

Electronic Money Association

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Minister James Browne
Minister of State, Department of Justice
Lower Church Street
Enniscorthy
Co. Wexford
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By email: james.browne@oireachtas.ie

22 February 2024

Dear Minister Browne,

Re: Draft [Gambling Regulation Bill 2022](#).

The Electronic Money Association (EMA) is the EU trade body representing electronic money issuers (EMIs) and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide, including FinTech and BigTech as well as a large number of smaller firms, together providing a wide range of payment-related services, including online payments, card-based products, electronic vouchers, mobile payment instruments, open banking payments, cryptoasset services and many others. The vast majority of EMA members operate across the EU, most frequently on a cross-border basis, and a large number have obtained – or are applying for - licences from the Central Bank of Ireland to provide domestic and cross-border services from Ireland. A list of current EMA members is provided at the end of this document.

We would be grateful for your consideration of two issues we have identified below, that could result in unintended consequences for the sector.

Issue 1: Clause 157 and identifying sources of credit other than credit card

Clause 157 (1) places a ban on the use of credit for gambling payments.

157. (1) A licensee to whom this Chapter applies shall not—

- (a) accept payment for a relevant gambling activity by credit card,*
- (b) extend a credit facility to a participant, or*
- (c) participate in, arrange, permit or knowingly facilitate the giving of credit in connection with a relevant gambling activity.*

*(2) The prohibition in subsection (1) includes payment by electronic or digital means which uses money loaded from a credit card **or from any other source of credit.***

The concerns for the sector arise under paragraph (2) above, which states that this “includes payment by electronic or digital means which uses money loaded from a credit card **or from any other source of credit.**”

EMA members are fully supportive of initiatives to reduce harm caused by problem gambling, and in particular any form of borrowing that exacerbates this harm. We welcome the Department’s efforts to address this harm within the context of the Gambling Regulation.

However the reference to “*any other source of credit,*” is too broad, and will be unworkable in practice.

Electronic money issuers have visibility of all account movements such as load and spend activities. However EMIs are not in a position to establish whether funds used to purchase e-money were borrowed (unless purchased by credit card), nor are they able to oversee and analyse the customer’s gambling activities.

When a customer loads their account, it is usually not known to the EMI whether they will be using their e-money for shopping or gambling (except in cases where the account has a target customer or specific purpose). Therefore one available technical solution is to separate balances within the wallet for gambling and non-gambling purposes. Essentially this involves the creation of two wallets per customer. However it may have a significant impact on customer experience, so is only attractive to those EMIs with a large gambling customer base.

For e-money products where a credit card or other payment method is presented and used at the merchant immediately, the EMI can link the card to the transaction and possibly identify a gambling transaction through use of the merchant category code (“MCC”). It must be noted however that the

merchant category code is not always reliable (e.g. a gambling business may have been assigned a wrong MCC) and the definition of gambling continues to evolve.

Whilst technical solutions to implement a ban on the use of digital wallets loaded by credit card are available, these solutions will be unable to detect whether the wallet has been loaded by another source of credit.

As it will be impossible for PSPs to identify whether a source of funds is a form of credit (apart from credit card loading of a wallet), we would suggest that the best approach would be for this section to explicitly limit the scope to “*which uses money loaded from a credit card*” and delete “*any other source of credit*”.

Clause 130

Section 69 prohibits a person from providing a “*gambling related service*” unless they possess a Business to Business gambling licence.

Under ‘Interpretation’ Section 2:

“gambling related service” means any service provided, directly or indirectly, in the course of business which relates to a gambling activity or a gambling product, or is ancillary to a gambling activity or a gambling product and includes providing, for the operation of a gambling activity—

- (a) odds to licensees,*
- (b) online hosting services,*
- (c) support and maintenance which is indispensable to its operation,*
- (d) risk management services,*
- (e) fraud management services,*
- (f) services to implement measures to protect and safeguard players,*
- (g) facilities for the holding and managing of customer funds,***
- (h) the installation, maintenance or upgrading of software, and*
- (i) any other service the Authority prescribes;*

However, Section 130(2) requires segregated ‘bank’ accounts to be used by licensees, noting that in section 130(7)

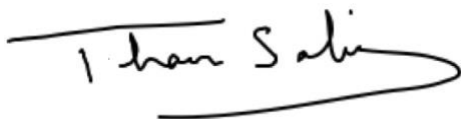
In this section, “bank” means—

- (a) a person who holds a licence from the Central Bank of Ireland under section 9 of the Central Bank Act 1971,*
- (b) a person referred to in section 7(4) of that Act, or*
- (c) a credit institution or financial institution that is permitted by the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014) to carry on business within the State.*

It is unclear whether the provision of “gambling related services”, which includes **offering facilities for the holding and management of customer funds**, extends to financial institutions and banks who provide services to gambling providers under Section 130, thus requiring them to obtain a gambling licence under the new legislative requirements. A requirement to seek a specific gambling licence in order to provide payment services to gambling operators would likely dissuade many payment service providers, financial institutions and banks from providing the service, and thus reduce options for gambling operators. We therefore suggest that this measure is disproportionate and such providers should be removed from the scope of the Bill.

We remain available to discuss further with Department representatives at any time. Thank you for your consideration of our concerns.

Yours sincerely,

A handwritten signature in black ink that reads 'Thaer Sabri'. The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

Members of the EMA, as of January 2024

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[Airbnb Inc](#)
[Airwallex \(UK\) Limited](#)
[Allegro Group](#)
[American Express](#)
[ArcaPay Ltd](#)
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