



# ***4th Anti Money Laundering Directive – Do you know the score?***

**A whitepaper on the fourth Anti-Money  
Laundering Directive & what it means for  
the online gambling industry**



## **The fourth Anti-Money Laundering Directive & online gambling**

**The fourth Anti-Money Laundering Directive (4AMLD) for the first time includes online gambling activities within its remit, having previously included just land-based casinos, and brings with it the likelihood of ever more onerous compliance procedures.**

**Recent AML-related enforcement actions on the part of the UK Gambling Commission prove that operators are already finding their processes under increased scrutiny. They also provide evidence of the need for comprehensive reporting tools that can help operators avoid some of the pitfalls inherent in a world where fears over money-laundering and terrorist financing are prevalent.**

## “In September, 2015 we saw two gaming operators set aside a combined £1.7m due to failings in AML”

To ask what a gambling operator should do if a Simon Mann turned up as a new depositor isn't a trick question. The world will recognise the name Mann as a notorious mercenary with an extremely chequered past. But to a gambling operator that name should prompt a red flag in need of further investigation, even if their particular Simon Mann works as a painter and decorator in the Bristol area and is not the renowned and disgraced ex-SAS soldier.

Such a scenario is an example of how the gambling industry is affected by wider geo-political events, particularly when it relates to the policing of anti-money laundering (AML) and terrorist financing. The adoption by the international community in June of the fourth Anti-Money Laundering Directive (4AMLD) for the first time specifically places online gambling within the directive's remit, whereas previously only land-based casinos were included.

As Warren Russell, chief executive at web-based online screening tools provider W2, puts it, what was once best practice is now a regulatory requirement. "There hasn't been that big stick previously," he adds.

Recent judgments from the UK Gambling Commission (UKGC) indeed suggest the authorities are increasingly less reticent about using the powers they already enjoy. In September, 2015 we saw two gaming operators set aside a combined £1.7m due to failings in AML

These effective 'fines' show the true cost of compliance – or indeed the cost of what happens when you have insufficient compliance protections. It puts into perspective the comment from W2's chief commercial officer Martin Pashley who suggests that when he talks to potential clients about the company's **BSMART** screening tool there is often a "misapprehension" over the cost of implementation.

**BSMART** (or the Batch Screening Monitoring and Reporting Tool) screens international sanction lists, politically exposed persons lists, global law enforcement notifications and wanted lists, disqualified directors and regulatory enforcement actions. It is the product that would help an operator sort its mercenaries from its painters and decorators, yet Pashley says concerns over increased compliance expenditure still abound.

"People know that, say, you pay a pound to initially screen someone at on-boarding stage then they assume that if I have a million customers, it's going to cost me a £1m a week to screen these customers," he says. "There is that misapprehension, but because the screening is done on an annual licence basis, the frequency of screening doesn't affect the price. Also, significant volume discounts can be applied."

## The cost of complacency

Care needs to be taken here to understand that the operators do not all have the same reaction to compliance issues. Pashley says that with the bigger names in the sector there is a heightened desire to be whiter-than-white and to protect their increasingly valuable brand names.

“Often because they have associated brands outside gaming, they don’t want to be splashed over the front page of the Daily Mail about non-compliance,” he says. “But others are purely looking at the bottom line, and they see the headline cost of the screening system and think they would rather spend it somewhere else.”

He says that a similar situation existed in the finance world a few years back. “But then a few started to get fined, and the MLRO (Money Laundering Reporting Officer) also gets fined personally,” he says. “So that industry has turned around. Whereas others haven’t. We need for people to really take notice. If it costs £50,000 a year to do it, and the fine is £200,000 or £500,000, the industry needs people to stop trying to see if they can get away with it for a couple of years.”

A degree of complacency is understandable according to David Clifton, lawyer at Clifton Davies. He points to three factors that might be the cause of this. First, there is the stipulation that in Europe member states can opt to exempt either fully or in part sub-sectors of gambling other than casinos from their own national provisions on the basis of the proven low-risk posed by the nature of these gambling operations.

