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**The online gambling selected issues.  
The role of anti-money laundering policy  
for consumer protection\***

**1. Introduction**

Different fields of law never operate alone. It is a cliché; however, it is very difficult to assess and substantiate how they cooperate with each other and what kinds of values they protect, not only directly but also indirectly. On the one hand, it is sometimes very difficult to assess if they are or they are not in a conflict of interests. On the other hand, they often cooperate or thus one of them is a complementary tool for deficiencies of protection provided by others. That is why because “the substantiation of provisions on the binding force of any rules should also take into consideration, to a greater or lesser degree, the correcting factor and the axiological aspect, namely the relationship between the specific rule and a particular set of values”<sup>1</sup>. The set of values and grounds of any system designate the understanding and interpreting of any established system, as well its binding and performing issues. The three tricky questions are:

- 1) what various kinds of areas/branches/fields of law cooperate;
- 2) what they really protect besides the main subject of protection (for example the antitrust law protect firstly the competition, but not only)<sup>2</sup>;
- 3) what kind of dependencies are between them.

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<sup>1</sup> S. Wronkowska, *Z teorii i filozofii prawa Zygmunta Ziemińskiego*, Warsaw 2007, p. 93.

<sup>2</sup> See D. Mąsik, *Stosunek prawa ochrony konkurencji do prawa własności przemysłowej*, Warsaw 2012, p. 67, 144–167, 325.

One of the most important branches of law in the European Union is the consumer protection law which was established, in particular to support the development of the internal market, as a remedy for market deficiencies from the point of view of “formal legal responses to crises and emergencies that generate great public outrage and require a public response”<sup>3</sup>. Needless to say that consumer protection is a great deal. The beginning of the vision of the CPL shall commence on the speech in the US Congress on the 15th March, 1962 delivered by John F. Kennedy who started with words: “Consumers by definition, include us all”. The US President continues that consumers “are the largest economic group, affecting and affected by almost every public and private economic decision. Yet they are the only important group whose views are often not heard. Nowadays consumers are protected from unsafe products, deceptive advertising, unfair business practices and/or negative impact of fraud and/or money laundering through a mixture of public and many private rights of actions<sup>4</sup>.”

Consequently, needless to say that consumer protection is a great and highly important issue for the EU internal (single) market, too. Pursuant to Article 26(2) Treaty of Functioning the European Union, the internal market is to comprise an area without internal frontiers in which the free movement of goods and services and freedom of establishment must be ensured. The harmonization of various aspects of consumer law is necessary for the promotion of the real consumer internal market and the right balance between a high level of consumer protection and the competitiveness of enterprises. It is also valuable and essential to add that the protection of the consumer internal market and freedom of entrepreneurs shall be provided in respect for the principle of subsidiarity. According to Directive 2011/83/EU<sup>5</sup> full harmonization of the internal market should considerably increase certainty of law for both consumers and traders who both should be able to rely on a single regulatory framework based on clearly defined legal concepts regulating certain aspects of business-to-consumer contracts across the European Union.

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<sup>3</sup> S.W. Waller, J.G. Brady, R.J. Acosta, J. Fair, *Consumer protection in the United States: An overview*, “European Journal of Consumer Law” May 2011, p. 1.

<sup>4</sup> See S.W. Waller, J.G. Brady, R.J. Acosta, J. Fair, *Consumer...*, p. 2.

<sup>5</sup> Directive 2011/83/EU of The European Parliament and of The Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

## 2. Freedom of establishment and its application to gambling services in the light of consumer protection

One of the fastest growing service activities in the EU, with annual growth rates of almost 15% and an estimated €13 billion in annual revenues in 2015 is the online gambling. However, the online gambling still seems not to be regulated enough, especially outside the EU, to which consumers are exposed and which carry significant risks of many crimes. (EC, 2012). As Levi noticed “within this economic context of very substantial expenditures that money-laundering risks should be viewed”<sup>6</sup>. Owing to permeating those different risks for consumers connected with the online gambling, the complicated but sensible idea is to ask how the consumer protection law (hereinafter CPL) and many other systems of law protection, including anti-money laundering (hereinafter AML), which is strictly bound with the gambling market, cooperate to minimize any potential and real risk for consumers who take a great part in the online gambling market and who can be very exposed to damages that may be caused by some crimes. As Internal Market and Services ECer Michel Barnier said: “Consumers, but more broadly all citizens must be adequately protected, money laundering and fraud must be prevented, sport must be safeguarded against betting-related match-fixing and national rules must comply with EU law. These are the objectives of the action plan we have adopted today”. That is why the European Commission (hereinafter EC) is not proposing EU-wide legislation on online gambling. It is proposing a comprehensive set of actions and common principles on protection origin from different systems of law protection.

