

THE GAMBLING LAW
REVIEW

THIRD EDITION

Editor
Carl Rohsler

THE LAWREVIEWS

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PREFACE

Welcome to the third edition of *The Gambling Law Review*.

I was very pleased last year that we managed to increase the coverage of the guide from 16 chapters to 25. This year I am pleased again to say that we have increased coverage to 29 chapters, including new contributions from four important jurisdictions – Bulgaria, France, Macao and the Netherlands. I am delighted to welcome the new authors and thank them for their contribution, as I am also very pleased to thank those who have found the time and resources to continue to make a contribution to this work. We are getting fatter!

What are the aims of this book? There are several. First and foremost, to provide a short summary of the gambling law of the jurisdictions in question. Second, to achieve that in a format that is uniform enough to allow comparison between the different legal systems but also flexible enough to recognise that gambling law springs from different sources in different jurisdictions – in some countries it is founded in the criminal law, in other places it forms part of civil or administrative law and, of course, it is sometimes rooted in a common law and sometimes in a civil code tradition. The third aim is to allow practitioners in the field to be updated on developments over the course of the year – with a section in each chapter dealing both with the main milestones of the past 12 months and the likely developments to come. Have we achieved that end? Of course, it is for others to judge – but I was heartened to meet a fellow professional at this year's International Casino Exhibition in London who congratulated me for 'that little grey book', which he said he frequently consulted and found 'immensely useful'. And not only useful, but up to date and freely available online, as a resource for everyone.

Which brings me to the fourth (and normally unspoken) aim of this book, which is to showcase the work of some of the leading gambling lawyers across the world, without whom this book would not exist. Each has given their time and considerable experience to produce something comprehensive and digestible – and as a summary of their own thoughts and work in the field. And so, may I make this suggestion to readers from the gambling world on behalf of my co-authors? If you find this Review useful, then please give them a call, safe in the knowledge that you will get more of the same quality.

The gambling world has been a busy place again in the past 12 months. What are the key themes? Let me pick three.

New jurisdictions

More and more governments are turning their minds to the regulation of gambling. The most obvious shift is in the United States, where the Supreme Court has just been considering the constitutional implications of a ban on gambling. During the preparation of this Preface, we have heard that the US Supreme Court has ruled 6:3 that the Professional and Amateur

Sports Protection Act of 1992 violates the 10th Amendment to the US Constitution, and therefore should be struck down. The 10th Amendment protects the power of individual states to make their own laws, in all circumstances where the Constitution does not explicitly give power to the federal government. It is therefore anticipated that the Supreme Court decision will mark a new turning point in the United States' relationship with gambling, more than a decade after UIGEA caused tremors across the world. There are plenty of states with draft legislation awaiting such a decision, and we will have to see the reaction of sports bodies seeking to find a way to tap into their share of a rich new market. The US is surely one of the most lucrative potential markets for sports betting – not only because it is a wealthy nation, but because it is one in which sport is marketed and televised more than in perhaps any other country in the world. With baseball, American football, basketball and ice hockey, there are four incredibly well-followed and, above all, data-rich sports that would be the subject of a very substantial betting market. Interesting times.

The US is not the only place where change is coming. We have seen new laws progressing in many countries, including Ireland, Sweden and Switzerland, and a host of significant shifts in legislation in countries as far apart as Australia and Slovenia. Further, there has been a continuing flow of decisions from the Court of Justice of the European Union in relation to the gambling regimes across Europe, and let us not forget the Asian markets, including India, where the pace of change has been somewhat slower (but the potential prize is very substantial indeed).

Regulators keep getting tougher

It feels as though regulators and governments are becoming better organised and tougher on operators. Although there are still places where 'soft touch' regulatory regimes persist, more regulators are making life harder for operators, with new rules and higher penalties for non-compliance. There is an increasing focus on financial crime, money laundering and social responsibility. Industry has reacted by improving its standards, but still feels embattled against waves of criticism, which in some cases seem to impose a higher threshold than for other adult industries. Indeed, I would argue that the increased levels of regulation are more the product of an increased ability to regulate, rather than an increased need. For one thing, although the amount of regulated gambling going on in the world is certainly increasing, that may reflect the fact that regulation is more effective, and that gambling that had previously operated on a black market basis is now being brought within the fold. And even if the amount of gambling going on in the world is increasing, there is no substantial evidence that the amount of problem gambling or underage gambling is on the rise.

