NJORD Estonia: CEO Silja Elunurm: an illusory fight against money laundering

The Parliament adopted new amendments to the Money Laundering and Terrorist Financing Prevention Act on 17.06.2020, increasing heavily the administrative burden and potential sanctions of the obliged persons, but the problems with the effective prevention are still not solved. NJORD CEO commented on the topic in Äripäev.

The country's efforts to properly transpose the European Parliament's and the Council's anti-money laundering directive and to successfully pass the Moneyval evaluation are understandable, but efforts to achieve these goals should not be an argument to create a legally unclear regulation, which unreasonably increases the administrative burden of obligated persons and often does not bring along a real solution, but simply creates an illusion of the existence of a functioning regulation, writes Silja Elunurm, CEO of NJORD Law Firm.

It has been repeatedly pointed out that if the state requires the submission of data on beneficial owners without verifying the data, the legislator will only formally comply with the requirement of the international norms. According to the legislation, a database of the FIU will be created to claim that the state exercises active control, but the state's obligation to initially verify the data submitted by the company is still missing.

The regulation assigns the state a role of a post pigeon, as on the one hand, it requires the companies to provide UBO data and while receiving a warning notification from the other person that the register data does not correspond to reality, it makes a warning entry in the register and informs the respective company accordingly. During this process, however, the data will still not be checked at any stage by the state.

Such checks on private individuals are not in line with international standards, which require all countries to make sure that the details of the actual beneficiaries of companies are correct. In addition, it should be noted that, as long as the concept of the beneficial owner is not fully clear, the subject is not obliged to perform its control function correctly and, in fact, the objective pursued by the norm is not achieved. Information on the actual beneficiaries does not become more accurate or correct in a vague regulation.

The second problem, actively debated in the public, is access to banking services. As credit institutions have actively closed bank accounts on the grounds of ambiguity and reassessment of internal risks, and it has become significantly more difficult for the companies (especially from third countries) to open an account, the draft seeks to address this issue by prescribing an obligation to state reasons to the credit institution's in the event of closing the account or a refusal to open an account. Unfortunately, this is a very raw solution.

Firstly, it is not possible to understand the content and scope of this notification. Secondly, non-compliance with the respective obligation does not essentially change anything for the company - the latter receives or does not receive information about the reasons why it was not considered worthy of opening a bank account, but there is still no obligation to open an account for the company.

The draft boastfully states that in such a case a person can claim damage caused by unlawful action. It should be noted, however, that a claim for the compensation for damage is possible only for the damage caused by a breach of the notification obligation. At the same time, it is clear, that it is not a breach of the notification obligation, but the non-receipt of an account or the closure of an account has actually caused the inconvenience and potential damage to a person or company. Thus, the draft creates a norm but does not alleviate the problem of the entrepreneurs.

The full article was published in Äripäev in the Estonian language and can be found here: https://www.aripaev.ee/arvamused/2020/07/01/silja-elunurm-illusoorne-voitlus-rahapesu-vastu


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