

# Guidance on the Danish Gambling Authority's AML inspections



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# Version history

## Version 1.0 of 31 May 2024

- The first version of the guidance

The Danish Gambling Authority emphasise that in case of any discrepancies between the original Danish text and the English translations of the Guidance on preventive measures against money laundering and financing of terrorism, the Danish text shall prevail.

# Introduction

1

## 1.1 Introduction

This guidance is aimed at gambling operators, their employees, and other relevant stakeholders.

The guidance includes guidelines for the Danish Gambling Authority's supervision of money laundering, reaction options, appeal options and duty of confidentiality. The guide is based on Consolidation Act no. 216 of 11 March 2022 on preventive measures against money laundering and financing of terrorism (the AML Act) with later amendments.

The content of this guide was previously a part of the Danish Gambling Authority's Guidance on Preventive Measures against Money Laundering and Financing of Terrorism, which specifies gambling operators' obligations under the AML Act.

# **The Danish Gambling Authority's AML-inspec- tions**

# 2

## 2.1 The Danish Gambling Authority as a supervisory authority

The supervision of the various obligated entities covered by the AML Act is distributed among three authorities and a single member organisation (the Danish Bar and Law Society).

The Danish Gambling Authority is the supervisory authority in relation to gambling operators. It appears from section 65(1) of the AML Act. It means that the Danish Gambling Authority inspects that gambling operators comply with:

- the provisions of the law
- regulations stipulated by law
- regulations containing rules on financial sanctions against countries, persons, group, legal entities and bodies.

The Danish Gambling Authority supervises persons' and companies' provision of gambling when this takes place as a result of a Danish licence, or if the person or company resides in or is established in Denmark and only provides gambling in another country.

The Danish Gambling Authority does not supervise gambling operators' compliance with the AML Act section 36. The provision states that gambling operators cannot subject an employee or a former employee to adverse treatment or adverse consequences as a result of an employee's or a former employee's report of the business's breach or potential breach of the AML Act to a supervisory authority or to a scheme within the business.

### 2.1.1 Risk-based supervision

The Danish Gambling Authority's supervision must be risk-based. It both applies to the types of gambling operators that are selected for inspection and the obligations of the AML Act that are prioritised. A risk-based approach entails that it must be taken into account at the inspection the discretion that gambling operators can exercise in order to prioritise their resources to best possibly combat the risk of being misused to launder money or finance terrorism.

The Danish Gambling Authority's supervision includes three different types of inspections:

- Full scope inspections
- Thematic inspections
- Ad hoc inspections.

When conducting a full scope inspection, the gambling operator's materials are requested and reviewed in relation to compliance of several obligations of the AML Act.

When conducting a thematic inspection, the Danish Gambling Authority chooses a topic and subsequently reviews several gambling operators' materials within the chosen topic.

When conducting an ad hoc inspection, the gambling operators' materials are requested and reviewed in relation to compliance of a few specific parts of the AML Act. Ad hoc inspections are usually initiated if the Danish Gambling Authority becomes aware of things that can give reasons for a closer investigation. For example, it may be information obtained by the Danish Gambling Authority via citizen requests, news media, the police or others.

### 2.1.2 Information for the use of the inspection

The gambling operator is obligated to hand over all information necessary for the inspection. It appears from section 65(2) of the AML Act. The scope of the information is determined solely by the Danish Gambling Authority and is not limited, except that the delivery of

## Section 65 of the AML Act

information must be justified based on the specific inspection. Thus, the Danish Gambling Authority can work within a wide scope, but the required information must always be able to be used to elucidate the specific problem or issues of the inspection.

The gambling operator's obligation to hand over information for the use of the Danish Gambling Authority's inspections also includes access to a gambling operator's premises to obtain information. The access does not require a court order but will require appropriate identification. It appears from section 65(3) of the AML Act.

Additionally, the Danish Gambling Authority can have access to the gambling operator's gambling system by remote access if the system is not geographically located in Denmark. It appears from section 65(4) of the AML Act. In this connection, it is common practice under the Gambling Act that the operator must provide access within five working days and is done by employees of the gambling operator, who appear in person at the Danish Gambling Authority and make sure to provide the necessary access to the gambling operator's system.

### **2.1.3 Cooperation in Europe**

The Danish Gambling Authority must cooperate with the competent supervisory authorities in another EU or EEA country when gambling operators who are under supervision in another EU or EEA country offers gambling in Denmark or when gambling operators subject to section 1(1)(19) offer gambling in other EU or EEA countries. This appears from section 65(5) of the AML Act.

This means that the Danish Gambling Authority must cooperate with supervisory authorities in other EU and EEA countries, when a gambling operator

- is established in another member state and, at the same time is licenced to offer gambling in Denmark
- is established in Denmark and provides gambling in another member state.