Traditional barriers are dissolving (again)

One of the most interesting features of the international gambling industry over the past two decades is the way that it has continued to engage in paradigm shifts. After many centuries of a land-based tradition, the internet and mobile communication created an international betting market for the first time. And now, just as we are getting used to that, new developments are changing that model again. For example, bitcoin and cryptocurrency technology, which was in its infancy only a couple of years ago, is now becoming mainstream – already being used by some operators and requiring serious consideration by regulators. Many still hold the view that there are hidden dangers with such cryptocurrencies – and of course they are not without risk. However, they also provide some interesting possibilities in

terms of ensuring provenance and traceability of funds and even that the tokens can only be used by those over the age of 18.

We have also witnessed a growing convergence of gambling and game playing, a development that throws up both paradoxes and new challenges. Studies show that for many the entertainment experienced by playing games is not lessened if there are no monetary stakes, and so one must ask whether social gaming represents a fundamentally new chapter in gambling psychology and practice. Equally, the rise of social gaming models blurs the barrier between what is regulated and what is not – with e-sports, and in game rewards ('loot boxes') also confusing the picture. Traditional models and expectations of what gambling is and how that form of entertainment is monetised are radically changing – and that leads to very important questions about whether the limits of regulation need to be redefined.

In the context of these changes, an annual review of the world of gambling law surely has an important place. I close by thanking my co-authors and the editorial team at The Law Reviews for their organisation and encouragement.

Carl Rohsler

Memery Crystal

London

May 2018

SWEDEN

*Erik Ullberg, Christel Rockström and John Olsson*¹

I OVERVIEW

i Definitions

Section 3 Paragraph 1 of the Swedish Lotteries Act (LA) provides a broad definition of lottery:

an activity where one or several participants, with or without a stake, can obtain prizes of a higher value than each one of the other participants may obtain.

Lotteries shall include:

- a* drawing of lots, guessing, betting and similar procedures;
- b* amusement at fairs and amusement parks; and
- c* bingo games, gaming machines, roulette games, dice games, card games, chain-letter games or similar activities.

When assessing whether an activity constitutes a lottery the general nature of the activity shall be taken into account and not only the greater or lesser degree chance present in the individual case.

Prizes (winnings) shall in this act also refer to continuation of the game.

All games and gambling where a winner is decided primarily by chance will fall within the scope of the LA. The element of chance is, however, not the sole criterion – the general nature of the activity must also be considered. Consequently, chance-based prize draws, sweepstakes and games as well as betting in various forms will all be considered lotteries under the LA. In addition, activities ‘without a stake’ may be considered a lottery, which may not be the case in other jurisdictions.

On the other hand, skill-based contests and games fall outside the scope of the LA, as long as there is no degree of chance in the activity.

In this context, the Swedish Supreme Court has found that certain games of Texas Hold'em during a poker tournament did not constitute a game of chance. The court established that a prominent Texas Hold'em player must have certain mathematical and strategic skills, and evidently skill is not an insignificant factor when the outcome of a game is determined.²

1 Erik Ullberg and Christel Rockström are partners, and John Olsson is a senior associate, at Wistrand Advokatbyrå.

2 Judgment of the Supreme Court of 6 April 2011 in case No. B 2760-09 (NJA 2011 p. 45).

ii Gambling policy

The objective of the Swedish gambling policy is 'to meet key public imperatives, such as combating criminality, countering the harmful social and economic effects of gambling addiction, and protecting consumers'.³

Accordingly, the Swedish gambling market is highly regulated. In principle, the only actors allowed on the market are non-profit non-governmental organisations, and state-owned or state-controlled companies. Thus, commercial actors are more or less barred from entering the market with only a few exceptions, chiefly that there must be a certain level of entertainment gambling (i.e., gambling with low-value bets and low-value prizes).

In addition to the prohibition of arranging gambling activities in Sweden without a permit, it is also prohibited to promote the participation in unlawfully arranged gambling activities or gambling activities arranged outside of Sweden.

Nonetheless, it should be mentioned that a large number of gambling companies are promoting participation in gambling arranged outside of Sweden through the internet (e.g., by means of their own websites, newspapers and other websites) directed at the Swedish market. Competition does, therefore, exist as a result of this.

