

Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (Text with EEA relevance) (repealed)

DIRECTIVE 2005/60/EC OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL

of 26 October 2005

on the prevention of the use of the financial system for  
the purpose of money laundering and terrorist financing

(Text with EEA relevance) (repealed)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2), first and third sentences, and Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>(1)</sup>,

Having regard to the opinion of the European Central Bank<sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>(3)</sup>,

Whereas:

- (1) Massive flows of dirty money can damage the stability and reputation of the financial sector and threaten the single market, and terrorism shakes the very foundations of our society. In addition to the criminal law approach, a preventive effort via the financial system can produce results.
- (2) The soundness, integrity and stability of credit and financial institutions and confidence in the financial system as a whole could be seriously jeopardised by the efforts of criminals and their associates either to disguise the origin of criminal proceeds or to channel lawful or unlawful money for terrorist purposes. In order to avoid Member States' adopting measures to protect their financial systems which could be inconsistent with the functioning of the internal market and with the prescriptions of the rule of law and Community public policy, Community action in this area is necessary.
- (3) In order to facilitate their criminal activities, money launderers and terrorist financiers could try to take advantage of the freedom of capital movements and the freedom to supply financial services which the integrated financial area entails, if certain coordinating measures are not adopted at Community level.
- (4) In order to respond to these concerns in the field of money laundering, Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering<sup>(4)</sup> was adopted. It required Member States to prohibit money laundering and to oblige the financial sector, comprising credit institutions and a

wide range of other financial institutions, to identify their customers, keep appropriate records, establish internal procedures to train staff and guard against money laundering and to report any indications of money laundering to the competent authorities.

- (5) Money laundering and terrorist financing are frequently carried out in an international context. Measures adopted solely at national or even Community level, without taking account of international coordination and cooperation, would have very limited effects. The measures adopted by the Community in this field should therefore be consistent with other action undertaken in other international fora. The Community action should continue to take particular account of the Recommendations of the Financial Action Task Force (hereinafter referred to as the FATF), which constitutes the foremost international body active in the fight against money laundering and terrorist financing. Since the FATF Recommendations were substantially revised and expanded in 2003, this Directive should be in line with that new international standard.
- (6) The General Agreement on Trade in Services (GATS) allows Members to adopt measures necessary to protect public morals and prevent fraud and adopt measures for prudential reasons, including for ensuring the stability and integrity of the financial system.
- (7) Although initially limited to drugs offences, there has been a trend in recent years towards a much wider definition of money laundering based on a broader range of predicate offences. A wider range of predicate offences facilitates the reporting of suspicious transactions and international cooperation in this area. Therefore, the definition of serious crime should be brought into line with the definition of serious crime in Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime<sup>(5)</sup>.
- (8) Furthermore, the misuse of the financial system to channel criminal or even clean money to terrorist purposes poses a clear risk to the integrity, proper functioning, reputation and stability of the financial system. Accordingly, the preventive measures of this Directive should cover not only the manipulation of money derived from crime but also the collection of money or property for terrorist purposes.
- (9) Directive 91/308/EEC, though imposing a customer identification obligation, contained relatively little detail on the relevant procedures. In view of the crucial importance of this aspect of the prevention of money laundering and terrorist financing, it is appropriate, in accordance with the new international standards, to introduce more specific and detailed provisions relating to the identification of the customer and of any beneficial owner and the verification of their identity. To that end a precise definition of 'beneficial owner' is essential. Where the individual beneficiaries of a legal entity or arrangement such as a foundation or trust are yet to be determined, and it is therefore impossible to identify an individual as the beneficial owner, it would suffice to identify the class of persons intended to be the beneficiaries of the foundation or trust. This requirement should not include the identification of the individuals within that class of persons.

