



**European Banking Authority**  
**Consultation on effective management of ML/TF risks when providing access to financial services**  
European Casino Association

The European Casino Association (ECA) welcomes the European Banking Authority's (EBA) Consultation on two new Sets of Guidelines *on money laundering/terrorist financing (ML/TF) risk factors and on the effective management of ML/TF risks when providing access to financial services* and appreciates the opportunity to share its views thereon. The ECA particularly welcomes this opportunity as it allows it to bring the unique characteristics of the national, licensed land-based casino industry to the attention of the EBA. The content and statements contained in this submission by the ECA are without prejudice to possible individual contributions of ECA members. The ECA remains at the EBA's disposal for any further information and/or explanation.

#### **ECA GENERAL SUBMISSION**

1. In principle, and as recognized by the EBA, no customer should be denied access to financial services without good reason, as access to financial products and services is a prerequisite for participation in the economic and social life of society. Both of the EBA's Sets of Guidelines aim rightfully to tackle unwarranted de-risking and to foster a common understanding throughout the EU on what financial institutions should do to tackle ML/TF risks effectively while taking care not to deny customers access to financial services without good reason.
2. The Guidelines amending the ML/TF risk factors and focusing on NPOs provide legitimate guidance on the types of information and documents that financial institutions should gather to obtain an understanding of the NPO's governance, funding, activities, areas of operation and beneficiaries. The risk factors to consider include reputation, adverse media findings and the question of establishing a good reputation for the NPO and its managers.
3. The draft Guidelines on access to financial services specify that before taking a de-risking decision, institutions should satisfy themselves that they have considered and rejected all possible mitigating measures taking into account the ML/TF risk associated with the existing or prospective business relationship. The Guidelines also add a requirement to document the decision to refuse a business relationship and the reason for doing so.
4. Moreover, as pointed out by the EBA, once rejected by institutions, some customers may resort to alternative payment and banking channels where they will be less monitored and, as



a consequence, anti-money laundering/countering the financing of terrorism (AML/CFT) efforts could be hampered.

5. Furthermore, the Guidelines provide for a cost-benefit analysis when financial institutions are to exclude customers or to push customers to resolve alternative payment as well as a due-diligence process to on-boarding customers at an “acceptable cost”.
6. The ECA wishes to point out the situation faced in the gambling sector where credit and financial institutions (mostly banks) are deciding to terminate, limit or refuse to enter into a relationship with legal (licensed) gambling operators as clients without a valid reason. These banks simply choose not to bother to analyze the actual ML risk and instead assume that working with casinos carries ML risks and should therefore be avoided altogether. This approach is counter-effective in terms of fighting ML and TF. Expelling legal, controlled, safe casino operators from the financial system actually gives an advantage to unlicensed black market operators and therefore increases the overall ML risk associated with gambling in Europe. Illegal black market operators, unrestricted by any relevant rules and regulations, can revert to underground parallel financial ecosystems that are at the very heart of ML and TF. They can also revert to cryptocurrencies, which entails a whole risk dimension in and of itself from an AML/TF perspective. The complacency of banks which opt to simply “de-risk” rather than assuming their responsibilities not only increases money laundering risks, it undermines the general gambling policies of Member States. The casino sector should be supported in combating and preventing ML and TF rather than being counteracted in this regard.
7. The ECA would like to point out that, according to the European Commission<sup>1</sup>, the assessed level of threat posed by money laundering in casinos is “moderately significant” (level 2), while the risk for terrorism financing is unobservable in legal casinos. This indicates that the casino sector has successfully put AML compliance procedures in place to tackle ML/TF risks associated with its activities and that casinos should not be regarded as higher ML/TF risk clients. Banks should take this type of information, and especially the Supra National Risk Assessment of the European Commission, into account when assessing measures that would need to be put in place to establish or maintain a business relationship with (potential) clients in the gambling industry.
8. Indeed, the licensed land-based casino industry is committed to combating money laundering in the most effective and efficient way. The ECA members are all licensed casinos and are taking action to tackle the threat posed by money laundering and ensure AML compliance with the highest European and international standards and applicable (national) legislation.
9. Furthermore, the ECA wishes to point out that decisions by financial institutions to refuse, limit or terminate a business relationship with a licensed casino in the EU can in some cases be based on de-risking even though other grounds (environmental/social/governance; ESG) are

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<sup>1</sup> Risk assessment (2022) from the Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities



actually given for the purpose of convenience. Banks will, for instance, state that gambling does not fit with their internal policies on ethics and refuse or limit services on that basis.

Where the actual motivation is indeed unambiguously based on ESG grounds, it should be noted that while financial institutions do have a role to play in society, this role is not to decide *in lieu* of nations and governments which types of activity are legal and which cannot be condoned.

EU Member States opt to put a legal gambling industry in place, which is licensed, controlled, regulated and taxed, and by which the potential negative consequences related to gambling are mitigated (crime and fraud as well as problematic gambling behavior). Indeed, this legal gambling industry channels those people with a natural propensity to gamble and serves to keep them away from dangerous, illegal, black market gambling operators. The latter can be found in the criminal circuit and pose grave money-laundering and terrorist-financing risks. This was also pointed out by the online gambling sector receiving a high-risk (4) evaluation in the last Supranational Risk Assessment in both ML and TF. Banks should not undermine these pragmatic gambling policies – this does not represent ethical governance but rather a paving of the way for illegal black market gambling to take hold. The European Court of Justice has issued many judgments on national gambling policies and how they can channel the desire to gamble in order to protect public order and player well-being. The ECA is obviously willing to provide more insight into this topic if requested.

