Sendt: 27. januar 2022 09:19

Emne: RE: Question concerning NPOs and the KYC-requirements set out in the AMLD

Dear Ms Ravnholt, Dear Ms Hove Gere,

Thank you for reaching out to us on this very relevant issue, and apologies for our belated reply.

With regard to your first question, neither the AMLD (with a minor exception for anonymous prepaid cards) nor the future AMLR provide for exemptions from customer due diligence. At the same time, the current AMLD grants Member States wide discretion in the application of simplified due diligence, provided that this is applied to lower risk situations. Our experience is that simplified due diligence measures vary greatly among Member States today.

The draft AMLR (Article 22(1)(b)) provides a mandate for AMLA to identify specific simplified due diligence measures that can be applied in situations of lower risk. This includes, but is not limited to, specific categories of obliged entities, products and services. The AMLR does not contain specific provisions pertaining to NPOs, but introduces requirements to prevent de-risking practices, including the obligation to document client refusals and to keep records of those documents so that supervisors can verify that the extent of measures applied is proportionate to risk.

The information you shared with us suggests that financial institutions are considering NPOs in Denmark as higher risk, and applying enhanced due diligence on them as a result. One avenue that you may wish to consider is to increase supervisory engagement with the financial sector to improve their understanding of risks related to NPOs (and the different sub-sectors of NPOs operating in the country) and the granularity of their customer risk assessment – which from your message seems to be quite high-level and established at the level of the sector as a whole. This could take the form of e.g. disseminations of additional information on risks relating to the NPOs (including sectoral risk assessments), meetings with the sector, or other types of supervisory activity such as thematic inspections that might help to clarify supervisory expectations in relation to the calibration of customer due diligence to risk. Of course any choice as regards the best supervisory instrument rests with you, and these are only examples that we are providing for further reflexion.

You will have seen that in the meantime the EBA has issued an opinion and report on the practice of de-risking, which is calling for further Commission action in this area, on top of what the AML package of July 2021 already contains. We are reflecting on the way forward in this area and on possible measures at EU level to ensure that our AML framework is implemented in a way that does not undermine financial inclusion.

Best Regards,

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Head of Unit

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