML Act). However, it also allows for alternative methods of identification – mediated identification (Section 10 of the AML Act) and acceptance of identification (Section 11 of the AML Act).

According to Section 10 of the AML Act, mediated client identification may, at the request of the gambling operator or client, be carried out through Czech POINT, which has more than 7,000 locations in the Czech Republic and 40 representative offices abroad, or a notary (including a foreign notary, if the public document issued by them under international law can also be recognized in the Czech Republic). A public document shall be drawn up on this identification, which must state, among other things, who carried out the identification, at whose request and for what purpose, and which includes copies of the documents from which the identity was verified. The client shall deliver this document to the obligated person before the first transaction is carried out.

According to Section 11(1) of the AML Act, if the client has been identified by a credit or financial institution (with the exceptions specified), the gambling operator may accept such identification. The condition is that the transferee will preferably have a contractual guarantee that the credit or financial institution will provide it with information on the identification of this client, including copies of the relevant documents, at any time upon request (or before the first transaction is carried out).

Another option for remote customer identification is to verify the customer's identity with a qualified trust service provider on the basis of the relevant EU regulation⁵, as permitted by Section 11(8) of the AML Act. In this case, the client shall communicate their identification data and other data required for identification by the obligated person in accordance with Section 5 of the AML Act to the obligated person by any means of communication, and the obligated person shall verify their identity with the relevant service provider. Currently, it is possible to use an electronic signature in accordance with Act No. 297/2016 Coll., and in the future, electronic identification in accordance with another law currently being prepared on the basis of EU Regulation No. 910/2014.

In the case of these alternative and therefore riskier methods of identification, only basic, minimum requirements are set out in the AML Act. The obligated entity itself will introduce additional precautionary measures based on its risk assessment in order to be able to exclude incorrect identification with the highest possible degree of certainty. Responsibility for proper identification remains with the operator, who is thus liable for any administrative offense resulting from incorrect identification, regardless of specific fault.

⁵⁾ Regulation (EU) No. 910/2014 of the European Parliament and of the Council of July 23, 2014, on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

identification performed. For this reason, in case of any doubt, the operator should not allow such identification at all, see Section 11(9) of the AML Act.

Customer verification

Customer verification refers to a set of activities aimed at fulfilling the "know your customer" principle (KYC principle⁶⁾). The purpose of customer verification is to identify suspicious transactions in a timely manner and thus prevent the misuse of the obliged entity for illegal activities. Operators are required to perform customer verification in the case of occasional transactions exceeding EUR 2,000 in value, and in the case of a business relationship, from its inception throughout its duration. In order to effectively review transactions as part of customer verification under the AML Act, it is necessary for obliged entities to store and review information on all customer transactions, regardless of whether they involve a deposit/bet or a win/payout, or where and how the transaction took place (e.g., at the cashier's desk or casino table, at slot machines, in cash or by payment card, etc.). Matching all transactions with client data is a prerequisite for effective AML/CFT prevention and the detection of suspicious patterns of behavior. This is comprehensively addressed in the Gambling Act. If, for certain types of gambling, the transitional provisions of the Gambling Act allow deposits (bets) under the previous law for a certain period of time, i.e., without the technical possibility of linking them to a specific client, this will also be tolerated for the same period of time in relation to client verification under the AML Act. However, it is up to operators to implement appropriate measures to mitigate the associated risks during this transitional period.

Client verification is described in Section 9 of the AML Act. Its scope is not explicitly defined in the Act. At the beginning of the business relationship, the obliged entity (operator) creates a risk profile for the client based on client verification. It continuously compares the transactions carried out (deposits, bets) with this profile (e.g., whether the deposits correspond to the declared income or financial circumstances). The information obtained about the client should provide sufficient information to assess the risk of possible misuse for money laundering or terrorist financing. When assessing the potential risk, it is always necessary to base the assessment on the risk factors listed in the risk assessment, which must be prepared by obliged entities in accordance with Section 21a of the AML Act. Increased attention should be paid to situations that deviate from the client's risk profile. For high-risk clients, politically exposed persons, and precisely these deviating or unusual transactions, it is necessary to conduct a more thorough client check, which may include, in particular, requesting the client to submit documents proving their income or the origin of their assets, e.g., confirmation of inheritance, etc. To this end, the AML Act imposes a duty of cooperation on the client and, conversely, prohibits the obliged entity from continuing to do business with a client who does not cooperate during the check.

When taking specific steps as part of the client check, it is also necessary to proceed on the basis of the provisions of

Section 9(3) of the AML Act, according to which customer due diligence must be carried out to the extent necessary to assess the potential risk of money laundering and terrorist financing, depending on the type of customer, business relationship, or product. It will therefore not be necessary to examine the origin of funds for all clients in all cases, for example, when the origin is obvious in the case of winnings, but even in such cases, knowledge of the client may be important in order to assess whether these funds are intended for illegal purposes.

This methodological guideline is intended only to provide basic guidance to gambling operators on the most important obligations and possible procedures for identifying and verifying clients and is not and cannot be a complete interpretation of all the obligations that an operator has under the AML Act.

Ing. Libor Kazda
Director

⁶⁾ From the English "Know Your Customer".

