

EUROPEAN DIRECTIVES AND THE ROLE OF THE LAND AND BUSINESS REGISTRIES AGAINST MONEY LAUNDERING AND TERRORISM FINANCING.

1.EUROPEAN DIRECTIVES:

The fight against money laundering and tax evasion is focusing the interest of the institutions of the European Union, with the proposal to amend Directive (EU) 2015/849, the 5th anti-money laundering Directive, which constitutes the main legal instrument in the prevention of the use of the Union's financial system for the purposes of money laundering and terrorist financing.

That Directive, which is to be transposed, set out efficient and comprehensive legal framework to address the collection of money or property for terrorist purposes by requiring Member States to identify, understand and mitigate risks related to money laundering and terrorist financing.

It pursues the maximum possible transparency in financial transactions, which includes all kinds of trust that intervene in different businesses as well as the holders of all types of assets, including Real Estate.

That is why Registrars are considered obliged entities by national regulations with duties of information, communication and due diligence measures and it is needed the creation of mechanism to record and provide information on these real owners, as the actual beneficiaries, both with regard to legal persons or legal agreements. This is the reason why the Land Registry of Spain has created a special office Anti money laundering Land Registry Office(C.R.A.B), to control this matter.

C.R.A.B play a important role in identifying suspicious transactions and it is the communication channel between Registrars and financial intelligence units.

The Land Registry can collaborate as an essential tool to fight against money laundering.

Next step is the interconnection between European Land Registries and European Business Registries

Looking at the matter in depth we must consider articles 3, 30 and 31 from the Directive referred.

1.Suspicious subjects:

According to article 3.6 people which must be identified are:

I-Natural persons who participate in more than 25% in company's share capitals, or own more than 25% of the customer's base.

II-In the case of trusts - all following persons:

1. the settlor(s);
2. the trustee(s);
3. the protector(s), if any;
4. the beneficiaries; or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
5. any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means."

III-Looking at fideicomisos :

Article 31 is amended as follows:

1. Member States shall ensure that this Article applies to trusts and other types of legal arrangements, such as, inter alia, fiducie, certain types of Treuhander or fideicomiso when having a structure or functions similar to trusts. Member States shall identify the characteristics to determine

where legal arrangements have a structure or functions similar to trusts with regard to such legal arrangements governed under their law. Solving differences of comparative law.

Each Member State shall require that trustees of any express trust administered in that Member State obtain and hold adequate, accurate and up-to-date information on beneficial ownership regarding the trust. That information shall include the identity of:

- (a) the settlor(s);
- (b) the trustee(s);
- (c) the protector(s) (if any);
- (d) the beneficiaries or class of beneficiaries;
- (e) any other natural person exercising ultimate control of the trust.";

Member States shall ensure that breaches of this Article are subject to effective, proportionate and dissuasive measures or sanctions.";

(aa) paragraph 2 is replaced by the following:

Member States shall ensure that trustees or persons holding equivalent or similar positions in other types of legal arrangements as referred disclose their status and provide the information referred to obliged entities in a timely manner, where, as a trustee, the trustee forms a business relationship or carries out an occasional transaction above the thresholds set out.

II-The essential aim is to find who the real owner is.

1. Member States shall ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held. Member States shall ensure that breaches of this Article are subject to effective, proportionate and dissuasive measures or sanctions.

2. It's essential to order these entities to comply with the requirements that the beneficial owners of corporate or other legal entities, including through shares, voting rights, ownership interest, through bearer shareholdings, or through control via other means, provide those entities with all the information necessary for the corporate or legal entity.

3. Member States shall require that the information held in the national central register referred to is adequate, accurate and current, and shall put in place mechanisms to this effect. These mechanisms shall include requiring obliged entities and, if appropriate and to the extent that this requirement does not interfere unnecessarily with their functions, competent authorities to report any discrepancies they find between the beneficial ownership information available in the central registers and the beneficial ownership information available to them. In case of reported discrepancies Member States shall ensure that appropriate actions will be taken to resolve the discrepancies in a timely manner and, if appropriate, that in the meantime a specific mention is included in the central register.

Where the place of establishment or residence of the trustee of the trust or similar legal arrangement is outside the Union, the information referred to in the fifth Directive shall be held in a central register set up by the Member State where the trustee enters into a business relationship or acquires real estate in the name of the trust or similar legal arrangement.

Where the trustees of a trust or similar legal arrangement are established or reside in different Member States, or where the trustee of the trust or similar legal arrangement enters into multiple business relationships in the name of the trust or similar legal arrangement in different Member

States, a certificate of proof of registration or an excerpt of the beneficial ownership information in a register held by one Member State may be considered as sufficient to consider the registration obligation fulfilled.

III-Available information:

The information on the beneficial ownership is accessible in all cases to:

(a) competent authorities and FIUs, without any restriction and without alerting the entity concerned.

(b) obliged entities, within the framework of customer due diligence in accordance with Chapter II."

(c) any member of general public.

The persons referred to in point (c) shall be permitted to access at least the name, the month and year of birth and the country of residence and nationality of the beneficial owner as well as the nature and extent of the beneficial interest held.