- (10) The institutions and persons covered by this Directive should, in conformity with this Directive, identify and verify the identity of the beneficial owner. To fulfil this requirement, it should be left to those institutions and persons whether they make use of public records of beneficial owners, ask their clients for relevant data or obtain the information otherwise, taking into account the fact that the extent of such customer due diligence measures relates to the risk of money laundering and terrorist financing, which depends on the type of customer, business relationship, product or transaction.
- (11) Credit agreements in which the credit account serves exclusively to settle the loan and the repayment of the loan is effected from an account which was opened in the name of the customer with a credit institution covered by this Directive pursuant to Article 8(1)(a) to (c) should generally be considered as an example of types of less risky transactions.
- (12) To the extent that the providers of the property of a legal entity or arrangement have significant control over the use of the property they should be identified as a beneficial owner.
- (13) Trust relationships are widely used in commercial products as an internationally recognised feature of the comprehensively supervised wholesale financial markets. An obligation to identify the beneficial owner does not arise from the fact alone that there is a trust relationship in this particular case.
- (14) This Directive should also apply to those activities of the institutions and persons covered hereunder which are performed on the Internet.
- (15) As the tightening of controls in the financial sector has prompted money launderers and terrorist financiers to seek alternative methods for concealing the origin of the proceeds of crime and as such channels can be used for terrorist financing, the anti-money laundering and anti-terrorist financing obligations should cover life insurance intermediaries and trust and company service providers.
- (16) Entities already falling under the legal responsibility of an insurance undertaking, and therefore falling within the scope of this Directive, should not be included within the category of insurance intermediary.
- (17) Acting as a company director or secretary does not of itself make someone a trust and company service provider. For that reason, the definition covers only those persons that act as a company director or secretary for a third party and by way of business.
- (18) The use of large cash payments has repeatedly proven to be very vulnerable to money laundering and terrorist financing. Therefore, in those Member States that allow cash payments above the established threshold, all natural or legal persons trading in goods by way of business should be covered by this Directive when accepting such cash payments. Dealers in high-value goods, such as precious stones or metals, or works of art, and auctioneers are in any event covered by this Directive to the extent that payments to them are made in cash in an amount of EUR 15 000 or more. To ensure effective monitoring of compliance with this Directive by that potentially wide group of institutions and persons, Member States may focus their monitoring activities in

particular on those natural and legal persons trading in goods that are exposed to a relatively high risk of money laundering or terrorist financing, in accordance with the principle of risk-based supervision. In view of the different situations in the various Member States, Member States may decide to adopt stricter provisions, in order to properly address the risk involved with large cash payments.

- (19) Directive 91/308/EEC brought notaries and other independent legal professionals within the scope of the Community anti-money laundering regime; this coverage should be maintained unchanged in this Directive; these legal professionals, as defined by the Member States, are subject to the provisions of this Directive when participating in financial or corporate transactions, including providing tax advice, where there is the greatest risk of the services of those legal professionals being misused for the purpose of laundering the proceeds of criminal activity or for the purpose of terrorist financing.
- (20) Where independent members of professions providing legal advice which are legally recognised and controlled, such as lawyers, are ascertaining the legal position of a client or representing a client in legal proceedings, it would not be appropriate under this Directive to put those legal professionals in respect of these activities under an obligation to report suspicions of money laundering or terrorist financing. There must be exemptions from any obligation to report information obtained either before, during or after judicial proceedings, or in the course of ascertaining the legal position for a client. Thus, legal advice shall remain subject to the obligation of professional secrecy unless the legal counsellor is taking part in money laundering or terrorist financing, the legal advice is provided for money laundering or terrorist financing purposes or the lawyer knows that the client is seeking legal advice for money laundering or terrorist financing purposes.
- (21) Directly comparable services need to be treated in the same manner when provided by any of the professionals covered by this Directive. In order to ensure the respect of the rights laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Treaty on European Union, in the case of auditors, external accountants and tax advisors, who, in some Member States, may defend or represent a client in the context of judicial proceedings or ascertain a client's legal position, the information they obtain in the performance of those tasks should not be subject to the reporting obligations in accordance with this Directive.
- (22) It should be recognised that the risk of money laundering and terrorist financing is not the same in every case. In line with a risk-based approach, the principle should be introduced into Community legislation that simplified customer due diligence is allowed in appropriate cases.
- (23) The derogation concerning the identification of beneficial owners of pooled accounts held by notaries or other independent legal professionals should be without prejudice to the obligations that those notaries or other independent legal professionals have pursuant to this Directive. Those obligations include the need for such notaries or other independent legal professionals themselves to identify the beneficial owners of the pooled accounts held by them.

