USURY IS NOT A GAME

SURVEY AIMED AT IDENTIFYING RISKY AND VIRTUOUS BEHAVIORS IN GAMING HALLS

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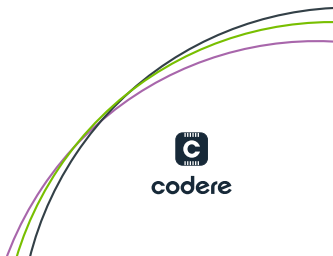
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Summary

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1. Introduction

The gaming sector, often the target of generalized and unreasonable demonization, has the merit of providing employment to hundreds of thousands of workers and managing money flows linked to many businesses across the national territory.
However, it is also undeniable that this sector—especially due to the volume of business it generates—is affected by phenomena of infiltration by organized crime.
The gambling sector is sometimes exploited by organized crime to carry out activities that deviate from the original socio-economic framework and lead to the commission of crimes such as usury, extortion, and money laundering.

The analysis carried out on behalf of the Codere Group aims to identify both risky and virtuous behaviors adopted by players within its gaming halls.
The analysis carried out, on behalf of the Codere Group, aims to highlight both risky and responsible behaviors exhibited by players in its gaming halls.

This work, after identifying the possible crimes that may occur in the sector in question, analyzes the current countermeasures—with a specific focus on the new anti-money laundering regulations—put in place by the Italian legislator.

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2. What crimes can occur in the gaming sector?

Usury

The habitual player who has accumulated gambling debts may be tempted to enter the circuit of usurious lending to recover their losses.
Usury is a crime against property, committed by “anyone who receives or is promised, in any form whatsoever, for themselves or for others, in exchange for money or other benefits, usurious interest or other usurious advantages. The same crime applies to anyone who provides someone with money or other benefits and receives or is promised, for themselves or for others, a usurious fee for their mediation. The law establishes a threshold beyond which interest rates are always considered usurious. Also considered usurious are interests, even if below that threshold, as well as other advantages or fees which, in view of the actual circumstances and the average rates applied in similar transactions, are nonetheless disproportionate to the money or benefit provided, or to the mediation itself, when the person giving or promising them is in a state of economic or financial difficulty” (Art. 644 of the Italian Criminal Code).

This is a typical “open-ended” criminal provision, where the rule itself—unlike the sanction, which is clearly defined—must be supplemented by an external element, in this case the decree issued by the Minister of the Treasury reporting the average overall effective rate.
Art. 644 outlines different types of usury: objective or traditional (first paragraph); usurious mediation (second paragraph), and subjective (third paragraph).

1.
Objective usury, also called “presumed usury,” applies even when the victim is not in a condition of financial weakness, as the decisive factor is solely the threshold rate applied by the usurer. In this case, the protected legal interest is the orderly functioning of the credit market.

2.
Usurious mediation refers to conduct in which the mediator receives a usurious compensation for their activity within the usurious relationship. This can involve, as in traditional usury, the delivery of a sum of money or the provision of any other benefit to the victim. Therefore, the law also applies to cases such as the sale of a property at an exorbitant price or so-called “real usury” (where the payment or promise involves not money, but other forms of gain or benefit).

3.
Subjective usury, also known as “in concreto” usury, occurs when interest rates below the legal threshold are still considered usurious due to their being disproportionate relative to the victim’s financial situation. Unlike in objective usury, where the legal threshold is the only relevant factor, in subjective usury one must assess circumstances such as: the victim’s economic hardship, the disproportion between services rendered and compensation, and the specific terms of the agreement.
Subjective usury is the most frequent type found in gambling scenarios. The crime of usury is punishable by imprisonment from two to ten years and a fine ranging from €5,000 to €30,000.

Extortion

An individual who has just won a sum of money may become the victim of extortion by criminal organizations targeting the newly acquired winnings (a phenomenon known as **racketeering).**
“Racketeering” is an English term used to describe criminal activities aimed at controlling specific sectors of the economic and commercial world by extorting money through intimidation and physically punishing those who refuse to submit to the system. The basis of this phenomenon lies in the crime of extortion, committed by “anyone who, by means of violence or threats, forces another person to do or to omit something, thereby procuring for themselves or others an unjust profit at the expense of another” (Art. 629 of the Italian Criminal Code).

Extortion is a multi-offensive crime, as it infringes both the property and the personal freedom of the victim.
The offense is characterized by several key elements: threats, violence, coercion to act or refrain from acting, and the result of procuring an unjust profit for oneself or others, causing damage to someone else.
To constitute extortion, the violence or threat—understood as alternatives—can take any form or shape. They must be aimed at coercing the victim’s will in such a way that the victim carries out an act of asset disposition.
Regarding the element of coercion, the act required from the victim may involve either a positive financial action (e.g., handing over a sum of money) or a negative one (e.g., waiving a debt).