The profit from lotteries and gambling arranged under a permit in Sweden must, in principle, be used for the public benefit. Surplus profits from lotteries and gambling are to finance undertakings of public utility.

The net turnover (after paid winnings) for the Swedish gambling market in 2017 amounted to approximately 22.6 billion kronor, of which 58 per cent was attributed to state-owned company Svenska Spel AB (Svenska Spel) and partially state-controlled AB Trav och Galopp (ATG).⁴ In 2017, the state's profits from gambling activities amounted to 6.4 billion kronor; consequently, gambling is an extremely lucrative business for the Swedish state.⁵

As further explained in Section VIII below, the Swedish gambling regulation is set to be reformed by 1 January 2019, when a licensing system will most likely be introduced in parts of the gambling market.

iii State control and private enterprise

State-owned Svenska Spel and partially state-controlled ATG, which is owned by the horse racing industry, more or less enjoy a *de facto* monopoly of the Swedish gambling market operating under permits of the government.

Svenska Spel has the exclusive right to arrange sports betting and lotteries (with a few exceptions for local events) and to operate gaming machines and land based casinos, and ATG has the exclusive right to arrange betting on horse racing.

iv Territorial issues

Gambling is regulated nationally. No localities have any favoured status for gambling.

3 See, e.g., SOU 2006:11, p. 26.

4 www.lotteriinspektionen.se/press/nyhetsarkiv/pressmeddelande-viss-avmattning-i-tillvaxttakten-pa-spelmarknaden-2017/.

5 www.lotteriinspektionen.se/om-oss/statistik/statistiknytt/statens-inkomster-fran-spel-64-miljarder-kronor/.

v Offshore gambling

As mentioned in subsection i, above, a large number of gambling companies are promoting participation in gambling arranged outside of Sweden towards Swedish citizens. As the authorities do not have jurisdiction over the offshore gambling operators, they have instead focused on those in Sweden who carry advertisements for such companies.

Every year, the offshore gambling companies invest around 2.3 billion kronor in advertisements in Sweden, a large part of which is invested in newspapers and TV.⁶ As a consequence, the authorities have issued a number of injunctions against media companies over the years. However, injunctions have also been aimed at billboard advertisers, sports teams and webpages with banners linking to foreign gambling companies.

II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

The Swedish gambling market is mainly regulated by two acts: the LA and the Swedish Casino Act (SCA).

Additionally, the Swedish Marketing Practices Act (MPA), which has a general application covering all types of marketing activities, may apply to gambling issues. According to the MPA, marketing must, as a general rule, not be incorrect, unfair or misleading; however, the specific legislation of the LA supersedes the MPA within the scope of its parameters.

The LA is a prohibitory act regulating lotteries.⁷ It only applies to lotteries arranged for the general public.⁸

The LA preparatory works state that a lottery is not considered arranged for the general public if the lottery in question is aimed at a small and closed group of people who also share a provable mutual relationship.⁹ Additionally, it is argued that the more people who participate in the lottery, the higher the requirement for a mutual relationship and closeness is required in order to avoid to be considered as general public.¹⁰

Furthermore, a lottery is 'deemed to be arranged for the general public also where membership is required of a certain organization, if its principal objective is to arrange lotteries, or where the lottery would otherwise as regard its extent or the conditions for participation be equivalent to a lottery arranged for the general public'.¹¹

In order for the LA to apply on the arrangement of a lottery, it must be arranged within Sweden.¹² Normally, a lottery is considered to have been 'arranged' as soon as it is marketed to the general public.¹³ The arranging of a lottery should be deemed to have taken place where the activities are organised and managed, and where the power over the activities is

6 www.lotteriinspektionen.se/press/nyhetsarkiv/reglerade-svenska-spelbolag-okar-sin-omsattning-genom-internet.

7 The LA also applies to *inter alia* lotteries in the form of bingo, gaming machines, roulette games, dice games and card games that are not arranged for the general public, if the game is arranged for the purpose of gain (Section 1 of the LA).

