

The new draft of the German Anti-Money Laundering Act (Geldwäschegesetz, GWG):
A Summary and Potential Implications

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On 1 August 2012 the German government adopted a new draft of the German Anti-Money Laundering Act (**Geldwäschegesetz, GWG**). If ratified, this draft would impose further amendments on the GWG, especially as it relates to online gambling.

The main result of the new GWG would be a broader application of the GWG. The draft would increase the GWG's scope to include licensed operators and agents of online games of chance in Germany.

The draft's expanded regulatory reach is a reaction to recent developments in the German online gaming sector: Schleswig-Holstein opened its gambling market for sports betting and online casino providers, including poker; and the other 15 German federal states agreed to licence up to 20 sports betting providers for a trial period of seven years.

According to the draft, gambling providers will be obliged to take "appropriate measures to avoid being abused for money laundering and financing of terrorism" and install "an appropriate risk-management". The German Federal Ministry of Finance (the author of the draft) justifies additional obligations for online gaming providers with the "particular risks" arising from a business model without personal contact between provider and customer, especially regarding the identification of the player and the processing of financial transactions related to the game.

It will be important to monitor whether the draft's regulations, that exceed most of the GWG's regulatory requirements for terrestrial casinos and also the EU Commission's latest proposals for the new Anti-Money Laundering Directive, go above what is necessary to provide a safe and reliable offer of online games of chance in Germany. Careful attention should be paid especially to the imposed identification requirements and restrictions of payment methods with the purpose of preventing money laundering.

The following analysis will address some of the core elements of the draft regulation and assess its potential implications for gambling operators, poker players and gaming at large.

1. Core elements of the GWG draft

a. Definition of online games of chance

The draft defines "games of chance on the Internet" as games of chance offered via tele-media. Hence, the law would apply to online games of chance, especially casino games, poker, sports betting and lotteries, but also other kinds of games of chance that do not require the physical appearance of the player.

b. Margin of application

To date, the GWG has applied, among others, to banks, e-money institutions, insurance companies, accountants, auditors, certain kinds of merchants and terrestrial casinos.

The draft proposes to expand the margin of application to operators and agents of games of chance on the Internet. However, it has to be pointed out that the GWG would only apply to those operators and agents licensed in Germany. Gaming providers not licensed in Germany under the Gaming Reform Act Schleswig-Holstein or the new Interstate Treaty on Gambling would not fall within the scope of the new GWG.

In addition, it is more than a detail of note that the draft provides an option for the competent authority to waive identification, monitoring and control requirements for lotteries, the gambling sector in Germany that is still exclusively run by the state monopoly.

c. The competent authority

The competent authority for the supervision of the gambling providers' compliance with the GWG will be the gambling supervision authorities in the 16, individual German federal states.

The competent authority can order the gambling provider to take measures to fulfil the required monitoring obligations. These orders are directly enforceable.

Furthermore, the authority is authorized to request specific information from gaming providers, banks and financial institutions regarding payment accounts and executed transactions related to the offer of games.

d. Internal monitoring obligations for the gambling providers

The internal monitoring requirements for gambling providers are comparable to those for banks and financial institutions. As part of the "appropriate measures to avoid being abused for money laundering and financing of terrorism", it will be mandatory to have an anti-money laundering officer who reports directly to the directors of the company. In addition, gambling providers will have to install internal monitoring and control systems, incl. an "anti-money laundering strategy" and data processing systems against money laundering activities as well as corresponding measures to assess the reliability of their employees.

The "appropriate risk-management" must include IT-based monitoring systems that cover all transactions on and from the player accounts. If a suspicious behaviour is discovered, the provider's anti-money laundering officers have to be enabled to take immediate action. Retrospective assessments of data via internal revisions are not sufficient. Out-sourcing of the internal monitoring measures as well as other services is only allowed after previous approval from the competent authority. In addition, the competent authority is authorized to request the certification of monitoring and gaming systems from approved testing laboratories.

Gambling providers are explicitly allowed to accumulate personal data of their customers, if this is necessary to fulfil the obligations stipulated in the GWG. But personal data must be deleted 5 years after the end of the customer relation.

e. Player identification requirements

The licensed gambling provider must identify the player before registering and establishing a player account as well as before the player participates in games of chance.

While it is possible to name an economic beneficiary, it has to be ruled out that the player is using third party money for the participation of the game or that the player is acting on behalf of a third

party. Consequently, the gaming provider must inform the competent authority about any economic beneficiary in order to avoid any kind of attempt of circumventing the identification requirements.

The identification of a player requires the following information: name, place of birth, date of birth, nationality and address or in case of private legal entities: name, legal structure, registry number, registered office and names of the legal representatives.

This information must be confirmed by a valid ID or passport, or an extract from the company/trade register. If the player is not physically present to prove his identity, he has to provide either the original identification document, a certified copy of it, an electronic ID-proof pursuant to sec. 18 of the German Identity Card Act, or a qualified electronic signature pursuant to sec. 2 no. 3 of the German Signature Act. Violation of these identifications requirements can be fined.

f. Player account and transparency of the payment processes

The draft only allows one player account per player per gaming provider. This player account must be connected to a payment account of the registered player at a bank or financial institution. Transactions on a player account may only be received for the purposes of the game.