Unlike the conduct (violence or threat), which may vary, both the profit for the perpetrator and the damage to the victim must be present. Economic harm is an essential component of the crime, and the offender’s action must directly and immediately affect the victim’s assets. The profit does not necessarily have to be of a purely economic or financial nature—it may take the form of any benefit. The damage, on the other hand, must be strictly financial.

The basic form of extortion is punishable by imprisonment from five to ten years and a fine from €1,000 to €4,000. The aggravated form carries a penalty of imprisonment from seven to ten years and a fine from €5,000 to €15,000. Extortion is also a threat to gaming venue operators. It is not uncommon for local criminal groups to demand payments in exchange for protection or so-called “security services,” or to request more proportional sums based on the players they accompany into the gaming rooms. Additionally, some companies that supply gaming machines often force operators to purchase exclusively from them, at prices that include the possible falsification of the chip linked to the State Monopolies system.

Money Laundering

Money laundering in the gaming sector can mainly occur in two ways: through activities related to the acquisition of a corporate vehicle (i.e., a licensed concessionaire or a company managing gaming operations), or through the use of gaming techniques and systems available on the market.
Both scenarios share the common goal typical of the crime of money laundering: to reintroduce funds derived from criminal activities into the legal economy. According to Article 648-bis of the Italian Criminal Code, money laundering is committed by "anyone who replaces or transfers money, goods, or other benefits derived from a non-negligent crime, or carries out other operations in relation to them in such a way as to hinder the identification of their criminal origin."
The crime of money laundering consists of two distinct but complementary phases: the commission of the predicate offense by any individual, and the intervention of a person other than the perpetrator of the original crime, who, being aware of the illegal origin of the funds, takes care of managing that financial resource by concealing its unlawful source.
There are essentially three phases in the money laundering cycle, aimed at erasing the traces of the illicit origin of the money:
1. Placement or **immersion** phase, during which illicit cash is converted into a set of active balances with financial intermediaries (book money);
2. **Laundering** phase, where, through the elimination of all accounting traces, the earnings are separated from the illicit source;
3. **Integration** phase, consisting in the injection of the money into the legal system in apparently legal ways. The crime is punishable by imprisonment from four to twelve years and a fine from €5,000 to €25,000. The most commonly used techniques are those of introducing banknotes into the machines according to the legal limits, in order to then obtain the winning tickets or in any case those containing the remainder. The banknotes obviously come from crime. Even the "advancement of winnings" to customers is a frequent method of money laundering, where the winner, in exchange for the winning ticket or ticket (e.g. "scratch and win"), is given an advance in cash, obtaining in exchange the same ticket to collect the winnings (higher than the amount advanced). The greatest difficulties are recorded in the quantification of the financial flows involved which, being illicit, remain largely hidden and in the growing opacity and complexity of money laundering techniques. For example, in the field of online gaming, one of the techniques used in the so-called **poker cash** is a fraudulent agreement between players that can occur in various ways: **soft play** (when one of the players decides to withdraw even though he could win in order to favor the other); **collusive chat** (exchange of information between two players); **dumping** (a player wins undeservedly thanks to the support of the other to "clean" the money). Casino games and betting are other tools used to introduce dirty money into the system. In fact, given the high percentage of takings (98%) redistributed in winnings, it is clear how this type of game is attractive for those who want to launder, as it allows them to get back almost all of the amount wagered, of illicit origin, transformed into proceeds from winnings. Still in the betting sector, another method is represented by the infiltration of crime into the corporate structure of the bookmaker. In other words, the company's revenue from players' bets, therefore regular, is in reality paid by the same operator for its own benefit.

3. What are the tools of contrast?

To counter the phenomena of illegality related to the online distribution of money-winning games, the Consolidated Public Security Law of 1931 (which has been updated multiple times) assigns the Customs and Monopolies Agency the task of regulating the sector and blocking websites that lack the required licenses or that engage in activities contrary to the existing regulations. Law 220/2010 reforms the convention scheme for the concessions for operating and collecting public games, also in order to combat the spread of irregular or illegal gambling in Italy and the infiltration of organized crime in the sector, to protect safety, public order, and consumers, especially minors. Law 111/2011, following the same approach, introduces stricter regulations on the requirements for public game concessionaires and provisions to counter tax evasion, avoidance, and money laundering, increasing fines and penalties for suspending operations or revoking concessions in the case of three violations within three years. However, the most comprehensive intervention on this matter was made through Decree-Law No. 158 of 2012, known as the Balduzzi Decree (converted into Law No. 189/2012). Initially, health-related measures were adopted: the essential levels of assistance (LEA) were updated with reference to the prevention, treatment, and rehabilitation services for people affected by gambling addiction.