8 Section 1, Paragraph 1 of the LA.

9 SOU 1992:130 p. 114.

10 Schwalbe, *Lotterilagen*, p. 54.

11 Section 1, Paragraph 2 of the LA.

12 See, e.g., SOU 2006:11 p. 270.

13 Government's bill (Prop) 1981/82:170 p. 128.

exercised.¹⁴ This means that it could be argued that a lottery provided from abroad, with the opportunity to participate in Sweden, is not arranged in Sweden according to the LA.¹⁵ On the other hand, under such circumstances, the prohibition to promote participation in lotteries arranged outside of Sweden must also be considered.¹⁶

ii The regulator

The Swedish Gambling Authority (the Authority)¹⁷ has overall responsibility for granting permits and supervising the Swedish gambling market (the government grants some permits). The Authority is charged with issuing permits for:

- a lotteries that are distributed online;
- b lotteries that are to be arranged in more than one county;
- c gaming machines; and
- d games of roulette, dice and card arranged pursuant to the LA.¹⁸

The Authority is also charged with the centralised monitoring of compliance with the LA and the SCA, and the more detailed supervision of those lotteries that are arranged under a permit from the Authority or the government.

Furthermore, the Swedish Consumer Ombudsmen¹⁹ has the general responsibility of supervising all marketing activities and of protecting consumers' interests, *inter alia* under the MPA.

iii Remote and land-based gambling

The Swedish legislation does not distinguish between remote gambling and bricks-and-mortar gambling in general. However, permits for arranging roulette, dice games and card games can be granted to for-profit entities in some premises, namely in restaurants and hotels that are licensed to sell alcohol, in amusement parks and on ships in international traffic. These 'restaurant casinos' are severely limited as to bets and potential winnings, and should only be used to complement the restaurant business.

Svenska Spel's right to operate land-based casinos is regulated in the SCA. Svenska Spel has applied for, but has not yet been granted, the right to provide online casinos.

iv Land-based gambling

There are only four land-based casinos in Sweden, in Stockholm, Gothenburg, Malmö and Sundsvall. The casinos are established and operated by Svenska Spel's wholly owned subsidiary Casino Cosmopol AB, under a permit granted by the Swedish government.

The restaurant casinos, operated by hotels and restaurants, consist of around 600 tables in 500 different locations.²⁰

Bingo halls are operated by public interest associations, under licences issued from the county administrative board.

14 Cf. judgment of Svea Court of Appeals of 17 September 1997 in case No. B 2482-97.

15 See, e.g., SOU 2006:11 p. 206.

16 See, e.g., SOU 2006:11 p. 206.

17 Sw. Lotteriinspektionen, www.lotteriinspektionen.se.

18 SFS 1994:1000, as amended.

19 Sw. Konsumentombudsmannen, www.konsumentverket.se.

20 www.lotteriinspektionen.se/tillstand-och-spelformer/kasino/restaurangkasino.

Gambling machines can be found in both restaurants and bingo halls and are operated by Svenska Spel, who has a permit for a maximum of 7,000 gambling machines in restaurants and hotels, and 500 machines in bingo halls.

Lottery tickets are sold in a number of venues, from local sport events and fairs, to grocery stores and betting shops. Many grocery stores and betting shops also offer sports betting via Svenska Spel and betting on horse racing via ATG.

v Remote gambling

Permits for remote gambling can only be applied for by Svenska Spel, ATG and public interest associations.

Svenska Spel has been granted permits to arrange online betting and poker. In 2014, Svenska Spel also applied for a permit to arrange online casinos, however, no decision on the matter has been taken so far.

ATG has a permit to arrange online horse race betting.

vi Ancillary matters

No specific licence is needed for manufacturing equipment for the gambling industry.

III THE LICENSING PROCESS

i Application and renewal

The LA is based on the general principle that all arrangement of lotteries requires a permit, and all permits are to be supervised by the state of Sweden (Section 9 of the LA).²¹ A licence may only be granted if it can be presumed that the activity will be executed in a suitable manner, from the general public's perspective.

Permits may, in principle, only be granted to a non-profit organisation that (1) has as its main purpose to promote an undertaking of public utility, (2) carries out its operations so as to achieve that purpose, (3) does not refuse anyone membership in the organisation unless there is a particular reason to do so, and (4) needs the income from lotteries to support its activities.