The Danish Gambling Authority always informs the home country of the gambling operator about the Danish Gambling Authority's sanctions such as reprimands and orders.

### **2.1.4 Supervision of the establishment of subsidiaries, branch offices or representative offices**

The Danish Gambling Authority can deny the establishment of or set rules on special conditions for subsidiaries, branch offices or representative offices in Denmark by gambling operators with a registered office in a country listed on the European Commission's list of countries that are assessed to pose a high risk of money laundering or financing of terrorism. This follows from section 31a of the AML Act.

In addition, the Danish Gambling Authority can prohibit gambling operators from establishing branch offices or representative offices in countries that are listed on the European Commission's list of high-risk countries, just as the Danish Gambling Authority also can set rules stating that the gambling operator must take into consideration that a branch office or a representative office is not to be established in a country with inadequate measures to prevent money laundering and financing of terrorism. This follows from section 31 b (1) and (2) of the AML Act.

### **2.1.5 Feedback to the Money Laundering Secretariat**

It follows from article 32(6) of the 4th Anti-Money Laundering Directive that the member states oblige the competent authorities to give the national financial intelligence unit (the FIU)



feedback on the use of the information delivered in accordance with this article and on the result of the investigations or inspections performed on this basis. The Money Laundering Secretariat is the Danish intelligence unit.

Thus, the Danish Gambling Authority is obligated to every six months (30 June and 31 December) to give general feedback to the Money Laundering Secretariat at the Special Crime Unit on how any reports received by the Danish Gambling Authority has been used.

# **Response options, publication and right of appeal**

# 3

## 3.1 Response options

As a supervisory authority, the Danish Gambling Authority can, pursuant to the AML Act,

- issue orders
- give reprimands
- refer cases to the police for investigation
- impose penalty payments.

## 3.2 Orders

Pursuant to section 66 of the AML Act, the Danish Gambling Authority may issue orders to gambling operators for violating the AML Act, rules issues pursuant to this, or the European Parliament's and the Council's regulations containing rules on financial sanctions against countries, persons, groups, legal entities or bodies.

The order will include a deadline for when the gambling operator must have met all obligations according to the Act etc.

The Danish Gambling Authority makes use of orders in the cases where the Danish Gambling Authority, hence-forth orders a certain behaviour or action. This may both be in situations where the gambling operators act contrary to the Act or neglect to act, although an action is required by the Act.

An order must be made in situations of serious, repeated, systematic violations or a combination hereof.

Orders are mainly intended for violations of the rules of the AML Act on:

- risk assessment and risk management
- customer due diligence procedures
- obligations to investigate, register, report, and record-keeping.

To a limited extent, this may be used in other situations as well.

If a gambling operator fails to comply with an order, it may be punishable by fine. This follows from section 79 of the AML Act. In such case, the Danish Gambling Authority will report the gambling operator to the police, which may result in a fine.

### 3.2.1 Immediate improvements

For uncomplicated and non-significant violations of formal requirements and in cases where the gambling operator acknowledges their mistake in connection with an investigation made by the Danish Gambling Authority, the Danish Gambling Authority may, as an alternative to an order, enter into an oral agreement with the gambling operator on immediate improvements. By this is meant that the gambling operator agrees to correct the mistake in accordance with the Danish Gambling Authority's order. Immediate improvements are thus applied to cases where an order is considered unnecessarily formalistic.

## 3.3 Reprimand

If it is established that a prior violation has been corrected, the Danish Gambling Authority cannot use an order as a supervisory reaction as there are no matters to put right prospectively. Instead, the Danish Gambling Authority can give reprimands, which is a type of order. However, in cases of gross or repeated violations of the law, the matter must be reported to the police.

## Section 66 of the AML Act

### 3.4 Police report

Intentional or grossly negligent violation of a number of provisions of the AML Act may result in a police report from the Danish Gambling Authority and finally result in a fine unless more severe punishment is prescribed by the provisions of the Criminal Code. The statute of limitations for violations of the money laundering legislation is five years. When deciding upon a fine, the revenue of the undertaking at the time of the violation must be taken into consideration. It appears from section 78 of the AML Act.

### 3.5 Penalty payments

If a gambling operator omits to provide the Danish Gambling Authority with the information necessary for the authority's supervision, the Danish Gambling Authority may, as a coercive measure, impose penalty payments on the gambling operator. It appears from section 80(4) of the AML Act. For example, if a gambling operator does not want to provide the undertaking's customer due diligence procedures.

Penalty payments are imposed by administrative decision, but following the police decision, an alternative sentence may be ordered in case of failure to pay the penalty fine.

The Danish Gambling Authority cannot impose penalty fines if there is a concrete suspicion that the gambling operator has committed a criminal offence. This follows from section 10 of the Act on Legal Protection with regard to the Administration's Use of Coercive Measures and Duties of Disclosure.