Regarding the media and broadcasting, the insertion of advertisements for money-winning games in television and radio programs, in theatrical or cinematic representations not prohibited for minors, in newspapers, and on the internet is prohibited. Offenders (both the advertiser and the media owner) are subject to an administrative fine of 100.000 to 500.000 euros. Betting slips, tickets, gaming devices, betting points of sale, and websites offering games must display warnings about the risk of gambling addiction and the related odds of winning.

Non-compliance with these provisions results in an administrative fine of 50.000 euros. The law reiterates the prohibition of access for minors under 18 in areas dedicated to money-winning games within Bingo halls, areas or rooms with VLT devices, and betting points of sale. The establishment owner is required to identify minors by requesting proof of identity, unless their majority is clearly evident.

Other tools for combating these practices include penalties foreseen by anti-money laundering regulations. Distributors and operators, of any contractual type, used by concessionaires to offer gaming services—including those operating in Italy on behalf of entities based in another EU state—that fail to fulfill their obligations are subject to an administrative fine ranging from 1.000 to 10.000 euros.

The report containing the assessment and violation notice is notified by the Guardia di Finanza to the concessionaire, on behalf of whom the distributor or operator is working, so that they take appropriate measures to prevent recurrence. In cases of “serious, repeated, or systematic violations” or multiple violations, considering the severity of the infraction, administrative fines are doubled both at the minimum and maximum. In these cases, the concessionaire, jointly with the distributor or operator, is responsible for paying the administrative fine.

For serious, repeated, or systematic violations, or multiple violations, the administrative fine ranges from 30.000 to 300.000 euros. Unless the act constitutes a crime, subjects who fail to submit a Suspicious Transaction Report (SOS) are subject to an administrative fine of 3.000 euros. The Ministry of Economy and Finance issues these financial penalties by decree. If the Guardia di Finanza, in the exercise of control powers under Legislative Decree 231/07, detects and contests a serious violation of anti-money laundering provisions against distributors and operators (of any contractual type) used by the concessionaire, and finds two previous sanctioning measures within the last three years, it proposes the suspension of the activity for 15 days to 3 months, in addition to the monetary penalty. The suspension is implemented by the central offices of the Ministry of Economy and Finance and notified to the interested party. The suspension order is also communicated to the concessionaire, for whom the distributor or operator works, for the adoption of measures to end the contractual relationship. The suspension order is also communicated by the Guardia di Finanza to the Customs and Monopolies Agency for the adoption of relevant measures.

Regarding usury, it should be noted that there is no access to anti-usury funds managed by the Government Anti-Racket Commissioner. However, this does not exclude beneficiaries from receiving support in case of reporting the extortionist or usurer, such as assistance offered by Anti-Usury Associations. The opportunity is taken to express the hope that the crime of usury will be sanctioned more easily, through a legislative amendment that takes greater account of the “state of need” and, in this case, the possible “gambling addiction.”

4. What are the specific obligations under anti-money laundering law?

Legislative Decree 90/2017 introduced changes to the regulation of entities subject to anti-money laundering obligations, which also impacted providers of gaming services. The following entities fall into this category:
a) online gaming operators that offer, through the internet and other telematic or telecommunications networks, games with money winnings, under concession from the Customs and Monopolies Agency;
b) physical network gaming operators that offer, including through distributors and operators contracted in any form, games with money winnings, under concession from the Customs and Monopolies Agency;
c) entities managing gaming houses, provided they hold the required licenses under current laws and meet the requirements of Article 5, Paragraph 3, of Decree-Law 30 December 1997, No. 457, converted with amendments by Law 27 February 1998, No. 30. According to the AAMS Circular of June 30, 2017, which provided the first indications regarding Legislative Decree 90/2017, the sectors of national lotteries - both instant and deferred drawing, numerical totalizator games, fixed-odds numerical games, and sports and horse racing prediction contests (such as Totocalcio, Il 9, Totogol, all types of Big, V7) - are excluded from the scope of the Decree.
As providers of gaming services, operators are considered to be among the obligated entities and must comply with the same anti-money laundering obligations, which include customer due diligence, record-keeping, and reporting suspicious transactions. Specifically, online gaming operators must identify and verify the identity of each customer when fulfilling the necessary requirements for opening or modifying a gaming account (the account where gaming transactions on remote channels, as well as deposits and withdrawals, are recorded). They must also acquire and retain, for a period of ten years from the time of acquisition, information in a manner that ensures compliance with personal data protection regulations, including:
a) identification data provided by the customer at the time of account opening;
b) the date of each account opening and reloading transaction, as well as any withdrawals from the accounts, along with the value of these transactions and the payment methods used;
c) the IP address, date, time, and duration of the online connections during which the customer, by accessing the online gaming operator's systems, performs the aforementioned transactions.

