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# Legal Bulletin



## Gambling Law

### Summary:

1. Order No. 370/2021 of the President of the National Office for Gambling approving the Instructions on preventing and combating money laundering and terrorist financing in the field of gambling in Romania

## Enactment of AML/CFT secondary legislation applicable to the Romanian gambling industry

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Order No. 370/2021 of the President of the National Office for Gambling (“**Order No. 370/2021**”) approving the Instructions on preventing and combating money laundering and terrorist financing in the field of gambling in Romania (“**AML Instructions**”) has entered into force on 7 January 2022.

Order No. 370/2021 has enacted sectorial instructions for the implementation of the general requirements prescribed by Law No. 129/2019 for preventing and fighting money laundering and terrorist financing, as well as for amending and supplementing certain legislative acts (“**AML Law**”).

Precisely, this piece of secondary legislation sets up specific rules on anti-money laundering and terrorist financing which must be observed by the gambling operators (foreign entities and their branches and national entities) authorised by the National Office for Gambling (“**NOG**”) to conduct gambling activities in Romania.

### 1. General overview

The main requirements to be observed by the gambling operators may be summarized as follows:

- Gambling operators must carry out risk assessments, in accordance with their internal policies and rules, identifying, assessing and managing the risk of AML/CFT,

in terms of clientele, type of gambling activities, channels through which they are offered, the type of transactions and connections to geographical areas;

- AML Instructions provide a list of minimum risk factors which should be observed by the gambling operators when establishing their internal policies and rules, grouped by the type of games covered by the operator's gambling license, namely (i) betting; (ii) casinos, poker clubs, poker festivals; (iii) slot-machine; and (iv) online gambling. Examples of such risks factors include:

(i) For **Betting**:

- Potential complicity of employees;
- Offering credit to participants;
- Risk derived in connection with the anonymous customers, who may place large sums of money, particularly in the case of stand-alone betting terminals;
- Participation in the game through intermediaries (e.g. through an informal value transfer system (IVTS) which usually takes place outside the conventional financial-banking system, through methods such as hawala, fei ch'ien, black market peso exchange);
- False winnings or false cancellation of betting tickets after they have been validated as non-winning in the betting system;
- Cancellation policy for betting tickets.

(ii) For **Casinos, poker clubs, poker festivals**:

- Offering credit to participants and any loan-sharking activities on the premises;
- Presence of customers from economic-geographical areas with a high risk of money laundering activities or included in the list of persons subject to sanctions regimes adopted at both UN and EU level;
- Presence of "high roller" customers fragmenting the amounts at stake into small stakes or disguised purchase of tokens.

(iii) For **Slot-machine**:

- Use of self-service betting terminals/ticket in ticket out;
- Fictitiously awarded jack-pot prizes/bonuses, in cash;
- Loyalty programmes involving cash rewards.

(iv) For **Online gambling**:

- Use of false or stolen identity documents by players;

- Lack of appropriate customer due diligence policies;
  - Accessing multiple gaming platforms or collections of games within the same platform;
  - Complicity in the provision of bonuses or other benefits offered in cash, chip dumping;
  - E-Wallet, being considered a payment method that makes difficult for the operator to identify the source of funds;
  - Remote gambling used as a front for cash deposits, which are then transferred to bank accounts, with apparent winnings from gambling as the source of funds.
- AML Instructions include a list of minimum requirements to be covered by the KYC procedure which must be prepared by the gambling operators. Such requirements include:
    - (i) The decision-making process, including a list of hierarchical positions, tasks and the level of responsibility assigned to the structures/persons involved;
    - (ii) KYC measures for each type of risk category, together with the procedure for assigning customers to a particular risk category;
    - (iii) Obligations and procedures for reporting, including channels, related documents and deadlines.
  - The gambling operators must evaluate and review their KYC rules periodically, at least annually and whenever necessary, in order to correct the potential deficiencies identified internally or by competent authorities.
  - Also, the AML Instructions include a complex set of rules which must be covered under the KYC procedures, which include:
    - (i) Gambling operators may not accept the collection of winnings, the placing of bets, the withdrawal of money or the initiation or continuation of the business relationship respectively if they are not able to apply the KYC measures;
    - (ii) Remote gambling operators must ensure that, before the verification of the customer's identity is completed, the gambling platform does not allow deposits to be made to the gambling account with a value exceeding EUR 200 or the equivalent in RON or allow withdrawals to be made;
    - (iii) Gambling operators must monitor winnings, purchase/exchange of chips of at least EUR 2,000 in RON equivalent, paid to or cashed in by the player as a result of the gambling activity, individually, in a single transaction, as well as cumulatively per month.