What must be emphasized “gambling (which is described as activities which involve wagering at stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions) should be excluded from the scope of this Directive. Member States should be able to adopt other, including more stringent, consumer protection measures in relation to such activities”. On the other hand in Communication from the EC to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions – Towards a comprehensive European framework for online gambling (23 December 2012) EC stated that “while fully respecting each Member State’s right to determine the regulatory framework for gambling services, the EC sees significant benefits in the develop-

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<sup>6</sup> M. Levi, *E-gaming and money laundering risks: a European overview*, “ERA Forum” 2009, vol. 10, p. 533–546.

ment of a range of authorized gambling opportunities in order to effectively dissuade consumers from using other gambling offers. It is important for authorized operators to be able to offer sufficiently attractive products, because in the absence of credible and sustainable offers consumers will continue to turn to unregulated gambling websites, with the ensuing potentially harmful effects”. This statement clearly shows that the EC sees a need of some harmonization of consumer law in the area of online gambling because of dangers that unregulated market brings to consumers.

The Single Market, which is an area of free movement for goods, people, services and capital, is at the heart of the European project since its inception. “Today more than ever it has become a part of people’s everyday life in their professional and private activities and as consumers”, ensuring more choice at lower price (Single Market Act II, COM(2012) 573 final and Single Market Act, COM(2011) 206 final). It means that consumers and their rights protection are important part of the Single Market so they are, *ipso facto*, indirect victims of many crimes, including money laundering.

The issue of regulating EU gambling markets, whether conventional or online, is very sensitive. But there is a clear need for clarification about the regulatory environment concerning online gambling. At present, several cases before the European Court of Justice (hereinafter ECJ) are related to gambling. This situation is dissatisfactory for the Court as well as Member States, consumers and online gambling providers.

On 10th March, 2009 the European Parliament adopted the Resolution on the integrity of online gambling (2008/2215(INI); hereinafter resolution). The online gambling is a range of different gambling services and distribution channels (including digital interactive TV, mobile phone technology, telephone and fax). The term “game of chance” in relation to online offers includes:

- Betting services (including horse and dog racing, event betting and pool competitions),
- Poker and casino services,
- Bingo services,
- Gambling services operated by and for the benefit of recognized charities and non-profit making organizations,
- Lottery services,
- Media gambling services (i.e. games within the editorial content of media),
- Sales promotion services, consisting of promotional games with a prize or where participation is linked to purchase.

However, the European online gambling area is not harmonized at European Union level, and the Member States have a wide discretion in relation to the objectives they wish to pursue and the level of protection they seek. Subsequently, the online gambling markets are regulated nationally in accordance with the principle of subsidiarity. Therefore the regulatory frameworks for the (conventional and online) gambling market in the EU varies from country to country. Nevertheless, it is possible to classify it into four categories<sup>7</sup>:

Table 1.

A ban on games of chance	a few MS (e.g. Germany and the Netherlands) prohibit (entirely or partly) games of chance on the internet
An exclusive right/monopoly	in some MS, online gambling services are offered by a state controlled public operator or private operator on the basis of an exclusive right (e.g. Finland, Portugal, Sweden).
Authorisation/Licensing	a growing number of MS (e.g. Denmark, Estonia, France, Italy, Spain) offer licences to more than one operator to provide services under specific conditions. Only a few MS recognise licences from other MS.
No specific regulation	a few MS (e.g. Ireland, Lithuania) have no specific rules on offering online gambling services

However, as a monopoly is an unusually restrictive measure, it must be ascertained that the national authorities really intend to ensure a particularly high level of consumer protection with regard to the objectives relied on, and whether, having regard to the level of protection sought, the establishment of a monopoly could actually be considered necessary<sup>8</sup>. Member States are relying on an objective capable of justifying the restriction of the freedom to provide services which must be adopted with the requirements deriving from the principle of proportionality<sup>9</sup>.

<sup>7</sup> See F. Zibold, *Online gambling in the EU*, "Library Briefing. Library of the European Parliament" 2 May 2013, p. 2.

<sup>8</sup> Judgment of the Court of 15 September 2011 *Dickinger and Ömer*, C-347/09, ECR [2011] I-0000.

<sup>9</sup> Judgment of the Court of 8 September 2010 *Stoß & Others*, C-316/07 etc., ECR [2010] I-8069.