In conclusion, the ECA underscores that financial institutions have an obligation to ensure that they apply risk-based customer due diligence (CDD) measures in combating ML/TF, while ensuring that they do not (falsely) deny access to financial services and products based on ESG-related arguments or topics such as morality.

10. The additional costs associated with the specific CDD measures for the casino industry, or the costs incurred by the requirement to document decisions made to refuse a business relationship should never be a reason for terminating the relationship or for not presenting any related documents. Moreover, such costs can be borne by the client (to the extent that they are reasonable) and would thus not affect the financial institution's bottom line. While such measures may in reality be a frequent issue at the start of the business relationship, this should ultimately settle down for most clients over time (recurring transactions, or at least recurring patterns, etc.). This is the ECA's own experience, having itself recently established a new business relationship with a bank after seeing its long-standing relationship with its former bank being terminated without giving a reason, obviously due to de-risking. The requirement to investment time and effort (which can even be compensated by the client) at the beginning of the business relationship should not be a reason to refuse services.
11. The ECA is a non-profit industry association of casino operators from 29 European countries representing around 60.000 employees. The association is no different to other industry associations in terms of ML risks – it is not a gambling operator and is not in a specific position to launder money. The reality, however, is that ECA was a victim of unwarranted de-risking, and its long-standing client relationship with its bank was terminated without any reason being



given. Thereafter, several banks declined (only verbally, never in written form) to offer their services to the ECA based on de-risking. After a long and difficult search, the association has ultimately had to opt to do its banking with a bank in a different EU Member State (Austria) to the one in which it is established (Belgium).

## **SPECIFIC RESPONSE TO THE QUESTIONS FOR THE PUBLIC CONSULTATION**

### **Guidelines amending the ML/TF risk factors Guidelines**

#### **1. Do you have any comments on the annex that covers NPO customers?**

1. The ECA would like to see a more precise and framed definition of “good repute” when it comes to the risk factors that financial institutions must consider when identifying the risk associated with NPO customers and managers (*Point 10 of the Consultation paper, Reputation/adverse media findings*).

This definition should not give any leeway for banks to *de facto* legislate on behalf of sovereign states, e.g. by excluding entire industries from the possibility of being of “good repute”.

### **Guidelines on policies and controls for the effective management of ML/TF risks when providing access to financial services**

#### **2. Do you have any comments on the section ‘Subject matter, scope and definitions’? If you do not agree, please set out why you do not agree and if possible, provide evidence of the adverse impact provisions in this section would have.**

1. The general scope of the Guidelines is clear and includes policies and controls for the effective management of ML/TF risks when providing access to financial services.

However, as follows from Point 9. of the ECA’s Submission, there is a risk that financial institutions (falsely) deny access to financial services and products based on ESG-related arguments or topics such as morality.

Hence, both Sets of Guidelines should include a clear statement that they focus on de-risking on an ML/TF basis only, which cannot be bypassed by relying on different motivations such as ESG-related arguments (Environmental/Social/Governance) or morality.

2. In the ECA’s view, a Section could be added in Subject matter and scope of application:

*“ 6. The scope of these guidelines is exclusively for policy, procedures and controls of credit and financial institutions in regard to ML/TF risks factors. Other topics should not be considered or used by a financial institution in the scope of the application of these guidelines. “*



**3. Do you have any comments on the section titled 'General requirements'?**

1. Where the actual underlying motivation is based on ML/TF grounds, it should not be possible for financial institutions to rely on false motivations to escape guidelines on unwarranted de-risking. The obligation to provide a documented and substantiated decision in case of refusal constitutes a first step towards avoiding this type of behavior. The provision of this documentation to the respective competent authorities would be a welcome addition, as would be the necessity to update the individual risk assessment of the customer and to dynamically adjust the extent of monitoring and the range of products and services offered.
2. In the ECA's view, credit and financial institutions should be required to update the risk assessment of customers in accordance with the latest applicable Supranational Risk Assessment (from the European Commission).

**4. Do you have any comments on the section titled 'adjusting monitoring'?**

N/A

**5. Do you have any comments on the section titled 'applying restrictions to services or products'?**

N/A

**6. Do you have any comments on the section titled 'Complaint mechanisms'?**

1. The section 'Complaint mechanisms' outlines that credit and financial institutions, when communicating their decision to refuse or terminate a business relationship with a customer, must advise the customer that he can contact the relevant competent authority or designated dispute resolution body and must provide him with the EBA's website link of complaints.
2. Means should be provided for NPOs or other businesses which face a refusal decision to take action if it appears from the written motivation provided that this refusal constitutes a case of unwarranted de-risking, wrapped in greenwashing.

**ABOUT THE ECA**

The European Casino Association (ECA) represents national associations and individual operators of licensed land-based casinos in Europe. To date, the ECA represents the interests of approximately 900 casinos with over 60,000 employees in 29 countries across Europe. Founded in the early 1990s as the European Casino Forum, the ECA has grown steadily over the years and today includes members from nearly all EU Member States as well as a number of non-EU countries.

The main purpose and objective of the ECA is to address and promote issues related to casino companies and/or casino operations. In so doing, the ECA is the focal point on casino matters for casino operators as well as for EU and national policymakers and stakeholders. To this end, the ECA



serves as a network for information that shall be used to communicate and work with the EU institutions on anything related to the land-based casino industry.

The ECA does not pursue any profit motive.

Within said purpose, the association aims to:

- Collect and provide information on casino operations and casino administration, including the assessment of European legislation and regulations addressing casino operations
- Increase awareness and understanding of the casino industry amongst EU policymakers and stakeholders
- Constructively contribute to EU decision-making on matters affecting the casino sector

For the European Casino Association