Member States may, under conditions to be determined in national law, provide for access of additional information enabling the identification of the beneficial owner at least the date of birth or contact details in accordance with data protection rules and on the condition of online registration and the payment of a fee, which shall not exceed the administrative costs of making the information available, including costs to ensure the maintenance and developments of the register.

Competent authorities granted access to the central register referred to shall be those public authorities with designated responsibilities for combating money laundering or terrorist financing, as well as tax authorities, supervisors of obliged entities and authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing, tracing and seizing or freezing and confiscating criminal assets.

8. Member States shall require that obliged entities do not rely exclusively on the central register referred to fulfil their customer due diligence requirements in accordance with Chapter II. Those requirements shall be fulfilled by using a risk-based approach.

IV-Connection of the Member State's Central Register.

Those central registers referred are interconnected via the European Central Platform established by Article 22(1) of Directive 2017/1132/EU. The connection of the Member States' central registers to the platform shall be set up in accordance with the technical specifications and procedures established by implementing acts adopted by the Commission in accordance with Article 24 of Directive 2017/1132/EU and with Article 31a of this Directive.

Member States shall ensure that the information referred to in paragraph 1 of this Article is available through the system of interconnection of registers established by Article 22(1) of Directive 2017/1132/EU, in accordance with Member States' national laws implementing paragraph 5, 5a and 6 of this Article.

The information referred to shall be available through the national registers and through the system of interconnection of registers for at least 5 years and no more than 10 years after the corporate or other legal entity has been struck off from the register. Member States shall cooperate among themselves and with the Commission in order to implement the different types of access in accordance with this Article.";

By 26 June 2020, the Commission shall submit a report to the European Parliament and to the Council assessing whether all trusts and legal arrangements which have a structure or functions similar to trusts governed under the law of Member States were duly identified and made subject to the obligations as set out in this Directive. Where appropriate, the Commission shall take the necessary steps to act upon the findings of that report.

2.The Land and Business Registries of Spain and its role in anti money laundering and terrorism financing.

I-Looking for the real owner:

Nowadays Spanish law does not allow knowing who the beneficial owner in societies is because transmissions of stakes only need public deed, and inscription is not mandatory, shares don't need it either .

Those problems can be solved with stakes transmissions and the beneficial owner's inscription in the Business Registry.

This way ownership will be guaranteed and protected by law, owner could improve its financial capacity, Member states will have a reliable tool, and states will benefit from having it to improve their financial situation and investments.

II-C.R.A.B :Land Registry antimoney laundering and terrorism financing office:

Land and business Registers from Spain have collaborated from the beginning with the State in order to fight against money laundering.

Law 19/1.993 is not directly referred to land and business Registrars but it existed a general obligation on the part of public servants(Article.16), but Regulation 925/95 was referred to Registrars as collaborators. There was a concurrence of multiple subjects under obligation

Later on Law 10/2010 28 april considered:

art.2 Subjects under obligation : Notaries and land , business and movable property Registrars

art.27 Centralized preventive bodies. Created by ministerial order.

Voluntary assignment except for Notaries and Registrars

By this time C.R.A.B is the centralized body of land , business and movable property Registrars .Its function is to promote and collaborate between Registrars and legal authorities, police and public servers to prevent money laundering and terrorist financing.

It controls Registrys in this matter with total technical autonomy.

I-COLLABORATION WITH AUTHORITIES IN PREVENTING AND ERRADICATING MONEY LAUNDRING

C.R.A.B It focuses on businesses linked with money laundering and terrorist financing.

It requires to be request, by the applicant or authority.

The information required is about:

1-Current entitlements of natural or artificial person

2-Business positions of natural or artificial person

3-Inscriptions copies

4-Annual accounts copies.

C.R.A.B is an internal control body that follows procedures, rollout and problems in preventing money laundering, taking measures and developing internal rules in order to improve the system.

It decides which suspicious transactions must be communicated to the Executive service. In order to inform Registrars on type of risk transactions, to adopt measures in order to guarantee confidentiality.

It also does definition of policies to adopt ,and formulation of the rules for registrars just to coordinate them.

Anti-money laundering and terrorism financing office analyses and evaluates money laundering evidences to report and take the necessary corrective measures of the land and business Registry data base.

C.R.A.B elaborates a yearly plan and drafts an annual report , with the relevant events about money laundering and terrorism financing.

At the same time it evaluates risks of Registrars activity depending on geographic location, intervening parties and transactions whereas checks european lists of frozen assets to give information to an external expert from the OCP.

C.R.A.B controls procedures of internal control by the Registrars

II-COLLABORATION WITH SEPLAC

C.R.A.B collaborates with spanish competent authorities as the SEPLAC (spanish anti-money laundering service):

-To exam and evaluate suspicious transaction.

-To centralize communications in terms of money laundering, and terrorism financing.

-To meet the requirements set by SEPLAC and legal authorities.

EVERYTHING IN ORDER TO OBTAIN INFORMATION ABOUT THE REAL BENEFICIAL OWNER, coming from suspicious transactions if it is not known.

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