

Katrine Sauer (EM-DEP)

Fra: Pernille Christiansen
Sendt: 14. december 2018 11:46
Til: Pernille Christiansen
Emne: VS: Udlivering af svar fra KOM til Erhvervs-, Vækst- og Eksportudvalget

Fra: Christian Fuglsang
Sendt: 29. september 2015 18:50
Til: 'JUST-AML-PACKAGE-TRANSPOSITION-WORKSHOP@ec.europa.eu'
Emne: Question regarding the implementation of Directive (EU) 2015/849

To whom it may concern.

In connection with the implementation of article 30 in Directive (EU) 2015/849 in Danish law, I have run into a question regarding the Directive's scope of application concerning small foundations.

According to the Danish Foundations Act (consolidated act no. 938 of 20 September 2012 with later amendments), small foundations with assets worth less than 1 million DKK (approximately 133 333 €) are excluded from the act's scope of application with a few exceptions. Such foundations are thus only under an obligation to form by-laws with a certain content and to make sure that the foundation's assets and net capital are in a reasonable proportion to the foundation's purpose. See section 1 (6) in the Danish Foundations Act.

It is not clear for the Danish Ministry of Justice whether such foundations are bound by the obligation to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held, and to make sure the information is held in a central register according to article 30 in the Directive.

On the one side, article 3 (6) (c) of the Directive states that foundations are covered by the Directive. Moreover, number 12 in the preamble reads that Member States should ensure that the widest possible range of legal entities incorporated or created by any other mechanism in their territory is covered.

On the other side, number 22 in the preamble reads that the risk of money laundering and terrorist financing is not the same in every case and that, accordingly, a holistic, risk-based approach should be used. Moreover, number 27 of the preamble reads that it is appropriate to take account of the characteristics and needs of smaller obliged entities which fall under the scope of the Directive, and to ensure treatment which is appropriate to their specific needs, and the nature of the business when applying the Directive.

The Danish Ministry of Justice is at first of the understanding that such small foundations are not covered by the Directive. The Danish Ministry of Justice places emphasis on the fact that such small foundations have less valuable assets (and do not thus imply a proper risk of money laundering or terror financing) and on the fact that such small entities are not bound by the same thorough obligations as foundations with assets worth 1 million DKK and more (it would thus seem to be unjust to oblige such foundations to obtain and hold adequate, accurate and current information on their beneficial ownership and to make sure the information is held in a central register according to article 30 in the Directive.

However, the Danish Ministry of Justice acknowledges that the Directive is not clear on this matter

Accordingly, can you please contact me by phone or e-mail as soon as possible, regarding the issue? I would be grateful if you could get back to me tomorrow (30 September) as we have a deadline to have our legislative proposal ready by the end of the week. If you need any further information, please do not hesitate to contact me.

Thank you very much in advance and I am looking forward to hearing from you.

Sincerely,
Christian Fuglsang

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Sendt: 2. oktober 2015 17:49

Til: Christian Fuglsang

Cc: SCHWANDER David (JUST); SIMEONOFF Kallina (JUST); VAGNHAMMAR Bertil (JUST); JUST AML PACKAGE TRANSPOSITION WORKSHOP; TERRIER Catherine (JUST)

Emne: Ares(2015)4075110 - RE: Question regarding the implementation of Directive (EU) 2015/849

[Ares\(2015\)4075110 - RE: Question regarding the implementation of Directive \(EU\) 2015/849](#)

Sent by CARRUBBA Marianne (JUST) <Marianne.CARRUBBA@ec.europa.eu>. All responses have to be sent to this email address.

Envoyé par CARRUBBA Marianne (JUST) <Marianne.CARRUBBA@ec.europa.eu>. Toutes les réponses doivent être effectuées à cette adresse électronique.

Dear Mr Fuglsang,

Thank you for your e-mail.

We discussed the issue of foundations as regards the scope of Article 30 during our last transposition workshop. The question was in particular focused on whether foundations have to be registered in the BO register whichever their status is (charitable purposes foundations, private foundations).

On this occasion, the Commission made clear that according to Article 3.6 c) foundations are considered as legal entities thus falling into the scope of Article 30 for the transparency requirement. As regards the possibility to exempt some entities, it is not in the spirit of the Directive (and of the FATF standards either) to grant exemptions from CDD obligations, even for charitable purposes organisations. The different ways proposed in Article 3.6 to identify who the beneficial owner of a legal entity or a trust is, allow for the identification of the beneficial owner in a wide range of situations, even when the 25% of shares or the direct or indirect control are not identifiable.

In addition, it seems clear to us that the basic requirement to comply with CDD obligations is the identification of the BO. As soon as a foundation (or another kind of legal entity) wants to open an account, the bank shall be in a position to identify the beneficial owner either directly from the foundation or through the central register as provided in Article 30.3.

We hope that these elements would be useful.

Best regards,

Marianne CARRUBBA

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