Different regulation, include the CPL, may cause various problems regarding to EU freedoms. Freedom is liberty, personal autonomy of independence, the ability to act, to some extent, in some fields, etc., without barriers and limitations, freedom, naturalness in behavior, simplicity, confidence, courage. In the plural, it should be understood that certain privileges<sup>10</sup>. In other words, 'freedom is the right to do what you want without being controlled or restricted by anyone'<sup>11</sup>. The concept of freedom of the Community appeared only in the preamble to the Treaty of European Union and in the Treaty of establishing the European Community. The Court of Justice of the European Union (hereinafter ECJ) used it for the first time in its judgment in *Casati* (C-203/80). In these cases The European Court of Justice has stated that freedom of movement (Article 49 of the EU Treaty) applies to gambling services. The Art. 49 of the EC Treaty provides that within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended. The Council may, acting by a qualified majority on a proposal from the EC, extend the provisions of the chapter to nationals of a third country who provide services and who are established within the Community.

However the ECJ has also stated that gambling may entail certain moral, religious and cultural aspects, involve a high risk of crime or fraud and may have damaging individual and social consequences (*Schindler* case). What is more, the legal environment of that important situation or of the EU economy includes a field of law which a considerable number of entrepreneurs is not fond of but, nevertheless, it has to comply with consumer law.

The Member States who have banned online gambling altogether or allow it only under monopoly conditions argue that these limitations are justified on grounds of social and public order. However, there have been great disputes regarding the so-called national gambling monopolies. Numerous complaint have been filed with the EC by gambling companies, private persons and media organizations claiming that certain Member States are unlawfully protecting their gambling markets and the revenues arising from their monopolies. As a result the EC has started infringement procedures against ten Member States, in order to verify whether national measures limiting

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<sup>10</sup> See S. Skorupka, H. Auderska, Z. Lempicka, *Mały słownik języka polskiego*, Warsaw 1968, p. 906.

<sup>11</sup> *Dictionary of contemporary English*, Essex 1995, p. 563.

the cross-border supply of online gambling are compatible with Community law. That is because the EU market shall be adopted to the freedom establishment and provide services.

A number of cases regarding gambling have been referred to the ECJ, some of them have already been settled (case law below) and many of which are still pending. The case law by the European Court of Justice consists of the following cases: Schindler 1994 (C-275/92), Läära 1999 (C-124/97), Zenatti 1999 (C-67/98), Anomar 2003 (C-6/01), Gambelli 2003 (C-243/01), Lindman 2003 (C-42/02), Placanica 2007 (C-338/04), Unibet 2007 (C-432/05) and EC v Italy 2007 (C-260/04)<sup>12</sup>.

In Poland also a few case are connected with online gambling (I SA/Lu 463/11, I SA/Lu 89/11, I SA/Lu 188/11, I SA/Lu 86/11, I SA/Lu 90/11, I SA/GI 198/11<sup>13</sup>). Courts drew attention to resolution which stresses that, in accordance with the principle of subsidiarity and the case-law of ECJ, Member States have the right to regulate and control their gambling markets in accordance with their traditions and culture in order to protect consumers against addiction, fraud, money-laundering and match-fixing sports games, as well as for the protection of accessing funding structures have been based on the culture of gambling.

One of the most important opinion on online gambling was the statement of YVES Advocate General Bot on 17th December, 2009, issued a preliminary ruling in the case of the Sporting Exchange Ltd v Minister van Justitie,

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<sup>12</sup> Judgment of the Court of 11 September 2003, Anomar & Others, C-6/01, ECR [2003] I-08621; Judgment of the Court of 13 March 2007, Unibet, C-432/05, ECR [2007] I-02271; Judgment of the Court of 13 September 2007, Commission v Italy, C-460/04, ECR [2007] I-07083; Judgment of the Court of 13 November 2003, Lindman, C-42/02, ECR [2003] I-13519; Judgment of the Court of 15 September 2011, Dickinger and Ömer, C-347/09, ECR [2011] I-0000; Judgment of the Court of 21 September 1999, Läära and Others, ECR [1999] I-06067; Judgment of the Court of 21 October 1999, Zenatti, C-67/98, ECR [1999] I-07289; Judgment of the Court of 24 March 1994, Schindler, C-275/92, ECR [1994] I-01039; Judgment of the Court of 6 March 2007, Placanica, C-338/04, ECR [2007] I-01891; Judgment of the Court of 6 November 2003, Gambelli & Others, C-243/01, ECR [2003] I-13031.