Second Clifton points out that figures released by the UK’s Serious Organised Crime Agency (SOCA) showed that instances of money laundering in ABB (Association of British Bookmakers) members’ shops accounted for less than 0.3% of all cases reported. Finally, he says that a recent HM Treasury money laundering and terrorist financing risk assessment found that the risk in land-based and retail betting was “low” in comparison with other regulated sectors.

But Clifton says a “greater sense of reality” has developed following a Gambling Commission letter to the bookmakers on the subject in 2013 and the separate Commission confirmation that the betting sector was unlikely to be exempt from 4AMLD. An article published by the AML lead at the Commission, Tim Tyler, made the point that it “isn’t difficult to find reasons” for money-laundering risk within betting, for instance.

“Some assert that gambling, by its nature, is attractive to the criminal lifestyle,” Tyler wrote. “Extensive use of cash for both stakes and winnings compounds (the customer anonymity) vulnerability, as does the immediate availability of a plethora of local betting shops, ability to transfer value through the exchange of betting slips, and potential use of machines that remove or limit human interaction.”

Clifton says that as a result of recent moves “compliance departments in non-casino operating gambling companies are now much more conscious of the need to prepare for the changes that will be introduced following implementation 4AMLD”.

“Some assert that gambling, by its nature, is attractive to the criminal lifestyle”

Russell from W2 is convinced that regulations in the money-laundering arena are destined to become ever-more onerous. "I don't think it will be that long before you can't even go to your local bookmakers and put £10 on the Grand National," he says. "I wouldn't be surprised if you will have to have an account with them. I know that is land-based, not online, but I think you will have to have an account and not just a membership type account. Something verifiable, not just a loyalty card."

## The cost of non-compliance

As ever with any business, when it comes to the imposition of new rules and regulations on the part of any authority, cost is a major issue. But companies questioning what budget should be allocated to their compliance departments should take heed from the aforementioned decisions handed down by the UK Gambling Commission.

In one such case, the Commission concluded that the examples in question provided "valuable learning for gambling companies of all sizes and across all sectors". "All operators should review the conditions of their licences in light of these cases and take a critical approach to assessing their policies and procedures, in particular to ensure they are being followed by staff and remain fit for purpose."

Then with another gaming operator, the Commission said in its findings that the company failed to demonstrate "appropriate levels of ongoing monitoring", undertake "appropriately rigorous" due diligence checks and relied instead on "no trace results from third-party and open source information".

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The legal team from Mishcon de Reya suggested the wider gambling industry would do well to pay attention to the specifics in this case and the wider ramifications. "The document makes for an interesting read and should be reviewed in detail by senior managers and especially Money Laundering Reporting Officers (MLROs) in all sectors, in particular non-remote and remote casinos," says Mishcon's Nick Nocton. "As with other similar public statements in the past, the Commission will expect the wider industry to learn from the issues identified."

Gambling consultant Steve Donoughue agrees that though the recent decisions from the Commission largely relate to land-based casino, the rest of the sector shouldn't be complacent. "This shows that the Commission is hot on the issue of AML," he says. "This isn't just about dodgy low-level criminals using the roulette tables of London to wash their ill-gotten gains. This is much wider and their concerns reflect more general fears over such important issues as the funding of terrorism and other very current touchpoints."

As Clifton says, the decisions also broadcast to operators and the wider industry the message that voluntary settlements may not always be its preferred route in future and that it is likely to “review an operating license when severe breaches of AML requirements have occurred”.

“**AML compliance has to be built in to fraud and risk management procedures for client onboarding.**”

For W2, the **BSMART** product provides a sleep-at-night factor that is important not just for the operators but for the specific AML lead in each company. “Once the **BSMART** account has been set up by us, we can automate the upload so the clients have an automated routine, which uploads either their entire latest client base or just their new clients since the last upload,” says Pashley.