- (24) Equally, Community legislation should recognise that certain situations present a greater risk of money laundering or terrorist financing. Although the identity and business profile of all customers should be established, there are cases where particularly rigorous customer identification and verification procedures are required.
- (25) This is particularly true of business relationships with individuals holding, or having held, important public positions, particularly those from countries where corruption is widespread. Such relationships may expose the financial sector in particular to significant reputational and/or legal risks. The international effort to combat corruption also justifies the need to pay special attention to such cases and to apply the complete normal customer due diligence measures in respect of domestic politically exposed persons or enhanced customer due diligence measures in respect of politically exposed persons residing in another Member State or in a third country.
- (26) Obtaining approval from senior management for establishing business relationships should not imply obtaining approval from the board of directors but from the immediate higher level of the hierarchy of the person seeking such approval.
- (27) In order to avoid repeated customer identification procedures, leading to delays and inefficiency in business, it is appropriate, subject to suitable safeguards, to allow customers to be introduced whose identification has been carried out elsewhere. Where an institution or person covered by this Directive relies on a third party, the ultimate responsibility for the customer due diligence procedure remains with the institution or person to whom the customer is introduced. The third party, or introducer, also retains his own responsibility for all the requirements in this Directive, including the requirement to report suspicious transactions and maintain records, to the extent that he has a relationship with the customer that is covered by this Directive.
- (28) In the case of agency or outsourcing relationships on a contractual basis between institutions or persons covered by this Directive and external natural or legal persons not covered hereby, any anti-money laundering and anti-terrorist financing obligations for those agents or outsourcing service providers as part of the institutions or persons covered by this Directive, may only arise from contract and not from this Directive. The responsibility for complying with this Directive should remain with the institution or person covered hereby.
- (29) Suspicious transactions should be reported to the financial intelligence unit (FIU), which serves as a national centre for receiving, analysing and disseminating to the competent authorities suspicious transaction reports and other information regarding potential money laundering or terrorist financing. This should not compel Member States to change their existing reporting systems where the reporting is done through a public prosecutor or other law enforcement authorities, as long as the information is forwarded promptly and unfiltered to FIUs, allowing them to conduct their business properly, including international cooperation with other FIUs.
- (30) By way of derogation from the general prohibition on executing suspicious transactions, the institutions and persons covered by this Directive may execute suspicious transactions before informing the competent authorities, where refraining from the

execution thereof is impossible or likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation. This, however, should be without prejudice to the international obligations accepted by the Member States to freeze without delay funds or other assets of terrorists, terrorist organisations or those who finance terrorism, in accordance with the relevant United Nations Security Council resolutions.

