

Referral response Fi2023/02022, An adjusted penalty fee for violations of the Money Laundering Act and a written requirement for telephone sales of gambling services

General comment

The Swedish Trade Association for Online Gambling (BOS) is grateful for the invitation to comment on the Ministry of Finance's memorandum with proposals to increase the penalty fee for violations of the Money Laundering Act. As this is the only proposal in the memorandum that affects our members, we are only commenting on the AML part.

We represent around twenty gambling companies active in the Swedish gambling market. This makes us Sweden's largest trade association within our industry. All members have a license/permit issued by Spelinspektionen.

An adjusted penalty fee for violations of the Money Laundering Act

BOS sees the logic in elevating AML violations to the same level as violations of the Gambling Act. The relative size of the penalty fees in relation to each other is an important signal of how serious the violation is. There is no reason to downgrade AML violations along with other violations, on the contrary, these are among the most serious violations that can occur in the gambling market.

BOS therefore approves the proposal, with the comments below as necessary additions.

Firstly, it is important that the Swedish Gambling Authority's sanction decision is of high quality. That sanction decisions are appealed and reviewed in courts is not in itself a problem or a failure. On the other hand, it can be a problem and a failure if the courts change the Gambling Authority's decision to a large extent, in favor of the complaining gambling company. The best way to avoid this scenario is, of course, that the initiatives to initiate supervisory cases and the decisions that follow from them maintain such a quality from the very beginning that they also stand up to a court review.

Secondly, we would like to point out that the level of sanction fees issued should be on par with the gambling industry's relatively marginal impact on the financial system's stability and credibility compared to financial actors. It is a position that is supported by, among others, the inquiry *Actions against match-fixing and unlicensed gambling operations* (Ds 2021:29) where the investigator, with reference to the money laundering directive, argues that the sanction value should be considered higher for financial actors than for non-financial actors. It should therefore be taken into account that the primary responsibility of the gambling sector is responsible gambling when assessing the penalty fees, and the equalization of the maximum ceiling notwithstanding.

Thirdly, BOS cannot emphasize enough the importance that penalty charges for AML breaches, like breaches of the Gambling Act, should be based on the so-called GGR (Gross Gaming Revenue), i.e. what remains in money after winnings have been paid out to the gambling consumers. This is also something that is emphasized in the Ministry of Finance's memorandum, which we welcome.

Typically, the gambling surplus makes up 5-10 percent of the total turnover, while profits to gambling consumers thus account for 90-95 percent. It falls on its own unreasonableness that penalty fees to be paid by the gambling company are based on money that does not belong to the gambling company, but that belongs to the gambling consumers.

As a result of the Swedish Gambling Authority's incorrectly basing penalty fees on the total turnover including the gambling consumers' share of this, the fees have become abnormally high. It has become normal that several annual profits for the business in Sweden have been erased for, for example, the violation that a betting company, contrary to current regulations, has offered betting on a single football match in a low division with very low turnover. The sanctions system has lacked any form of proportionality.

Through the Supreme Administrative Court's ruling that penalty fees must be based on GGR, it will now be possible for the state to set a new standard with generally lower penalty fees, which are then technically based on the same percentage level decided by the SGA as before. The amount is lower when it is multiplied by the GGR (5-10%) compared to the turnover (100%). These penalty fees will nevertheless – as we can attest – send a clear signal of the serious nature of an infringement and the importance of its not being repeated.

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