With the account, the frequency of screening, and which data sources it will be screened against in place, and once they have uploaded their client base, W2 clients also know the versions of the sanctions lists they are screening against are the most current and latest. “It means that someone isn’t just on Google downloading a version of the CIA Factbook or HM Treasury sanctions list but not knowing how up to date it is,” says Pashley.

In November, the Remote Gambling Association (RGA) issued the second edition of its own AML guidance. In introducing the update the RGA somewhat made W2’s point by suggesting that they will be “continually updated to reflect alterations in Anti-Money Laundering/Counter Terrorism Funding operators’ practices.” This last factor is vital. Following the Paris attacks, Pashley points out some governments are looking for 4AMLD to be fast-tracked for implementation as soon as possible. It indicates how events can overtake the industry should it take its foot off the compliance pedal.

Peter Howitt, director at Gibraltar-based law firm Ramparts points out that directives are translated and transposed in each member state in the EU and hence it can give rise to significant difference in differing countries. “For the remote gaming sector the concern has to be that countries, such as Germany, will use these revised AML laws to prevent cross-border activities that they do not want. After all it is much easier to tell courts that you are trying to stop someone from providing services due to AML risks than it is to argue against someone relying upon Article 56 of the TFEU re freedom to provide services within the EEA.”

The RGA AML guidance suggests the industry is at least aware of the issues it is facing. While noting that an RGA-commissioned study in 2009 had concluded that the combination of statutory and self-regulation had “effectively reduced” the risk of money-laundering in the realm of online gambling, the report had “underlined the need to remain vigilant”.

The report added: “Money laundering and terrorist financing are serious international issues and it is important that such criminal activities are identified and prevented by all available means. The Financial Action Task Force (FATF) has identified casinos as one of many industries that may be attractive to those who wish to commit crime, conceal the profits of their crime or fund terrorist activity. By extension the online gambling industry therefore has a duty to detect and prevent money laundering and the funding of terrorism wherever possible.”

Clifton concludes that operators should be cognisant of the importance of what the RGA suggests. “The RGA’s guidelines are no less essential reading than the Gambling Commission’s own publications, particularly bearing in mind the risk of criminal prosecutions and regulatory sanctions (including fines and revocations of both operating and personal licences) that can flow from failures to adopt and implement sufficiently adequate AML systems and controls.”

A notable aside from the UKGC cases is that the Commission found what it described as a degree of “over-confidence in systems” which had now been rudely awakened. It chimes with comments from Russell at W2 about the regulated service providers always being necessarily behind the curve when it comes to the behaviour of modern organised crime and terrorist organisations.

“It’s the same with any legislation to combat financial crime; the minute you shut one door, they look for the next one to open,” he says. “You are always one step behind, so they are now shutting the doors that the criminals and terrorists have been exploiting for the last three years. But another will open in the next six months, and it will take time to work out how to shut that one. You are always playing catch-up.”

“**You can’t run and you can’t hide from this kind of stuff**”

Howitt from Ramparts adds that AML compliance has to be built in to fraud and risk management procedures for client onboarding. “Likewise data protection must be considered throughout the data collection and management process including relating to working with third party agencies and partners in different countries.”

Given this perpetual nature, it becomes ever clearer that a heads-in-the-sand approach will not suffice. “You can’t run and you can’t hide from this kind of stuff,” says Donoughue. “It’s just not feasible in the modern world to pretend either internally or externally that you are covered when you really aren’t.”

The regulatory landscape is constantly changing. The impact to your business of not investing (which is the key word) in reliable, robust and accurate solutions that allow you to make informed decisions and stay ahead of the curve, is a decision that you may only regret when it is too late.

**If you would like to learn more about how W2 can help you comply with 4MLD and simplify customer on-boarding please email the team on [enquiries@w2globaldata.com](mailto:enquiries@w2globaldata.com).**



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