- (31) Where a Member State decides to make use of the exemptions provided for in Article 23(2), it may allow or require the self-regulatory body representing the persons referred to therein not to transmit to the FIU any information obtained from those persons in the circumstances referred to in that Article.
- (32) There has been a number of cases of employees who report their suspicions of money laundering being subjected to threats or hostile action. Although this Directive cannot interfere with Member States' judicial procedures, this is a crucial issue for the effectiveness of the anti-money laundering and anti-terrorist financing system. Member States should be aware of this problem and should do whatever they can to protect employees from such threats or hostile action.
- (33) Disclosure of information as referred to in Article 28 should be in accordance with the rules on transfer of personal data to third countries as laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>(6)</sup>. Moreover, Article 28 cannot interfere with national data protection and professional secrecy legislation.
- (34) Persons who merely convert paper documents into electronic data and are acting under a contract with a credit institution or a financial institution do not fall within the scope of this Directive, nor does any natural or legal person that provides credit or financial institutions solely with a message or other support systems for transmitting funds or with clearing and settlement systems.
- (35) Money laundering and terrorist financing are international problems and the effort to combat them should be global. Where Community credit and financial institutions have branches and subsidiaries located in third countries where the legislation in this area is deficient, they should, in order to avoid the application of very different standards within an institution or group of institutions, apply the Community standard or notify the competent authorities of the home Member State if this application is impossible.
- (36) It is important that credit and financial institutions should be able to respond rapidly to requests for information on whether they maintain business relationships with named persons. For the purpose of identifying such business relationships in order to be able to provide that information quickly, credit and financial institutions should have effective systems in place which are commensurate with the size and nature of their business. In particular it would be appropriate for credit institutions and larger financial institutions to have electronic systems at their disposal. This provision is of particular importance in the context of procedures leading to measures such as the freezing or seizing of assets (including terrorist assets), pursuant to applicable national or Community legislation with a view to combating terrorism.

- (37) This Directive establishes detailed rules for customer due diligence, including enhanced customer due diligence for high-risk customers or business relationships, such as appropriate procedures to determine whether a person is a politically exposed person, and certain additional, more detailed requirements, such as the existence of compliance management procedures and policies. All these requirements are to be met by each of the institutions and persons covered by this Directive, while Member States are expected to tailor the detailed implementation of those provisions to the particularities of the various professions and to the differences in scale and size of the institutions and persons covered by this Directive.
- (38) In order to ensure that the institutions and others subject to Community legislation in this field remain committed, feedback should, where practicable, be made available to them on the usefulness and follow-up of the reports they present. To make this possible, and to be able to review the effectiveness of their systems to combat money laundering and terrorist financing Member States should keep and improve the relevant statistics.
- (39) When registering or licensing a currency exchange office, a trust and company service provider or a casino nationally, competent authorities should ensure that the persons who effectively direct or will direct the business of such entities and the beneficial owners of such entities are fit and proper persons. The criteria for determining whether or not a person is fit and proper should be established in conformity with national law. As a minimum, such criteria should reflect the need to protect such entities from being misused by their managers or beneficial owners for criminal purposes.
- (40) Taking into account the international character of money laundering and terrorist financing, coordination and cooperation between FIUs as referred to in Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information<sup>(7)</sup>, including the establishment of an EU FIU-net, should be encouraged to the greatest possible extent. To that end, the Commission should lend such assistance as may be needed to facilitate such coordination, including financial assistance.
- (41) The importance of combating money laundering and terrorist financing should lead Member States to lay down effective, proportionate and dissuasive penalties in national law for failure to respect the national provisions adopted pursuant to this Directive. Provision should be made for penalties in respect of natural and legal persons. Since legal persons are often involved in complex money laundering or terrorist financing operations, sanctions should also be adjusted in line with the activity carried on by legal persons.
- (42) Natural persons exercising any of the activities referred to in Article 2(1)(3)(a) and (b) within the structure of a legal person, but on an independent basis, should be independently responsible for compliance with the provisions of this Directive, with the exception of Article 35.
- (43) Clarification of the technical aspects of the rules laid down in this Directive may be necessary to ensure an effective and sufficiently consistent implementation of this Directive, taking into account the different financial instruments, professions and risks

in the different Member States and the technical developments in the fight against money laundering and terrorist financing. The Commission should accordingly be empowered to adopt implementing measures, such as certain criteria for identifying low and high risk situations in which simplified due diligence could suffice or enhanced due diligence would be appropriate, provided that they do not modify the essential elements of this Directive and provided that the Commission acts in accordance with the principles set out herein, after consulting the Committee on the Prevention of Money Laundering and Terrorist Financing.