### 3.6 Publication

The Danish Gambling Authority is obligated to publish responses pursuant to sections 65(1) and 66 of the AML Act as well as decisions to refer cases to the police for investigation. The publication must be made on the Danish Gambling Authority's website. The decision to refer a case to police investigation must be published as a summary. It appears from section 68 of the AML Act.

#### Responses

Responses are defined in the explanatory memoranda to the AML Act as all responses decided by the Danish Gambling Authority that are aimed at a party, including all decisions, orders, actions and decisions to report a gambling operator to the police.

#### 3.6.1 What must the publication include?

As a minimum, the publication must include information on the natural person or legal entity and the nature of the violation. It must also appear from the announcement if the reaction is referred to the Danish National Tax Tribunal or the court as well as the result hereof.

If the Danish Gambling Authority has referred a case to police investigation and the accused is found guilty by court ruling or fine, the Danish Gambling Authority must publish the ruling, fine or a summary hereof on the Danish Gambling Authority's website.

##### 3.6.1.1 Modification

The publication of a natural person's name may only take place in case of the person's gross, repeated, or systematic violation of a number of the provisions of the AML Act. By this is meant e.g., failure to apply customer due diligence procedures, which is a fundamental

## Section 78 of the AML Act

## Section 80(4) of the AML Act

## Section 68 of the AML Act

requirement in order to comply with all other obligations that follow from the AML Act, or lack of record-keeping of information about customers or transactions, which is a condition for enabling an investigation of a criminal offence.

#### 3.6.1.2 Exemption

A publication cannot take place if it will cause disproportionate damage to the gambling operator, or, for the purposes of investigation, a publication is spoken against. However, in these cases, a publication must take place when the considerations that gave grounds for the exemption are no longer valid.

### 3.6.2 When must the publication take place?

The Danish Gambling Authority publishes responses two working days after the decision or the decision on announcing the response has been made. This provides the gambling operator with the opportunity to prepare for the publication.

### 3.6.3 When must the announcement be removed?

Published responses must be removed from the Danish Gambling Authority's website after five years. However, personal data must only remain on the website for the time necessary in accordance with the general data protection rules in force.

In addition, the Danish Gambling Authority must remove all information about a decision to refer a case to the police for investigation in case of dismissal of actions or charges, or acquittal.

If a report has been filed to the police and a decision to do this has been published, the Danish Gambling Authority must publish information about dismissal of actions or charges, or acquittal upon request from the gambling operator.

## 3.7 Right of appeal

It appears from section 77 of the AML Act that complaints against the Danish Gambling Authority's decisions may be brought before the Danish National Tax Tribunal. The part against which the decision is directed can appeal. In practice this means the gambling operator who has received a decision from the Danish Gambling Authority.

Complaints against decisions must be brought before the Danish National Tax Tribunal no later than three months after the gambling operator has received the decision about which is complained. If a gambling operator, contrary to expectation, has not received the decision, the complaint must be filed no later than four months after the decision, about which is complained, is sent from the Danish Gambling Authority.

Decisions on orders and reprimands can be appealed.

The Danish Gambling Authority's decision on referring a case to the police for investigation is a procedural decision that cannot be appealed.

Additionally, it is not possible to appeal the Danish Gambling Authority's publication of a response on the Danish Gambling Authority's website.

Furthermore, part 11 of the Act on Gambling on judicial review applies, which means that the Danish Gambling Authority's decisions in relation to the money laundering legislation must be

## Section 77 of the AML Act

brought before the court no later than three months after the decision is made. In cases where the gambling operator has appealed to the Danish National Tax Tribunal and after this wants to bring a case before the court, the deadline is three months after the Danish National Tax Tribunal's decision is made.

# **The Danish Gambling Authority's duty of confi- dentiality**

# 4

## 4.1 The Danish Gambling Authority's duty of confidentiality

### 4.1.1 Duty of confidentiality on confidential information

The Danish Gambling Authority's employees are obliged to keep secret the confidential information acquired through their supervisory activities. This follows from section 69(1) of the AML Act.

The consent of whomever the duty of confidentiality aims to protect does not entitle the employees to disclose confidential information.

#### 4.1.1.1 What is confidential information?

Confidential information is information about the commercial and personal affairs of undertakings and other information that, in view of its nature, is confidential. By this is meant information that directly relates to the circumstances of individual customers or undertakings.

Information, which in view of its nature, is public, for example financial statements, and company announcements is not covered by the duty of confidentiality. The same applies to confidential information that have been published and has become common knowledge.