For physical network gaming (directly with customers or through video terminal devices), customer identification activities are carried out by distributors and operators—through which the concessionaire offers gaming services—for every customer who requests or carries out transactions amounting to 2.000 euros or more with the same operator.
This threshold is reduced to 500 euros for transactions involving games offered through VLT (Video Lottery Terminal) devices. The concessionaires ensure, in any case, that distributors and operators of VLT devices are equipped with functionalities that allow them to verify: a) tickets with a nominal value equal to or greater than 500 euros; b) tickets of any value that indicate no winnings or a low percentage of winnings relative to the ticket's value.

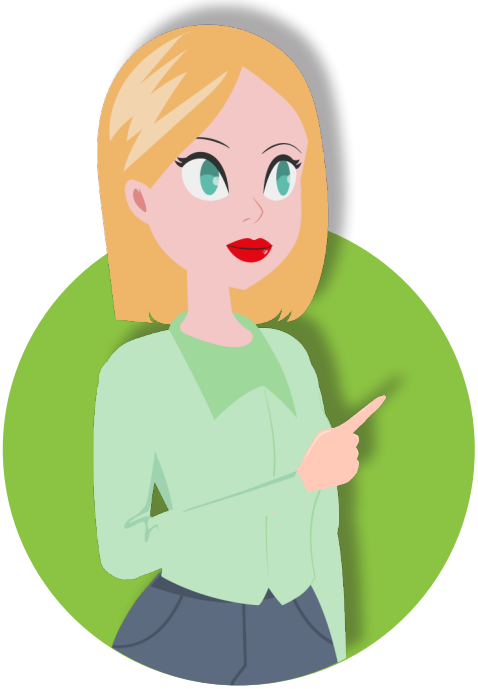
In the case of suspected money laundering or terrorism financing, the same operators are required to proceed with identification, regardless of the amount of the transaction. For this purpose, they acquire and retain, in a manner that ensures compliance with the personal data protection regulations, the following information: a) the identification data of the customer at the time of requesting or making a gaming transaction; b) the date of the gaming transactions, their value, and the payment methods used.
These entities ensure the retention of the data for two years from the date of acquisition, with the concessionaire being responsible for retaining the data for a period of ten years.

Gaming house operators, on the other hand, apply customer identification and verification measures when the value of transactions for purchasing or exchanging tokens or other gaming mediums or for collecting winnings by the customer amounts to 2.000 euros or more. They are required to apply these measures, regardless of the amount, whenever there is suspicion of money laundering or terrorism financing. Additionally, they must retain data and information related to the date and type of gaming transactions where customer identification was carried out, the payment methods used for the purchase or exchange of gaming tokens, the gaming transactions made by the customer, and their value for ten years.
Regarding reporting obligations, anti-money laundering regulations require obligated entities to promptly send a Suspicious Transaction Report (STR) to the UIF (Financial Intelligence Unit) before completing the transaction if they know, suspect, or have reasonable grounds to suspect that a transaction is being made or has been attempted with the purpose of money laundering or terrorism financing, or that the funds, regardless of their amount, originate from criminal activity.

The suspicion is inferred from the characteristics, amount, nature of the transaction, its connection or fragmentation, or any other known circumstance, taking into account the functions exercised and the economic capacity of the entity involved, based on the information acquired under the decree.

Furthermore, the regulation also includes specific provisions for this category of obligated entities regarding risk mitigation measures. Article 52 requires gaming concessionaires to adopt procedures and control systems that effectively mitigate and manage money laundering and terrorism financing risks, including those related to customers, countries or geographic areas, and the types of gaming and operations, to which distributors and operators, contracted in any capacity, whom the concessionaires use for gaming services, are exposed.

As can be easily noticed, the regulation includes a series of strict requirements, similar to those prescribed for the banking system, and although useful, they are certainly not economical from an implementation standpoint.



5. What anti-money laundering tools are used by Gaming Operators?

Gaming Sector Operators (Concessionaires, Managers, and Retailers), in order to promote virtuous behavior and ensure compliance with anti-money laundering regulations, adopt appropriate risk prevention control systems. These are implemented through specific procedures, guidelines, reference manuals, organizational models pursuant to Legislative Decree 231, technological upgrades, as well as training and information initiatives for all employees and collaborators. The aim is to make a meaningful contribution to the development of a strong anti-money laundering culture.

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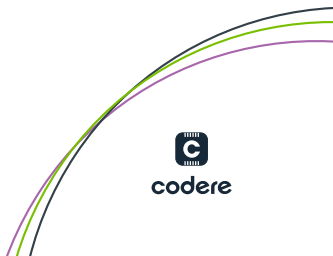
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