CJEU Rules on Due Diligence Obligations under 4AMLD

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On 17 November 2022, the CJEU delivered a judgment that interprets several provisions of Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (4th Anti-Money Laundering Directive, 4AMLD). The case C-592/20 (SIA "Rodl & Partner") addressed questions as to when enhanced due diligence measures must be taken, how information on the customer's activities is to be obtained, and how information on the sanctions applied to obliged entities is to be published.

Facts of the case and questions referred

In the case at issue, Rodl & Partner, a Latvian company that provides services for accounting, bookkeeping, auditing, and tax consultancy, appealed a fine imposed by the Latvian state tax administration. The latter mainly argued that Rodl & Partner had not properly carried out and documented an assessment of the risk of money laundering and terrorist financing in relation to two customers (a foundation and a commercial company) that have links to the Russian Federation.

First, in relation to Art. 18 4AMLD, the referring District Administrative Court, Latvia, had doubts as to whether any non-governmental organisation (NGO) should be regarded as a case of higher risk and, for this reason, be subject to enhanced due diligence criteria. The Court questioned whether it is proportional to be quasi automatically required to categorise a customer as representing a higher degree of risk if the customer is a non-governmental organisation and the person authorised and employed by the customer is a national of a high corruption-risk third country (in the present case, the Russian Federation).

Second, in relation to Art. 13(1) 4AMLD, the referring court sought clarification as to whether a copy of the contract concluded between the customer and a third-country company must be produced by the obliged entity (here the Latvian bookkeeping company) vis-à-vis the competent tax administration.

The CJEU's reply to the first question

As regards the first question, the CJEU stated that Art. 18 4AMLD provides for three cases in which enhanced customer due diligence must be applied:

- Specific cases referred to in Arts. 19-24 4AMLD;
- Deals with natural persons or legal entities established in the third countries identified by the Commission as high-risk third countries;
- Other cases of higher risk identified by Member States or obliged entities.

The CJEU further stated that the two first scenarios are not relevant in the present case (Russia is only considered a country with a high risk of corruption but not of money laundering). Regarding the third scenario, the CJEU observed that – in light of Art. 5 4AMLD – Member States have wide discretion to provide for enhanced due diligence obligations and to define both cases of higher money laundering risk and due diligence obligations themselves. This is only limited by the principles of Union law, in particular the principles of proportionality and non-discrimination.

Against this background, the CJEU concluded that the 4AMLD does not require an obliged entity to automatically attribute a high level of risk to a customer solely because that customer is an NGO, because one of the employees of that customer is a national of a third country with a high risk of corruption, or because a business partner of that customer (but not the customer itself) is linked to such a third country. However, a Member State may identify in national law such circumstances as factors indicating a potentially higher risk of money laundering and terrorist financing, which obliged entities must take into account in risk assessment of their customers, provided that these factors are compatible with Union law, in particular with the principles of proportionality and non-discrimination. As a result, it is now up to the Latvian court to decide whether the Latvian legislation provided for such factors.

The CJEU's reply to the second question

As regards the second question, the CJEU examined the scope of due diligence measures to be applied by obliged entities under Art. 13(1) 4AMLD, which must be interpreted in the context of several other provisions in the Directive. In conclusion, the CJEU observed that, when exercising customer due diligence, the 4AMLD does not require the obliged entity to obtain from the customer a copy of the contract concluded between the latter and a third party. However, the obliged entity must submit to the competent national authority other appropriate documentation demonstrating, on the one hand, that it has analysed the transaction and established business relationship carried out between that customer and the third party and, on the other hand, that it has duly taken this into account when applying the due diligence required in view of the identified risks of money laundering and terrorist financing.

Above and beyond these two important issues, the CJEU also took a position on questions of when due diligence obligations should be applied (Art. 14(5) 4AMLD) and how accurate information on an issued decision on a breach of national money laundering rules must be published (Art. 60(1)(2) 4AMLD).

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