Permits are granted on a local, regional or state level, depending on the geographical scope of the lottery in question. On the local level it is generally the relevant municipal committee²² that grants licences, on the regional level it is usually the county administrative board²³ and on the national level it is the Authority or the government that grants permits. The Authority has the central supervisory responsibility regarding the adherence to the LA and decisions based on the LA.

In addition to permits for certain non-profit organisations, as set out above, the government may grant special lottery permits in other cases.²⁴ Svenska Spel and ATG operate under such permits.

21 In some situations, a permit is not needed, but this is only under specific circumstances and is very restricted (Section 19-21 of the LA).

22 Sw. Kommunstyrelsen.

23 Sw. Länsstyrelsen.

24 Section 45 of the LA.

The LA stipulates a minimum age of 18 years for the participation in gambling on horse races, gambling machines, roulette, games of dice or card games.²⁵ The organiser of the activity has to ensure that no one under the minimum age can participate. Moreover, an organiser of a lottery is prohibited from granting credit for wagers in the lottery.²⁶

ii Sanctions for non-compliance

Arrangement of a lottery without a permit is a criminal offence subject to a fine, or imprisonment for a maximum of up to six months in severe cases.²⁷

Additionally, promotion of a lottery arranged from abroad may constitute a criminal offence subject to a fine or, in severe cases, a maximum of two years' imprisonment.²⁸ However, following a Supreme Court ruling in 2012, this provision has been rendered practically unenforceable against lotteries arranged in other EU Member States. Since promotion of Swedish lotteries arranged without a permit is not criminalised in a corresponding manner, the provision constitutes discrimination contrary to EU law.²⁹ This issue has, however, been covered in a Swedish government official report³⁰ and is expected to be implemented in Swedish legislation in due course.

The Authority has the power to issue injunctions and prohibitions required to ensure compliance with the LA. Injunctions or prohibitions may be combined with fines.

IV WRONGDOING

The new Swedish Act on Measures against Money Laundering (AML), implemented in 2017, imposes obligations for most of the gambling sector to take risk-based measures to prevent gambling being used for money laundering or funding of terrorism, for example customers would have to be identified.

Participation in match-fixing is penalised under the Swedish Penal Code.³¹

V TAXATION

Winnings from lotteries, which also includes poker games, are exempt from taxation if the lotteries are arranged within the EU. For lotteries arranged outside the EU, any winnings are taxed as income from capital, at a tax rate of 30 per cent.

Companies arranging lotteries in Sweden are subject to regular corporate income tax (at present, 22 per cent) and must also pay lottery tax. The lottery tax is 35 per cent of bets less paid winnings and is deductible for income tax purposes. Non-profit organisations and Svenska Spel AB are exempt from lottery tax. Restaurant casinos are also exempt from lottery tax, but must pay gambling tax based on the number of tables they run.

25 Section 35 of the LA.

26 Section 37 of the LA.

27 Section 54 of the LA.

28 Section 54 of the LA.

29 Judgment of the Supreme Court of 21 December 2012 in case No. B 3559-11 (NJA 2012 p. 1073). See also judgment of the Court of Justice of the European Union of 8 July 2010 in joint cases C-447/08 and C-448/08.

30 SOU 2015:30.

31 Chapter 10, Sections 5 (a) and (b) of the Swedish Penal Code.

Gambling is not subject to VAT. Winnings from skill-based contests or games are subject to regular income taxation.

VI ADVERTISING AND MARKETING

Generally, the LA prohibits the promotion of participation in lotteries organised without a permit or lotteries organised from abroad within Swedish territory in commercial operations, or otherwise for the purpose of profit.³² For the same purposes a person is also not allowed, without having the organiser's consent, to sell lottery tickets or distribute profits in an allowed lottery.³³

According to the LA preparatory works, examples of promotion of the participation in a lottery include offering, selling or supplying lottery tickets or certificates for participation in a lottery, as well as collecting or mediating stakes or winnings.³⁴ Moreover, the distribution of notices relating to the lottery in question (e.g., invitation or register of winners) may constitute a promotion of participation in a lottery under the LA.