- The gambling operators must collect certain information detailed in the AML Instructions for their internal KYC process, when establishing a business relationship with suppliers of goods and services, in order to determine the risk profile of each such partner.
- The gambling operators are required to provide an independent audit function for the purpose of testing at least every 2 years the effectiveness and practical implementation of their policies, internal rules, procedures, mechanisms and systems.

## **2. Designated persons**

As per the AML Instructions, gambling operators shall designate one or more persons responsible for the implementation of their internal policies and procedures on the prevention and combating of money laundering and terrorist financing.

The gambling operators must periodically, and at least once a year, test the knowledge of all persons with roles and duties in the application of measures for preventing and combatting money laundering and terrorist financing.

Certain criteria must be considered in the process of selection and subsequent evaluation of the designated persons:

- The necessary experience and knowledge in the field of the prevention and combating of money laundering and terrorist financing;
- Knowledge of the specific gambling processes which are involved;
- Professional reputation.

## **3. Recruitment and training of employees**

Gambling operators should communicate to their employees the AML/CFT policies and procedures whenever this is necessary for the fulfilment of their responsibilities under AML Law.

The information should be provided upon hiring and whenever changes or internal restructuring occurs in the positions held by respective employees. Gambling operators should also verify the employees' understanding on a regular basis, but at least annually.

The training and testing programmes organized by the gambling operator should ensure that the employees:

- Are aware of their obligations as per the applicable legal framework and internal documents, including the reporting requirements under AML Law;
- Have the necessary knowledge to carry out the KYC process and analyse the transactions requested or carried out to identify money laundering and terrorist financial risks;
- Are able to detect and deal with the transactions that may be related to money laundering and terrorist financing.

#### 4. Reporting requirements

The gambling operators must submit a report of suspicious transactions under the conditions prescribed by AML Law, when the objective circumstances relating to a business relationship or occasional transaction correspond to the indicators of suspicious transactions included in the AML Instructions or which are publicly presented by the National Office for Prevention and Combating of Money Laundering.

The gambling operators must also submit a report on cash transactions to National Office for Prevention and Combating of Money Laundering when transactions with a minimum value of at least EUR 10,000 in RON equivalent are carried out in a single operation or in fragmented operations carried out during the same day.

#### 5. Other various requirements

The AML Instructions also lists other various requirements the gambling organizers must comply with, which include:

- Rules concerning the methods for the verification of customer information and documents;
- Rules on the regular review of customers' profile;
- Rules for the monitoring of the indicators regarding suspicious transactions (e.g. customers who present documents/information suspected to be false or show reluctance to present the requested documents/information; customers who make successive deposits in the game account or purchase chips without participating in the game; customers who requests the gambling operator staff not to record their transactions, players constantly playing against the same players);
- Records retention rules (e.g. in principle, all documents and records related to the customers and transactions must be kept for a period of 5 years from the date of the last transaction performed by the customer, with the possibility to extend the retention period for additional maximum 5 years; the documents drawn up in the selection procedure and the periodic evaluation/training of the designated persons shall be kept for 5 years from the date of termination of the contractual relationship);
- Specific rules on the management and processing of personal data.

#### 6. Control activity of the NOG

The NOG has the responsibility to supervise and control the lawful application by the gambling operators of legal provisions in the field of prevention of money laundering and terrorist financing as prescribed by AML Law and AML Instructions in Gambling Sector.

For this purpose, as per the Order No. 370/2021, the NOG shall carry out periodic control activities, with prior notification of the gambling operator, or unannounced control, without prior notification of the organizer. Following their control activities, the NOG has the right

to impose sanctions and/or remedies in case of failure by the gambling operators to comply with their obligations/responsibilities under the applicable legal framework.

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## Editors

Țuca Zbârcea & Asociații has an unparalleled knowledge and commercial understanding of the **Gambling** legislation. Our lawyers are advising many of the gambling operators active in the Romanian online and offline markets as well as software developers, payment processors and other suppliers of services to the gambling industry.

Our expertise covers an extensive range of legal issues which arise in the gambling industry, including assistance in the applications for gambling licenses to offer online gambling in Romania or specific licenses for the suppliers of services to gambling operators, corporate transactions aiming at businesses consolidation on the Romanian market, the lawful promotion of gambling, negotiation of contracts between gambling operators and services suppliers, AML and data protection compliance, as well as tax treatment of both operators' and players' revenues.



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