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NEW AMENDMENTS TO THE AML ACT[1] IN BULGARIA

On 28 May 2019, the Act for amendments to the Bulgarian AML Act was promulgated and came into force. These are the fifth amendments to the AML Act since its adoption last year. Although the changes are numerous, for the most part they are of a technical nature. However, there are still a few points that deserve attention.

Internal AML guidelines

Entities covered by the AML Act should generally adopt internal AML guidelines. Initially, those guidelines were supposed to be reviewed and approved by the supervisory authority (SANS[2]) but this approach was repealed by previous amendments to the AML Act.

The conformity of internal AML guidelines would thus be reviewed in the course of inspections by SANS. Under the latest amendments, it seems that if SANS identifies discrepancies between the adopted internal guidelines and the AML legislation it shall not impose a fine but rather the company concerned should receive instructions on how to rectify the defects within a month.

Yet discrepancies in the internal AML guidelines may lead to violations of other AML provisions (for example, omissions in the customer due diligence process) in which case the supervisory authority may impose sanctions depending on the relevant violation.

Concept of "wholesaler"

Wholesalers have various obligations under the Bulgarian AML Act. There is no definition of a "wholesaler" in the AML Act nor is there one in commercial law in more general terms, which has proved problematic when deciding whether a company should comply with AML legislation or not.

While the latest amendments still do not introduce a definition, they stipulate that manufacturers are not considered as wholesalers when they sell goods produced by them. Further, SANS recently published on its website an answer in the Q&A section containing some interpretation of the term. Nevertheless, as we see it, the concept remains insufficiently clear and it is thus a source of uncertainty.

The source of funds of the customer must be clarified

Until the adoption of the latest amendments, the AML Act stipulated that the source of funds needs to be clarified only in cases provided for in the law. Further, the only case provided in the law seemed to be when establishing a business relationship or carrying out an occasional operation/transaction with politically exposed persons, i.e., it was not expected that such a check would be applied very often. From the wording of the provision, it now seems that this measure should be applied in all cases of customer due diligence, which would result in further administrative burden under the AML Act.

[1] Measures Against Money Laundering Act (in Bulgarian: Закон за мерките срещу изпирането на пари)

[2] The State Agency for National Security

Financial situation will be considered when deciding on sanctions

A newly adopted provision sets the factors that shall be considered by the supervisory authority when deciding on the type and amount of the sanctions to be imposed for AML violations. Among other criteria, the sanction imposed by the supervisory authority should be proportionate to the financial situation of the inspected subject. The financial situation will take into account the annual turnover of the legal entity, respectively based on the annual income of a natural person.

Among the other factors that will be taken into consideration are the amount of the profit, respectively the third party's losses caused by the violation, the duration and seriousness of the violation, previous violations, etc.

Awaiting new developments

While there have already been several amendments to the AML Act in quite a short period of time, its interpretation and proper application in practice still raises various questions to be answered either by further legislative changes, court rulings or new guidance from the SANS. One thing is sure though – new developments remain to be seen.