- (44) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(8)</sup>. To that end a new Committee on the Prevention of Money Laundering and Terrorist Financing, replacing the Money Laundering Contact Committee set up by Directive 91/308/EEC, should be established.
- (45) In view of the very substantial amendments that would need to be made to Directive 91/308/EEC, it should be repealed for reasons of clarity.
- (46) Since the objective of this Directive, namely the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (47) In exercising its implementing powers in accordance with this Directive, the Commission should respect the following principles: the need for high levels of transparency and consultation with institutions and persons covered by this Directive and with the European Parliament and the Council; the need to ensure that competent authorities will be able to ensure compliance with the rules consistently; the balance of costs and benefits to institutions and persons covered by this Directive on a long-term basis in any implementing measures; the need to respect the necessary flexibility in the application of the implementing measures in accordance with a risk-sensitive approach; the need to ensure coherence with other Community legislation in this area; the need to protect the Community, its Member States and their citizens from the consequences of money laundering and terrorist financing.
- (48) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Nothing in this Directive should be interpreted or implemented in a manner that is inconsistent with the European Convention on Human Rights,

HAVE ADOPTED THIS DIRECTIVE:



## CHAPTER I

### SUBJECT MATTER, SCOPE AND DEFINITIONS

#### *Article 1*

1 Member States shall ensure that money laundering and terrorist financing are prohibited.

2 For the purposes of this Directive, the following conduct, when committed intentionally, shall be regarded as money laundering:

- a the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;
- b the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;
- c the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity;
- d participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing points.

3 Money laundering shall be regarded as such even where the activities which generated the property to be laundered were carried out in the territory of another Member State or in that of a third country.

4 For the purposes of this Directive, ‘terrorist financing’ means the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism<sup>(9)</sup>.

5 Knowledge, intent or purpose required as an element of the activities mentioned in paragraphs 2 and 4 may be inferred from objective factual circumstances.

#### *Article 2*

1 This Directive shall apply to:

- (1) credit institutions;
- (2) financial institutions;
- (3) the following legal or natural persons acting in the exercise of their professional activities:
  - (a) auditors, external accountants and tax advisors;
  - (b) notaries and other independent legal professionals, when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or execution of transactions for their client concerning the:

- (i) buying and selling of real property or business entities;
  - (ii) managing of client money, securities or other assets;
  - (iii) opening or management of bank, savings or securities accounts;
  - (iv) organisation of contributions necessary for the creation, operation or management of companies;
  - (v) creation, operation or management of trusts, companies or similar structures;
- (c) trust or company service providers not already covered under points (a) or (b);
  - (d) real estate agents;
  - (e) other natural or legal persons trading in goods, only to the extent that payments are made in cash in an amount of EUR 15 000 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked;
  - (f) casinos.

2 Member States may decide that legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or terrorist financing occurring do not fall within the scope of Article 3(1) or (2).

### *Article 3*

For the purposes of this Directive the following definitions shall apply:

- (1) ‘credit institution’ means a credit institution, as defined in the first subparagraph of Article 1(1) of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions<sup>(10)</sup>, including branches within the meaning of Article 1(3) of that Directive located in the Community of credit institutions having their head offices inside or outside the Community;
- (2) ‘financial institution’ means:
  - (a) an undertaking other than a credit institution which carries out one or more of the operations included in points 2 to 12 and 14 of Annex I to Directive 2000/12/EC, including the activities of currency exchange offices (bureaux de change) and of money transmission or remittance offices;
  - (b) an insurance company duly authorised in accordance with Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance<sup>(11)</sup>, insofar as it carries out activities covered by that Directive;
  - (c) an investment firm as defined in point 1 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments<sup>(12)</sup>;
  - (d) a collective investment undertaking marketing its units or shares;