It is not entirely clear how far the territorial scope of the LA reaches. As far as lotteries organised from abroad are concerned, the LA will likely not apply only based on the fact that Swedish subjects may participate in the lottery through a website or similar medium. An additional circumstance would have to be present in order to trigger Swedish jurisdiction. In this context a banner on a Swedish website linking to gambling activities provided by a foreign gambling company has been found to be a promotion of participation in a foreign lottery.³⁵

It is not uncommon for television channels, broadcasted from abroad under a foreign broadcasting licence, to promote gambling services. And as far as we are aware such promotions have not been challenged under the LA. However, the Authority ordered a Swedish television channel to cease broadcasting sponsorship messages and odds of a foreign gambling company (Unibet) in connection with a sporting event.³⁶ The Authority's decision was eventually overruled by the Supreme Administrative Court who found that the order regarding sponsorship messages was in conflict with, among other things, the purpose of the Fundamental Law on Freedom of Expression, and that the odds were to be considered as editorial content and not advertising. The marketing measures were thus allowed.

In another case, a subsidiary of Betsson AB (publ) (Betsson), which organised lotteries from abroad under a Maltese licence, acted in a provocative manner by establishing a betting shop in central Stockholm, which led to interventions from the Authority. The betting shop provided computers connected to the internet within the shop, whereby it was possible for customers to place various bets with the company. The Authority held that this setup was in breach of the LA and ordered Betsson to cease its activities subject to a conditional fine. The injunction was appealed by Betsson, who relied on EU law for their appeal, but it was finally upheld by the administrative courts.³⁷

32 Section 38 of the LA.

33 Ibid.

34 Government's bill (Prop) 1998/99:29 p. 8 ff.

35 Judgment of the Göta Court of Appeal of 20 September 2005 in case No. B 1884-04.

36 Judgment of the Supreme Administrative Court case No. 7800-07 (HFD 2011 ref. 46).

37 Judgment of the Stockholm Administrative Court of Appeal of 7 December 2009 in case No. 8900-08; leave for appeal to the Supreme Administrative Court was not granted.

If participation in a lottery is promoted in breach of the LA, then the Authority may issue orders and prohibitions subject to a conditional fine.

As mentioned above, the criminalisation of promotion of participation in lotteries is rendered practically unenforceable against lotteries arranged in other EU Member States. As many gambling companies who target the Swedish market operate under a British or Maltese licence, the promotion of participation in these companies' lotteries cannot, for the time being, be subject to criminal prosecution. A report to amend this gap in the legislation has been proposed to the government, but it has so far not been implemented. It should be noted, however, that orders and prohibitions subject to conditional fines can still be used against such promotion.

VII THE YEAR IN REVIEW

In the past few years, several newspapers and other companies have appealed injunctions issued against them by the Authority regarding advertisements for gambling companies who are based outside Sweden. In the court proceedings that have followed, the appellants have invoked that the LA is not compliant with EU law and have argued, *inter alia*, that the restrictions on gambling are not carried out in a consistent and systematic manner, as required by the case law of the Court of Justice of the European Union (CJEU), and that the LA's main purpose is to provide revenue to the state.

The European Commission has previously directed several questions to the Swedish government regarding the LA, and in October 2014 it issued a press release, in which it was announced that Sweden would be referred to the CJEU for lack of compliance with EU law in the areas of online betting services and online poker services. No such referral did, however, take place, and the European Commission has since decided to close all infringement procedures and complaints in the area of gambling.³⁸

In addition, arguments that the LA is in conflict with EU law have not been successful in court proceedings before the Administrative Court and Administrative Court of Appeal, which, in a series of recent judgments, have held that the LA conforms with EU law.³⁹ In a decision in October 2017, the Supreme Administrative Court (SAC) decided not to grant a review permit in two such cases, whereby the SAC confirmed the lower courts' standpoint.⁴⁰ Following the SAC's decision, the Authority has issued a large number of injunctions against mainly newspapers, but also other entities that carry advertisements for foreign gambling companies.

The gambling market has been expecting a proposed licence system for the Swedish market for a while, and has tried to prepare and position themselves for such a system.

VIII OUTLOOK

Reviews of the Swedish gambling regulation have been considered several times over the past decade, but have historically not led to any real changes.

38 http://europa.eu/rapid/press-release_IP-17-5109_en.htm.

39 See, e.g., judgments of the Linköping Administrative Court of 16 March 2017 in cases Nos. 3665-15, 5156-16, 8391-16 and 1146-16, and judgments of the Jönköping Administrative Court of Appeal of 30 June 2016 in case No. 230-15, 20 January 2017 in case No. 3215-14.