<sup>13</sup> Judgment of Polish Administrative Court (Gliwice) of 22 August 2011, I SA/GI 198/11, LEX nr 787927; Judgment of Polish Administrative Court (Lublin) of 16 September 2011, I SA/Lu 188/11, LEX nr 1137058; Judgment of Polish Administrative Court (Lublin) of 16 November 2011, I SA/Lu 463/11, LEX nr 1150285; Judgment of Polish Administrative Court (Lublin) of 27 May 2011, I SA/Lu 90/11, LEX nr 1131719; Judgment of Polish Administrative Court (Lublin) of 27 May 2011, I SA/Lu 89/11, LEX nr 1131718; Judgment of Polish Administrative Court (Lublin) of 27 May 2011, I SA/Lu 86/11, LEX nr 1131717.

C-203/08<sup>14</sup> and on *Ladbrokes Betting & Gaming Ltd v Stichting de Nationale Sport totyalisator*, C-258/08<sup>15</sup>, stated that it is settled case-law that the Member States may limit the organization of games of chance and gambling on their territory, in order to protect consumers against excessive spending associated with the game and to protect public order because of the risk of fraud because of large sums of money to gambling in order to receive<sup>16</sup>.

In the gaming machines case, the ECJ Free Trade Association States (established because of the lack of ability of ECJ to ruled over non-member of EU who have access to European market – Iceland, Lichtenstein and Norway <http://www.eftacourt.int/the-court/jurisdiction-organisation/introduction/>), examined the introduction of an exclusive right for the operation of gaming machines of a fully state-owned public company supervised by the relevant Norwegian Ministry. It considered that the national legislation did not opt for a total ban, but for a monopoly system with a view to reducing the risk of gambling addiction to a level which it deems acceptable and to reduce crime and malpractice. The EFTA Court noted, as regards the objective of reducing crime and malpractice, that Norway “failed to demonstrate that a licensing scheme allowing private operators, if necessary with more restrictive rules on who may qualify, will not be equally effective as an exclusive right [for the monopoly operator] in preventing money laundering and embezzlement”<sup>17</sup>. Nonetheless, it concluded that taking into account the public interest objectives considered as a whole, including the one of fighting gambling addiction, the exclusive right system is likely to be more effective, in the end, than the other available regulatory means<sup>18</sup>.

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<sup>14</sup> Judgment of the Court (Second Chamber) of 3 June 2010, *Sporting Exchange Ltd v Minister van Justitie*, C-203/08, ECLI:EU:C:2010:307.

<sup>15</sup> Judgment of the Court (Second Chamber) of 3 June 2010, *Ladbrokes Betting & Gaming Ltd and Ladbrokes International Ltd v Stichting de Nationale Sporttotalisator*, C-258/08, ECLI:EU:C:2010:308.

<sup>16</sup> Opinion Of Advocate General Bot delivered on 17 December 2009 (I) Case C-203/08, *The Sporting Exchange Ltd, trading as Betfair v Minister van Justitie* Case C-258/08 *Ladbrokes Betting & Gaming Ltd, Ladbrokes International Ltd v Stichting de Nationale Sporttotalisator*, ECLI:EU:C:2009:791.

<sup>17</sup> European Commission, Strasbourg, 23 October 2012 SWD(2012) 345 final Commission Staff Working Document, *Online gambling in the Internal Market* Accompanying the document *Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions Towards a comprehensive framework for online gambling* {COM(2012) 596 final}.

<sup>18</sup> Judgment of the Court of 8 September 2010 *Stoß & Others*, C-316/07 etc., ECR [2010] I-8069.

The online gambling introduces a lot of risk for the consumers. For example the higher risk is connected with addictions and fraud. Due to the lack of direct contact between consumer and operator, games of chance accessible via the internet involve different and more substantial risks of fraud by operators against consumers, compared with the traditional markets for such games.

Restrictions may therefore be justified if they are necessary for consumer protection, for maintenance of the public order (prevention of fraud and crime), for maintaining of the social order (culture or morale) and for preventing gambling from being a source of private profit.

As the resolution noticed gambling services are to be considered as an economic activity of a very special nature due to the social and public order and a health care aspects linked to it, where competition will not lead to a better allocation of resources, which is the reason why gambling requires a multi-pillar approach.

To conclude, it is essential to clarify that the online gambling regulation is dedicated in general to consumer protection. European and national courts decisions and European regulations maintain that the consumer protection is a value itself and the adopted system of online gambling is supported by mechanism against addiction, fraud, money-laundering and match-fixing sports games. What puzzles mostly is how the money laundering counter-acting which is aimed to protect the stability and reputation of the financial sector and the Single Market, as well as – what is even more crucial – to fight against predicate offences, especially serious and transnational crime strictly related to establishment, however, protected the public interest, is a tool for consumer protection.