- (e) an insurance intermediary as defined in Article 2(5) of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation<sup>(13)</sup>, with the exception of intermediaries as mentioned in Article 2(7) of that Directive, when they act in respect of life insurance and other investment related services;
  - (f) branches, when located in the Community, of financial institutions as referred to in points (a) to (e), whose head offices are inside or outside the Community;
- (3) ‘property’ means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to or an interest in such assets;
- (4) ‘criminal activity’ means any kind of criminal involvement in the commission of a serious crime;
- (5) ‘serious crimes’ means, at least:
- (a) acts as defined in Articles 1 to 4 of Framework Decision 2002/475/JHA;
  - (b) any of the offences defined in Article 3(1)(a) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
  - (c) the activities of criminal organisations as defined in Article 1 of Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union<sup>(14)</sup>;
  - (d) fraud, at least serious, as defined in Article 1(1) and Article 2 of the Convention on the Protection of the European Communities’ Financial Interests<sup>(15)</sup>;
  - (e) corruption;
  - (f) all offences which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards those States which have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months;
- (6) ‘beneficial owner’ means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:
- (a) in the case of corporate entities:
    - (i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;

- (ii) the natural person(s) who otherwise exercises control over the management of a legal entity;
- (b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:
  - (i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;
  - (ii) where the individuals that benefit 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;
  - (iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;
- (7) ‘trust and company service providers’ means any natural or legal person which by way of business provides any of the following services to third parties:
  - (a) forming companies or other legal persons;
  - (b) acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
  - (c) providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement;
  - (d) acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement;
  - (e) acting as or arranging for another person to act as a nominee shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in conformity with Community legislation or subject to equivalent international standards;
- (8) ‘politically exposed persons’ means natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons;
- (9) ‘business relationship’ means a business, professional or commercial relationship which is connected with the professional activities of the institutions and persons covered by this Directive and which is expected, at the time when the contact is established, to have an element of duration;
- (10) ‘shell bank’ means a credit institution, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is unaffiliated with a regulated financial group.

#### *Article 4*

1 Member States shall ensure that the provisions of this Directive are extended in whole or in part to professions and to categories of undertakings, other than the institutions and persons

referred to in Article 2(1), which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.

2 Where a Member State decides to extend the provisions of this Directive to professions and to categories of undertakings other than those referred to in Article 2(1), it shall inform the Commission thereof.

#### *Article 5*

The Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering and terrorist financing.

## CHAPTER II

### CUSTOMER DUE DILIGENCE

#### SECTION 1

#### **General provisions**

#### *Article 6*

Member States shall prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks. By way of derogation from Article 9(6), Member States shall in all cases require that the owners and beneficiaries of existing anonymous accounts or anonymous passbooks be made the subject of customer due diligence measures as soon as possible and in any event before such accounts or passbooks are used in any way.

#### *Article 7*

The institutions and persons covered by this Directive shall apply customer due diligence measures in the following cases:

- (a) when establishing a business relationship;
- (b) when carrying out occasional transactions amounting to EUR 15 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
- (c) when there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold;
- (d) when there are doubts about the veracity or adequacy of previously obtained customer identification data.

#### *Article 8*

- 1 Customer due diligence measures shall comprise:
  - a identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;
  - b identifying, where applicable, the beneficial owner and taking risk-based and adequate measures to verify his identity so that the institution or person covered by this Directive is satisfied that it knows who the beneficial owner is, including, as regards legal persons,

- trusts and similar legal arrangements, taking risk-based and adequate measures to understand the ownership and control structure of the customer;
- c obtaining information on the purpose and intended nature of the business relationship;
- d conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's or person's knowledge of the customer, the business and risk profile, including, where necessary, the source of funds and ensuring that the documents, data or information held are kept up-to-date.

2 The institutions and persons covered by this Directive shall apply each of the customer due diligence requirements set out in paragraph 1, but may determine the extent of such measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction. The institutions and persons covered by this Directive shall be able to demonstrate to the competent authorities mentioned in Article 37, including self-regulatory bodies, that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing.

#### *Article 9*

1 Member States shall require that the verification of the identity of the customer and the beneficial owner takes place before the establishment of a business relationship or the carrying-out of the transaction.

2 By way of derogation from paragraph 1, Member States may allow the verification of the identity of the customer and the beneficial owner to be completed during the establishment of a business relationship if this is necessary not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing occurring. In such situations these procedures shall be completed as soon as practicable after the initial contact.