40 Decision of the Supreme Administrative Court of 18 October 2017 in case No. 4268-16.

However, immediately following the European Commission's press release in October 2014 that it would be referring Sweden to the CJEU for lack of compliance with EU law in the areas of online betting services and online poker services (as mentioned above), the Swedish government announced that they were going to initiate a reform of the gambling regulation and introduce a licensing system.⁴¹

A government-appointed committee with the explicit assignment to lay forward a proposal for a new gambling regulation submitted its report in March 2017.⁴² The report has since been circulated for formal consultation and a bill proposing the new gambling regulation was presented in April 2018.⁴³

The bill proposes, *inter alia*, a division of the gambling market into two sectors: one competitive sector and one exclusive. The competitive sector would include online casinos, betting, poker and bingo, as well as land-based sports and horse race betting, while the sectors of gaming machines, land-based casinos and bingo, as well as online and land-based lotteries, will continue to be reserved for government-controlled companies and non-profit organisations.

The same legal person will not be allowed to act within both the competitive and exclusive sectors. As Svenska Spel currently operates within both sectors, it will therefore have to adapt its business if it wishes to continue to do so. It has been proposed that the company should be divided into two, but it is up to Svenska Spel's board to decide how the adaptation should be done. It has also been suggested that, if Svenska Spel is divided into two companies, the company acting in the competitive section should be sold, but so far the Swedish government seems to have no such plans.

State-owned companies would have a continued monopoly on gaming machines and land-based casinos, currently offered by Svenska Spel, and would compete with public interest associations with respect to online and land-based lotteries. The non-profit sector would continue to have exclusivity with regard to land-based bingo.

If Svenska Spel continues to offer online casinos, online betting, online poker, online bingo, land-based sports betting and land-based horse racing, it will thus compete with ATG and online gambling companies, which will be allowed to operate under licences for these markets. Since land-based horse-racing betting is included in the competitive sector a reformation in line with the proposed legislation means that ATG will lose its current monopoly in this sector.

In order to obtain a licence to provide gambling activities it is proposed, *inter alia*, that the applicant must meet the requirements of insight, experience and organisation needed to operate the planned activities; there should be reason to assume that the activities will be operated in accordance with the law and other statutes; and the applicant must be deemed suitable, taking into account its reputation and financial strength. The requirements shall also apply to the applicant company's board, management, shareholders who hold more than 10 per cent of the share capital or voting rights, or otherwise can exercise a significant influence over the company's management, as well as certain other categories of employees.

41 Directive 2015:95.

42 SOU 2017:30.

43 Prop. 2017/18:220.

Licences will be valid for a period of up to five years and can be awarded to persons living in or companies established in the EU, or to persons or companies outside the EU, if the applicant has appointed a representative who lives in Sweden and meets the aforementioned requirements.

Licences would be issued by the Authority, and it has been suggested that licence fees and supervision fees would be based on turnover, ranging from 60,000–400,000 kronor and 30,000–1 million kronor respectively.

The bill also suggests a tax rate of 18 per cent based on the gambling revenue. Licensed gambling companies will also, like any other company, pay 22 per cent corporate tax on profits. However, licence and supervision fee, and gambling tax are deductible.

Unlike the committee report, the bill does not suggest a licence requirement for possessing or manufacturing gambling equipment, or to manufacture, provide, install or modify software for games in connection with online gambling.

In order to maintain the new gambling regulation, the bill contains a strengthening of both the regulation regarding advertising of licensed gambling, as well as sanctions against providing and promoting unlicensed gambling companies, including harsher penal provisions and raised fines compared to the current legislation. In addition, it is proposed that the provision of payment solutions aimed at unlicensed gambling activities will be held illegal and that accounts used to transfer bets and winnings to unlicensed operators could be blocked.

No internet service provider (ISP) bans are proposed, but the proposition suggests that ISPs should be required to display a warning message when a user attempts to gamble on illegal sites.

The new legislation is proposed to enter into force on 1 January 2019, while licences can be applied for from 1 August 2018. The bill has, at the time of writing, not yet been voted on by the Swedish parliament, but seeing as there is a broad political support for a re-regulated gambling market, there is a strong likelihood that a licence-based gambling market will be introduced in Sweden on 1 January 2019.

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