For banks and financial institutions in Germany, it is standard procedure to make a full identity check before a payment account is opened. However, even if a player uses a payment account or a debit/credit card from a bank or financial institution outside of Germany, the gambling provider is required to insure that the bank fulfils the same identification requirements as stipulated in the GWG. Otherwise, the player may not be registered or has to be excluded from the gaming offer. No transaction on or from his player account may be executed.

In addition, transactions from a player's payment account to the gaming provider/the player's player account and vice versa are only allowed via the following transactions methods:

- direct debit
- bank transfer
- debit card and
- credit card

This means that other methods of transaction are not allowed, including: pre-paid cards, cash deposits or e-money. The ministry of finance justifies these tough restrictions because of the anonymous and opaque nature of e-money devices and cash money. The use of such payment methods would contradict the intention to avoid money laundering via online games of chance. The ministry even rejects thresholds for the usage of these payment methods, since "such thresholds would be understood as an invitation to divide payments into small pieces (*smurfing*)".

On the other hand, the issue of so called "closed loop vouchers" (vouchers issued by the gambling provider that can only be redeemed on the gambling providers own website) remain possible, if the gaming provider takes "appropriate measures" to assure that the user of the voucher is identical with the owner of the player account.

g. Additional requirements for entities involved in the execution payment proceedings

Banks and financial institutions as well as issuers and acquirers involved in the payment proceedings related to online gaming will have to comply with additional due diligence, monitoring and control requirements.

The intention is to use specific codes for card transactions related to online gaming. These codes shall facilitate the identification of the recipient of the transaction as a gaming provider. While it is already common practice to use Merchant Category Codes (MCC) for transactions via VISA and Mastercard credit cards, including a specified code for online gaming, this is not the case for other transaction methods and is redundant for debit cards.

The codes shall be determined in cooperation with the Germany banking supervision authority (BaFin). In this regard, the German Ministry of Finance suggests that stakeholders of the financial industry find a solution in cooperation with the gambling authorities of the German federal states based on the MCC of ISO standard 18245.

2. Outlook

So far the draft is not in force. The draft has been published by the ministry of finance and was adopted by the government on 1 August 2012. However, to come into force both chambers of the German parliament (Bundesrat und Bundestag) have to be heard before the Bundestag may pass the law. A statement by the Bundesrat (the representation of the German federal states) is expected within the next month. Afterwards, the Federal government has the chance to reply, before the law may be adopted by the Bundestag, normally after three parliamentary hearings and referrals to the responsible committees. Therefore, the draft will most probably not be in force before late fall/winter of this year.

3. Conclusion

The most recent amendment of the GWG is a reaction to changes in German gambling regulation in 2012.

Most of the required internal monitoring and control requirements are already standard procedure of gambling operators in order to provide a reliable and secure offer of online games of chance. However, some of the draft requirements might require adjustment.

Regarding the identification requirements for players, some online gambling providers will have to change their registration proceedings and request the cooperation of their customers, since original documents or certified copies of the ID/passport have to be provided by the players.

Some of the regulations regarding the transparency of the game-related transactions will be a challenge to gambling operators, players and the financial industry.

Following the EU Commission's Green Paper on on-line gambling in the Internal Market ca. 65% of all transactions in the gambling sector are processed over credit cards, an additional 12 % via bank transfer. This leaves e-wallets with some 13%, and prepaid cards with ca. 10%. The two latter payment methods and thereby nearly one quarter of all gaming related transactions would be excluded if the GWG draft comes into effect in its present version.

The rigorous limitation of payment methods is a little surprising since the last amendment of the GWG from 22 December 2011 stipulated exemptions from regulatory requirements for e-money devices. Due diligence regarding identification and monitoring requirements were waived if it can be assured that a person does not obtain e-money worth more than € 100 per month. This exemption, called "bagatelle-clause", was justified with the argument that an amount of € 100 per month would not constitute a risk regarding money laundering activities, since the amount is simply too little.

Moreover, the GWG only requires terrestrial casinos to identify customers if they buy or sell token worth € 2000 or more; the same threshold stipulated by the EU's 3rd Anti-Money Laundering Directive.

Given the argumentation of December 2011, the new "smurfing"-argument in connection with thresholds for stakes in online games of chance indicates a change of mind in the German Ministry of Finance regarding the money laundering risk of rather small amounts of money.

A specific Merchant Category Code for gambling offers is already standard for a lot of credit card transactions. However, it is still unclear how banks, issuers and acquirers will be able to distinguish between legal and illegal gambling offers. Since considerable doubts remain regarding the EU-law compliance of the new German Interstate Treaty on Gambling, the financial industry may be left uncertain about the lawfulness of game-related transactions.

In conclusion, the new draft of the GWG presents some significant changes regarding the regulatory requirements for online gambling. Going forward, stakeholders in the gambling industry, the financial industry, politicians, representatives of the German banking supervision and the German gambling authorities are called to cooperate to provide the framework for a safe, legally compliant but still attractive offer of online games of chance in Germany.



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