### **3. Money laundering and gambling**

In the Communication from the EC to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions – Towards a comprehensive European framework for online gambling (23 December 2012) (cited below) the EC indicated that “the main public interest objectives of Member States with regard to public order are the prevention of gambling fraud and money laundering”. The question is if there is any connection between money laundering and consumer protection law in the area of conventional and online gambling.

AML policy was introduced into international law at the turn of 1980s and 1990s with opening for signature in United Nations Convention Against

Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 1988) and Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 1990). Firstly, the main aim of criminalizing money laundering was to fight against serious crime which were producing dirty money, in particular drug trafficking, organized and transnational crime<sup>19</sup>. Nowadays in the European Union – according to Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005<sup>20</sup> on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing – AML system is also aimed against damaging the stability and reputation of the financial sector and threatening the Single Market with influence of dirty money on business operations. Securing stability of financial sector is not only virtual need. There are at least few known cases where high government official (e.g. Nigeria – general Abacha, Pakistan – president Zardari and Prime Minister Bhutto) laundered money on a large scale what endangered the stability of economy of whole country<sup>21</sup>.

However the term money laundering was not used regularly until time of the Watergate scandal in the 1970s and money laundering crime is still quite new in most legislation systems „money laundering is as old as money generating crime itself. Successful criminals have always had to work out a way to make their illegal proceeds from crime look like legally obtained”<sup>22</sup>. There are tens of examples when criminals were laundering money before such an activity became a forbidden act, using really primitive methods (hiding money in a garage or burying it in the ground) as well as sophisticated (laundering through Swiss bank accounts or tax havens)<sup>23</sup>.

According to Group of 7 Economic Declaration of 16 July 1989<sup>24</sup> the amount of dirty money that could have been available for laundering and in-

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<sup>19</sup> See W.C. Gilmore, *International efforts to combat money laundering*, Cambridge 1992, p. IX–XVIII.

<sup>20</sup> Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

<sup>21</sup> See S.G. Khan, *EU Directives on money laundering: A critical analysis*, Saarbrücken 2012, p. 9–10.

<sup>22</sup> C. Shaap, *Fighting money laundering with comments on the legislation of the Netherlands Antilles and Aruba*, London 1998, p. 9.

<sup>23</sup> See T. Clarke, *Dirty money. Swiss banks, the mafia, money laundering, and white collar crime*, New York 1975, p. 16–17, 91; T. Hall, *White collar crime in Australia*, Sydney 1979, p. 101–112.

<sup>24</sup> Group of 7 Economic Declaration of 16 July 1989.

vestment per year in the United States and Europe only from sales of cocaine, heroin and cannabis estimated \$85 billion. Presently the scope of sources of dirty money is much more broader than drug trafficking only what means at the same time that its number increased since 1990s and on the other hand “it is beyond our capacity to formulate a clear understanding of how much money is actually being laundered” because “there is not a present any economic *deus ex machine* that will allow the accurate measurement of money laundering world-wide, or even within most nations. The basis for such estimations simply does not exist”<sup>25</sup>. However it is assessed that nowadays in Poland amount of money laundered per year is around \$10 billion what exceeds 20% of yearly state budget income<sup>26</sup> and worldwide it is around \$1.5 trillion, which was 17% of GDP of USA in 1998 and eight times more than GDP of Switzerland<sup>27</sup>.

It is said that „money laundering is mother of many evil which gave birth to many other extremely dangerous evils” which affect the state on three levels<sup>28</sup>. “First, on the enforcement level, laundering increases the threat posed by serious crime, such as drug trafficking, racketeering, and smuggling, by facilitating the underlying crime and providing funds for reinvestment that allow the criminal enterprise to continue its operations. Second, laundering poses a threat from an economic perspective by reducing tax revenues and establishing substantial underground economies, which often stifle legitimate business and destabilize financial sectors and institutions. Finally, money laundering undermines democratic institutions and threatens good governance by promoting public corruption through kickbacks, bribery, illegal campaign contributors, collection of referral fees and misappropriation of corporate taxes and license fees”<sup>29</sup>. Subsequently, in the middle of 1980s firstly in international law, then European, and lastly in legislation of every Member State the AML regulations were introduced.