#### 4.1.1.2 The enhanced duty of confidentiality

The enhanced duty of confidentiality of section 69(1) of the AML Act means that it is a criminal offence for employees of the Danish Gambling Authority to disclose confidential information about supervisory activities. Thus, it is not possible to have access to documents that are covered by the enhanced duty of confidentiality. This follows from section 35 of the Access to Public Administration Files Act, since the right of access to documents is limited due to special provisions on the duty of confidentiality in the special legislation.

#### 4.1.1.3 Exemption

However, confidential information may be disclosed to:

1. Supervisory authorities pursuant to the AML Act (the Danish FSA, the Danish Business Authority and the Danish Bar and Law Society).
2. Members of a collaborative forum (HvidvaskForum).
3. Other public authorities, including the prosecution service and police in connection with the investigation and prosecution of potential criminal offences covered by the Criminal Code, the AML Act, or other supervisory legislation.
4. The relevant minister as part of his/her general supervision.
5. Administrative authorities and courts processing decisions made by the Danish Gambling Authority.
6. The Parliamentary Ombudsman.
7. A parliamentary commission set up by the Danish Parliament.
8. Commissions of inquiry established by law or under the act on commissions of inquiry.
9. The government auditors and the National Audit Office.
10. The bankruptcy court, other authorities involved in the gambling operator's liquidation, bankruptcy, or similar proceedings, curator or persons responsible for the statutory audit of a gambling operator's accounts, provided that the recipients of the information need said information to carry out their tasks.
11. Committees and groups etc. established by the Minister for Industry, Business and Financial Affairs and the Minister for Taxation.
12. Supervisory authorities in other countries within the EU or EEA responsible for supervising the compliance of gambling operators with legislation on preventive measures against money laundering or financing of terrorism, provided that the supervisory authority need said information to fulfil their duties.
13. Supervisory authorities in countries outside the EU or EEA responsible for supervising the compliance of gambling operators with legislation on preventive measures against

## Sections 69-69a of the AML Act and section 110b(3) of the Administration of Justice Act



money laundering or financing of terrorism, provided that the supervisory authority need said information to fulfil their duties.

It should be noted that disclosure of information to foreign authorities covered by item 13 may only take place on the basis of an international collaborative agreement and only if the recipients are subject to a statutory duty of confidentiality equivalent to the duty of confidentiality that applies to the Danish Gambling Authority's employees.

It applies to all recipients of information in items 1-12 that these are subject to a duty of confidentiality equal to the duty of confidentiality that applies to the Danish Gambling Authority's employees.

Any disclosure must take place in accordance with the rules of the general data protection regulation.

#### **4.1.2 Duty of confidentiality on information about a person who has submitted a report to the Danish Gambling Authority**

According to section 69a of the AML Act, the employees of the Danish Gambling Authority must not disclose information about a person who has reported a gambling operator to the Danish Gambling Authority due to a violation or potential violation of anti-money laundering legislation, for example through the Danish Gambling Authority's whistleblower programme. However, personal data may be disclosed to the above mentioned in section 4.1.1.3 items 1-13, provided that these are subject to a duty of confidentiality equal to the duty of confidentiality that applies to the Danish Gambling Authority's employees.

##### **4.1.2.1 No access to documents for parties**

Section 69a of the AML Act is a special rule that enhances the duty of confidentiality in such a way that not even parties defined in section 75 of the AML Act will have access to documents about a person when said person has submitted a report of the party's (the gambling operator) violation or potential violation of the money laundering legislation to the Danish Gambling Authority.

Thus, if a party does not have the right of access to documents according to the Public Administration Act, notification according to the Act on Legal Protection with regard to the Administration's Use of Coercive Measures and Duties of Disclosure or right to access according to the general data protection regulation. The Danish Gambling Authority will thus, upon a request of access to documents be obligated to anonymise all information that makes it possible to identify the person who has submitted the report.

##### **4.1.2.2 What is personal data?**

Personal data must be understood in accordance with the definition hereof in article 4 no. 1 of the general data protection regulation. Therefore, this covers any type of information about an identified or identifiable natural person that have submitted a report to the Danish Gambling Authority. Thus, section 69a of the AML Act covers, among other things, information about the person's identity or any information that indirectly makes it possible to identify the person. When assessing whether a person is identifiable, all the means that can reasonably be applied to identify the person either by the data controller or by any other person must be considered.

Information that is anonymised in such a way that the person's identity cannot be derived from it, is not covered by the concept of personal data.

#### **4.1.3 Disclosure of information to participants in an operative cooperation**

As a supervisory authority, the Danish Gambling Authority can under the AML Act regardless of duty of confidentiality stipulated in other legislation disclose information to authorities, businesses, and persons participating in an operative cooperation, cf. section 110b (1) of the Danish Administration of Justice Act if the information can be significant to the task of preventing or combatting money laundering and financing of terrorism or other crimes stipulated under section 110b (8) of the Danish Administration of Justice Act.

