New German Anti-Money Laundering Act - impact on gambling operators

Financial Services Regulatory Alert

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On 26 June 2017 a new Anti-Money Laundering Act (AML Act or “Geldwäschegesetz” = GwG) entered into force in Germany. The new AML Act transposes the 4th AML Directive into German law. It has severe impacts on gambling companies that are active in Germany.

Overview

The new AML Act brings three important changes for gambling companies:

- Extension of the scope from online to offline gambling and from licensed to unlicensed gambling
- Revised AML measures in detail
- Extended catalogue of administrative offenses with higher administrative fines (up to 1 million Euro)

In detail

Extension of the law’s scope

The former AML Act applied to online gambling and brick-and-mortar casinos – if they were licensed in Germany. The scope of the new AML Act is extended in two ways:

- The scope of the new AML Act includes basically all gambling venues – online as well as offline
- In addition, the legislator intends to apply the new AML Act to all gambling companies in Germany – licensed or unlicensed

But there are notable exceptions. Some gambling services are exempt from the new AML Act because of their low risk of money laundering. These services are not obliged to put into effect any AML measures:

- Slot machines in slot halls and pubs (but not in casinos)
- Horse racing bets by horse racing associations in the form of totalisators (but not bets offered by bookmakers)
- Social lotteries and licensed state lotteries – this includes intermediaries online and offline

However, especially online casino games and sports betting are obliged under the new AML Act. This is irrespective of whether they are licensed, tolerated or even unlicensed. In the case of sports betting it is even irrespective of the kind of service – operation or intermediation – and also irrespective of the venue – on the Internet or in sports betting shops.
Revised AML measures

The newly obliged parties face a multitude of AML measures to comply with. First and foremost, they will have to implement “Know Your Customer” (KYC) procedures that are based on an ID verification. For offline gambling services, this applies from a threshold of 2000 Euro (winnings or stakes). Online gambling services do not benefit from this privilege – they have to identify their customers from the beginning. However, the new AML Act allows to choose KYC processes that are in accordance with the gambling regulation. This is a relief for obliged online gambling operators because they are allowed to comply with only one KYC regime – the one they already know from gambling regulation.

All gambling operators have to appoint an AML officer. They may apply to be exempt from this obligation by the gambling authorities if a risk based assessment supports the case.

A parent company for companies operating in different countries now has to comply with the AML laws of all countries its subsidiaries are active in. AML measures have to be unified on a group level.

The already known restrictions of payment methods for online gambling services still apply under the new AML Act. However, there is one new relief that is targeted at online sports betting but that also applies to e.g. online casino games. Transactions of up to 25 Euro (and combined 100 Euro per month) do not require a verification that the credit card used for payment belongs to the actual player.

Extended administrative offenses

To better enforce the new AML requirements the legislator equipped the gambling authorities with a substantially enhanced toolbox. Gambling authorities are authorised to:

- Withdraw gambling licenses of operators licensed in Germany
- Prohibit executive positions for individuals
- Obtain information from financial institutions

But that’s not all. The legislator also nearly quadrupled the catalogue of administrative offenses from a list of 17 offenses to a list of 64 offenses. And the height of the administrative fines for one offense has also been increased tenfold from 100.000 to 1 million Euro or even 10 percent of the turnover of the previous year.

The new AML Act also provides for a “naming and shaming” regulation that directs authorities to publish violations on their websites.

Conclusion

The new and complex regulation will affect many gambling companies for the first time which never had to deal with AML in the past. Other gambling companies are well advised to review already existing AML measures where necessary. The risk of liability for non-compliance with AML requirements is higher than ever before. Moreover, The German gambling authorities might use the AML Act to enforce regulatory requirements instead of the legally disputed State Treaty on Gambling – first of all against unlicensed gambling services. The impact of the new AML Act should therefore not be underestimated.

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