In the classic model money laundering procedure contains three stages – placement, layering and integration<sup>30</sup>. At these three stages dirty money meets

<sup>25</sup> D.S. Demetis, *Technology and anti-money laundering. A systems theory and risk-based approach*, Cheltenham 2010, p. 13–14.

<sup>26</sup> See R. Zawłocki, *Komentarz do art. 299 § 1 k.k.*, in: *Kodeks karny. Część szczególna. Tom II*, red. A. Wąsek, R. Zawłocki, Warsaw 2010, p. 1411.

<sup>27</sup> See P. Lilley, *Dirty dealing: the untold truth about global money laundering, international crime and terrorism*, London and Philadelphia 2006, p. 32.

<sup>28</sup> See S.G. Khan, *EU...*, p. 29.

<sup>29</sup> W.R. Schroeder, *Money laundering. A global threat and the international community's response*, “FBI Law Enforcement Bulletin” May 2001, p. 1–7.

<sup>30</sup> See W.C. Gilmore, *Dirty money*, Strasbourg 2004, p. 32.

with gambling and consumers at the same time. Placement stage is a phase when dirty money are divided from the perpetrator and the crime which was committed by her/him. Usually it is made by placing money in a financial institution, using them to buy some properties or transferring them abroad<sup>31</sup>.

The main aim of the second stage of money laundering is to hide the sources of dirty money which is usually made by multiplication of many financial operations, often transnational, to create as money layers of transactions between perpetrator and dirty money as possible<sup>32</sup>. At this stage “there is the first attempt at concealment or disguise of the source of the ownership of the funds”<sup>33</sup>.

At the third stage laundered money is integrated into – through many operations made during the layering stage which guarantee that the source of it will not be discovered – the legitimate economic and financial system and later assimilated with capital which comes from legal sources<sup>34</sup>.

One of the most popular method of laundering money at the placement stage is refining which at the same time is one of the safest. During this method dirty banknotes of low value are changed by smurfs into notes of higher value. It is very often to use in this process casinos or other gambling places where such banknotes are changed firstly into tokens and later into notes of higher value which source can be legitimized as gambling prize<sup>35</sup>.

Another method of money laundering used at the placement or the layering stage is to receive faked prize certificates from friendly casinos, without physical change of dirty money (there are even known cases of buying whole casinos to perform such activities)<sup>36</sup>. Such certificates are later used by criminals to prove that their dirty money originate from legal gambling. Hence, *inter alia* in Directive 2001/97/WE casinos were made obliged institutions to register gamblers, casino transactions (buying or changing tokens) which amount exceeds 2.000 EUR or as well as suspicious transactions. It is important that right now online casinos have no such duties what is one

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<sup>31</sup> See K. Buczkowski, M. Wojtaszek, *Pranie pieniędzy*, Warsaw 2001, p. 45.

<sup>32</sup> See K. Buczkowski, M. Wojtaszek, *Pranie...*, p. 45.

<sup>33</sup> W.C. Gilmore, *Dirty...*, p. 32.

<sup>34</sup> See W.C. Gilmore, *Dirty...*, p. 32; K. Buczkowski, M. Wojtaszek, *Pranie...*, p. 46.

<sup>35</sup> See J.W. Wójcik, *Przeciwdziałanie praniu pieniędzy*, Zakamycze 2004, p. 102; B. Bieńnik, *Pranie pieniędzy w prawie międzynarodowym, europejskim oraz polskim*, Warsaw 2010, p. 229.

<sup>36</sup> See J.W. Wójcik, *Pranie pieniędzy. Studium prawnokryminalistyczne i kryminalistyczne*, Toruń 1997, p. 162; A. Golonka, *Prawnokarne zagadnienia wprowadzania do obrotu finansowego wartości majątkowych pochodzących z nielegalnych lub nieujawnionych źródeł*, Rzeszów 2008, p. 36.

of the biggest problems of AML policy noticed in *Communication towards a comprehensive European framework for online gambling*.

Problem occurs when criminal organizations, usually at the third stage of money laundering, buy casinos or other gambling places and start to launder money in their own casinos. In such casinos it is very easy – due to not following registration duties – to use refining as well as blending method of money laundering during which clean money from casino income is blended with dirty money<sup>37</sup>. It is also very popular to corrupt casinos workers who later work for criminal groups and help them with laundering by not registering gamblers and transactions or issuing faked prize certificates.