3 By way of derogation from paragraphs 1 and 2, Member States may, in relation to life insurance business, allow the verification of the identity of the beneficiary under the policy to take place after the business relationship has been established. In that case, verification shall take place at or before the time of payout or at or before the time the beneficiary intends to exercise rights vested under the policy.

4 By way of derogation from paragraphs 1 and 2, Member States may allow the opening of a bank account provided that there are adequate safeguards in place to ensure that transactions are not carried out by the customer or on its behalf until full compliance with the aforementioned provisions is obtained.

5 Member States shall require that, where the institution or person concerned is unable to comply with points (a), (b) and (c) of Article 8(1), it may not carry out a transaction through a bank account, establish a business relationship or carry out the transaction, or shall terminate the business relationship, and shall consider making a report to the financial intelligence unit (FIU) in accordance with Article 22 in relation to the customer.

Member States shall not be obliged to apply the previous subparagraph in situations when notaries, independent legal professionals, auditors, external accountants and tax advisors are in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings.

6 Member States shall require that institutions and persons covered by this Directive apply the customer due diligence procedures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis.

### Article 10

1 Member States shall require that all casino customers be identified and their identity verified if they purchase or exchange gambling chips with a value of EUR 2 000 or more.

2 Casinos subject to State supervision shall be deemed in any event to have satisfied the customer due diligence requirements if they register, identify and verify the identity of their customers immediately on or before entry, regardless of the amount of gambling chips purchased.

## SECTION 2

### Simplified customer due diligence

#### Article 11

1 By way of derogation from Articles 7(a), (b) and (d), 8 and 9(1), the institutions and persons covered by this Directive shall not be subject to the requirements provided for in those Articles where the customer is a credit or financial institution covered by this Directive, or a credit or financial institution situated in a third country which imposes requirements equivalent to those laid down in this Directive and supervised for compliance with those requirements.

2 By way of derogation from Articles 7(a), (b) and (d), 8 and 9(1) Member States may allow the institutions and persons covered by this Directive not to apply customer due diligence in respect of:

- a listed companies whose securities are admitted to trading on a regulated market within the meaning of Directive 2004/39/EC in one or more Member States and listed companies from third countries which are subject to disclosure requirements consistent with Community legislation;
- b beneficial owners of pooled accounts held by notaries and other independent legal professionals from the Member States, or from third countries provided that they are subject to requirements to combat money laundering or terrorist financing consistent with international standards and are supervised for compliance with those requirements and provided that the information on the identity of the beneficial owner is available, on request, to the institutions that act as depository institutions for the pooled accounts;
- c domestic public authorities,

or in respect of any other customer representing a low risk of money laundering or terrorist financing which meets the technical criteria established in accordance with Article 40(1)(b).

3 In the cases mentioned in paragraphs 1 and 2, institutions and persons covered by this Directive shall in any case gather sufficient information to establish if the customer qualifies for an exemption as mentioned in these paragraphs.

4 The Member States shall inform each other and the Commission of cases where they consider that a third country meets the conditions laid down in paragraphs 1 or 2 or in other situations which meet the technical criteria established in accordance with Article 40(1)(b).

5 By way of derogation from Articles 7(a), (b) and (d), 8 and 9(1), Member States may allow the institutions and persons covered by this Directive not to apply customer due diligence in respect of:

- a life insurance policies where the annual premium is no more than EUR 1 000 or the single premium is no more than EUR 2 500;

- b insurance policies for pension schemes if there is no surrender clause and the policy cannot be used as collateral;
- c a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme;
- d electronic money, as defined in Article 1(3)(b) of Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions<sup>(16)</sup>, where, if the device cannot be recharged, the maximum amount stored in the device is no more than EUR 150, or where, if the device can be recharged, a limit of EUR 2 500 is imposed on the total amount transacted in a calendar year, except when an amount of EUR 1 000 or more is redeemed in that same calendar year by the bearer as referred to in Article 3 of Directive 2000/46/EC,

or in respect of any other product or transaction representing a low risk of money laundering or terrorist financing which meets the technical criteria established in accordance with Article 40(1)(b).

