

Taking into consideration customer's business activity

- Regulation
- Act No. 253/2008 Coll., on Certain Measures Against Legitimation of Proceeds of Crime and Financing of Terrorism, as amended (**AML Act**)
 - Decree No. 67/2018 Coll., on Selected Requirements for the System of Internal Rules, Procedures and Control Measures against Legitimation of Proceeds of Crime and Financing of Terrorism (**AML Decree**)

- Provisions
- **Articles 8(7), Article 9(2)(a) and (c) and Article 21 of the AML Act**
 - **Articles 4, 8, 9 and 18 of the AML Decree**

Question **What is the manner and scope in which obliged entities should take into consideration their customer's business?**

Answer **The obliged entity must always take into consideration all lines of business of a customer that is a legal person or a natural person - entrepreneur. In practice, to fulfil this obligation it is usually sufficient for the obliged entity to identify and take into consideration at least the lines of business listed in the commercial, trade or other register.**

If any of the customer's lines of business is associated with a higher risk of money laundering or terrorist financing, the obliged entity must always, pursuant to the AML decree, obtain a wider range of additional information regarding the customer and the business relationship and consider applying further potential measures to mitigate the risk identified.

Obliged entities must set out their processes in a manner that ensures effective mitigation of the risks of abuse of their business for money laundering and terrorist financing (Article 21 of the AML Act and Article 6 et seq. of the AML Decree, among others). In order to fulfil this obligation, it is essential that the obliged entity is fully aware of and understands the risks to which it is exposed (and consequently takes appropriate measures). Therefore, when assessing and mitigating the risks associated with individual transactions and business relationships, the obliged entity must take into account all relevant factors that could affect the risk associated with the transaction or business relationship. At the same time, in order to ensure a minimum standard, both the AML Act and the AML Decree lay down a number of criteria that must always be applied by obliged entities for the effective implementation of measures using a risk-based approach.

Pursuant to Article 9(2)(a) and (c) of the AML Act in conjunction with Article 11(3) of the AML Decree, the obliged entity must identify and understand all its customer's lines of business.¹ Here we add that a line of business under the AML Decree means business activities regularly performed by the customer, or such activities for which regular performance can be assumed. In a typical case, the obliged entity must take into consideration at least the lines of business listed in the commercial, trade or other register.²

¹ For the purposes of this Opinion, "customer" means a customer that is a legal person or a natural person - entrepreneur (pursuant to Article 11(3) of the AML Decree).

² The wording of the AML Decree is based on Article 120(1) of Act No. 89/2012 Coll., the Civil Code: "An entry shall be made for a legal person in a public register stating at least its date of establishment, the date of its annulment, stating the legal reason for such, and the date of its termination, as well as its name, registered office and line of business". This interpretation is also in accordance with the purpose of the relevant provision, namely to prevent the abuse of legal persons and legal arrangements without legal personality for illegal activity. The justification (preamble) for the AML Decree adds, *inter alia*, that "thorough customer identification and customer due diligence should serve to ensure that the institution genuinely understands the form, structure and business of legal persons and legal arrangements without legal personality".

This requirement is a prerequisite for the obliged entity to be able to understand the transaction or business relationship and to identify potential suspicious activity. It is also a factor that may fundamentally affect the risks associated with the customer and must, therefore, be taken into consideration when assessing risks and setting out follow-up measures for the mitigation of those risks (again to ensure that any suspicious activity is identified).

In its risk assessment, the obliged entity must consider which types of business are generally associated with a higher risk in order to subsequently set out its processes in a manner that will effectively mitigate those risks. Although the legislation does not contain a list of high-risk activities, obliged entities must base this list on the national risk assessment, FAO documents, the joint guidelines of the European Supervisory Authorities and so on (see Articles 4 and 5 of the AML Decree setting forth the information and standards that obliged entities must take into account when preparing their internal procedures).

In the case of a customer whose line of business is high-risk, the obliged entity must, pursuant to Article 9(4)(b) of the AML Decree, perform enhanced customer due diligence (i.e. apply stricter measures). The obliged entity must always take into account all the customer's lines of business. However, the provision in question leaves to the discretion of the obliged entity what specific follow-up measures it will take against a customer undertaking a high-risk business activity and stipulates as the only single mandatory obligation that it must at least obtain a wider range of information regarding the customer, transaction and the business relationship. This measure is intended to ensure that the obliged entity thoroughly understands the nature of the customer and the business relationship and thereby rules out any suspicion despite the existing potential increased risk of abuse for money laundering and financing terrorism (due to the customer's high-risk business activity).

If, based on the information obtained, the obliged entity is convinced that the risk is not increased in the given case (especially if it finds that the customer does not actually carry out this business activity – and if there is no risk arising from the actual conflict between the registered business activity and the one actually performed), it does not need to implement any further measures (such as – in the case of a business relationship – allocating the customer to a higher-risk category in order to apply stricter measures against the customer on a permanent/continuous basis). Pursuant to Article 8(7) of the AML Act and Article 7(3) of the AML Decree, the obliged entity must update the information gathered in the course of the customer due diligence process so that it is able, where necessary, to identify and subsequently react to any change (including any *de facto* change) in this state of affairs.

These procedures and considerations performed by the obliged entity must be reconstructible (Article 18 of the AML Decree). In other words, the obliged entity's assessment of the risk associated with all lines of business, and the justification for consequent procedures implemented, must be traceable.

Nature of the Opinion This answer expresses the opinion of Czech National Bank staff members. The court and, as the case may be, the Bank Board of the Czech National Bank may be of a different opinion.

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