All these situations and methods may occur and be used in online gambling as well. It is even much more easy to use e-institutions in money laundering process than laundering in conventional way. Cyber laundering (hereinafter CL) is faster and more anonymous<sup>38</sup> as it transferring money laundering into the cyberspace via information technologies and the Internet, creating “an extremely complex audit trail in a very short period of time, which in a multi-jurisdictional financial environment can render the possibility of detection minimal”<sup>39</sup>. Computers have become the best washing machines, not forgetting that e-mail routing, state of the art encryption software and ‘anonymizer’ programs as well as free e-mail accounts and programs (that mean you can access your mail from any computer anywhere in the world), e-banking and e-payment systems can also be used by criminals<sup>40</sup>. “Dematerialized e-cash and its subsequent liquidity – which is used during CL – provide the opportunity for disintermediation, bringing the buyer and the seller into a direct relationship”<sup>41</sup>.

If conventional gambling is used by money launderers in such a broad range it is obvious that ML is also present in online gambling, which is even more dangerous because of all opportunities which are given to criminals by CL. What is significant valid, EU AML directives applies only to conventional gambling and casinos, leaving online gambling to its own. Although some of “online gaming companies licensed in the EU have chosen to comply with the EU Directives for the prevention of money-laundering”<sup>42</sup>

<sup>37</sup> See J.W. Wójcik, *Przeciwdziałanie...*, p. 95–96; A. Golonka, *Prawnokarne...*, p. 32–33.

<sup>38</sup> See A. Stańczak, *Pranie pieniędzy w oazach podatkowych i przy wykorzystaniu Internetu*, in: *Pranie brudnych pieniędzy*, ed. J. Grzywacz, Warsaw 2004, p. 42–43.

<sup>39</sup> D.S. Demetis, *Technology...*, p. 12–13.

<sup>40</sup> See D.S. Demetis, *Technology...*, p. 15; P. Lilley, *Dirty...*, p. 113.

<sup>41</sup> D.S. Demetis, *Technology...*, p. 15.

<sup>42</sup> M. Levi, *E-gaming...*, p. 537.

rest of them are not controlled in any way unless MS internal law provides restrictions in this area. It means that consumer can find dirty money while using online gambling products and become a victim of unfair practices of other gamblers as well as online gambling companies.

It can manifest itself for example in:

- questionable fairness of online gambling companies controlled by criminal groups whose the main objective is to launder dirty money using asset of gamblers and are not interested in losing their money by paying prizes to users of their products; this means that the risk of fraud in such an ‘e-casino’ is higher than in ‘e-casinos’ managed by normal, non-criminal, entrepreneurs;
- ‘e-gambler’ who uses gambling sites controlled by criminals becomes a tool in their hands and in some measure – against his/her will – participates in money laundering process;
- questionable fairness of online games of chance in which probability of winning may depend on number of bought lots when one of the participants uses for buying them large amounts of dirty money;
- corruption in sport events in situations when criminal groups are planning to launder large amounts of dirty money by betting on a particular result using online bookmakers.

#### **4. The link between AML policy and consumer protection**

The main goal of the resolution was to regulate the sector of online gambling in UE. As the resolution stated this specific branch on gambling is a great one: online gambling. ‘The online gable market has a 10.9% share of the overall gambling market, but it is growing at a fast pace with annual growth rates of almost 15%’<sup>43</sup>.

The main aims of this resolution is to protect consumers against addiction, fraud, money-laundering and match-fixing. It seems that the main aspect of this resolution is the safeguard the public and consumer protection. These goals may be achieved by the transparent sector of the online gambling. The value itself is the consumer protection because Member States of the European Union have an interest and right to regulate and control their gambling markets in accordance with their traditions and cultures in order to protect consumers against addiction, fraud, money-laundering and match-fixing in

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<sup>43</sup> F. Zibold, *Online...*, p. 2.

sports, as well as to protect the culturally-built funding structures which finance sports activities and other social causes in the Member States. Thus activities against addiction, fraud, money-laundering and match-fixing in sports are tools to protect the consumer.

If online gambling companies keep to the basis of the integrity of their operations, which entails behaving with transparency, consistency and fairness<sup>44</sup>, and harmonization of the consumer protection law, such a behavior is in compliance with anti-money laundering policy. The transparency is one of the pillars of anti-money laundering policy.

One of the best known and popular method of AML is Know Your Consumer program (hereinafter KYC). According to KYC the more obliged institutions know about their consumers the less risk of money laundering is. KYC may be described as a set of information consisting of current consumer's personal and economic data which can be used to check his/her credibility and 'transactional profile'<sup>45</sup>.

Implementation of KYC should assure:

- safeness of transactions;
- enforcing compliance with the AML regulations;
- reduction of potential obliged institution loss;
- protection of obliged institution good name;
- keeping or even increasing trust in the institution<sup>46</sup>.

KYC is sometimes described – mainly by obliged institutions representatives – as too burdensome (and thereby alienating clients), expensive, inflexible when flexibility is needed and only effective in combating the rather amateurish attempts to launder money. Often the information given by client could not be verified what means that identification is too easy to falsify and the value KYC requirements is brought into question<sup>47</sup>.

Some of the online gambling companies use KYC and amass huge data structures in their databases in order to realize the AML policy, including: "Username, Password, E-mail address, First and Last names; Date of birth – the system does not accept a date of birth that would make the player less

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<sup>44</sup> See M. Yani-De-Soriano, U. Javed, Sh. Yousafzai, *Can an industry be socially responsible if its products harm consumers? The case of online gambling*, "Journal of Business Ethics" 2012, vol. 110, p. 481–497.

<sup>45</sup> J.W. Wójcik, *Pranie...*, p. 325.

<sup>46</sup> See J.W. Wójcik, *Pranie...*, p. 327.

<sup>47</sup> See M. Gill, G. Taylor, *Preventing money laundering or obstructing business? Financial companies' perspectives on 'Know Your Customer' procedures*, "British Journal of Criminology" 2004, vol. 44, p. 582–594.

than 18 years of age; Sex; Address information; Country; Phone number; Account currency; Preferred contact language; and Secret question and answer. The amount of information available for verification varies in different European jurisdictions, depending on databases collected by governments and the private sector, and also the costs of verification<sup>48</sup>.

Despite the doubts about KYC effectiveness described above there is a question about potential violation of 'e-gamblers' privacy by collection of their private data. However it must be said that no one created better and more effective program which can eliminate dishonest 'e-gamblers' and there is a need for its further development.

## 5. Conclusions

Every consumer has the right to the best products and services, include gambling, conventional as well as online. This also means that gambling is – in order to guarantee respect for the rights of consumers – to be honest, and that has to be driven by fair share, both for casino owners and their users. Gambling, including online gambling may pose a risk of many increasing addictions and/or fraud or money laundering delinquency. However, the risk of dysfunctional and pathological phenomenon shall not lead to banning gambling entirely or partly, because it is not negative service as such.

In the very beginning it may seem that the AML system serves only the public interests of the country, including only the supporting of counteracting crimes and maintaining the stability of the financial system, or the protection of economic activity of business. Nevertheless, the public interest which is understood mainly as a balance of interests implemented by the proportionality principle shall be subject of as a deep analysis that also serves the protection of ordinary consumers and realize the consumer welfare which refers to the individual benefits derived from the consumption of goods and services which by definition is an individual's own assessment of somebody's satisfaction, given prices and income whereas the goal is to maximize consumers' surplus, while producer benefits should also be counted<sup>49</sup>. Hence, the AML system as the helpful and useful instrument for the public interest is often understood and used as a consumer protection tool. A number of elements constituting the AML plays as well a significant role for the CPL. Subse-

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<sup>48</sup> M. Levi, *E-gaming...*, p. 540.

<sup>49</sup> See R.S. Khemani, D.M. Shapiro, *Glossary of industrial organization economics and competition law*, OECD 1993, p. 29.

quently, the AML and CPL combine each other and regardless of imposing some restriction (e.g. the limiting of privacy) intend to one direction – the guarantee of realization of common, public welfare not only for consumers, but also for entrepreneurs which both are central and leading actors of the internal (single) market and digital single market.

#### Summary

The paper describes the right of every consumer to have the best conventional and online products and services, include gambling. That right, in the opinion of authors, means that gambling is to be honest, and has to be driven by fair share, both for casino owners and their users. The case study proved that online gambling may pose a risk of many increasing addictions and/or fraud or money laundering delinquency. However, authors reckon that the risk of dysfunctional and pathological phenomenon shall not lead to banning gambling entirely or partly. The comparative analysis led to the conclusion that the early-bird AML system served only the public interests of the country, including only the supporting of counteracting crimes and maintaining the stability of the financial system, or the protection of economic activity of business. The AML was described as the helpful and useful instrument for the public interest which is often understood and used as a consumer protection tool. Authors tried to prove that the AML and CPL combine each other, and regardless of imposing some restriction (e.g. the limiting of privacy) intend to one direction – the guarantee of realization of common public welfare not only for consumers but also for entrepreneurs which both are central and leading actors of the internal (single) market as well as the digital single market.

**Keywords:** digital single market, money laundering, AML, EU CPL, online gambling

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