#### *Article 12*

Where the Commission adopts a decision pursuant to Article 40(4), the Member States shall prohibit the institutions and persons covered by this Directive from applying simplified due diligence to credit and financial institutions or listed companies from the third country concerned or other entities following from situations which meet the technical criteria established in accordance with Article 40(1)(b).

### SECTION 3

#### **Enhanced customer due diligence**

#### *Article 13*

1 Member States shall require the institutions and persons covered by this Directive to apply, on a risk-sensitive basis, enhanced customer due diligence measures, in addition to the measures referred to in Articles 7, 8 and 9(6), in situations which by their nature can present a higher risk of money laundering or terrorist financing, and at least in the situations set out in paragraphs 2, 3, 4 and in other situations representing a high risk of money laundering or terrorist financing which meet the technical criteria established in accordance with Article 40(1)(c).

2 Where the customer has not been physically present for identification purposes, Member States shall require those institutions and persons to take specific and adequate measures to compensate for the higher risk, for example by applying one or more of the following measures:

- a ensuring that the customer's identity is established by additional documents, data or information;
- b supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by a credit or financial institution covered by this Directive;
- c ensuring that the first payment of the operations is carried out through an account opened in the customer's name with a credit institution.

3 In respect of cross-frontier correspondent banking relationships with respondent institutions from third countries, Member States shall require their credit institutions to:



- a gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision;
- b assess the respondent institution's anti-money laundering and anti-terrorist financing controls;
- c obtain approval from senior management before establishing new correspondent banking relationships;
- d document the respective responsibilities of each institution;
- e with respect to payable-through accounts, be satisfied that the respondent credit institution has verified the identity of and performed ongoing due diligence on the customers having direct access to accounts of the correspondent and that it is able to provide relevant customer due diligence data to the correspondent institution, upon request.

4 In respect of transactions or business relationships with politically exposed persons residing in another Member State or in a third country, Member States shall require those institutions and persons covered by this Directive to:

- a have appropriate risk-based procedures to determine whether the customer is a politically exposed person;
- b have senior management approval for establishing business relationships with such customers;
- c take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction;
- d conduct enhanced ongoing monitoring of the business relationship.

5 Member States shall prohibit credit institutions from entering into or continuing a correspondent banking relationship with a shell bank and shall require that credit institutions take appropriate measures to ensure that they do not engage in or continue correspondent banking relationships with a bank that is known to permit its accounts to be used by a shell bank.

6 Member States shall ensure that the institutions and persons covered by this Directive pay special attention to any money laundering or terrorist financing threat that may arise from products or transactions that might favour anonymity, and take measures, if needed, to prevent their use for money laundering or terrorist financing purposes.

## SECTION 4

### **Performance by third parties**

#### *Article 14*

Member States may permit the institutions and persons covered by this Directive to rely on third parties to meet the requirements laid down in Article 8(1)(a) to (c). However, the ultimate responsibility for meeting those requirements shall remain with the institution or person covered by this Directive which relies on the third party.

#### *Article 15*

1 Where a Member State permits credit and financial institutions referred to in Article 2(1)(1) or (2) situated in its territory to be relied on as a third party domestically, that Member State shall in any case permit institutions and persons referred to in Article 2(1) situated in its territory to recognise and accept, in accordance with the provisions laid down in Article 14, the outcome of the customer due diligence requirements laid down in Article 8(1)(a) to (c),

carried out in accordance with this Directive by an institution referred to in Article 2(1)(1) or (2) in another Member State, with the exception of currency exchange offices and money transmission or remittance offices, and meeting the requirements laid down in Articles 16 and 18, even if the documents or data on which these requirements have been based are different to those required in the Member State to which the customer is being referred.

2 Where a Member State permits currency exchange offices and money transmission or remittance offices referred to in Article 3(2)(a) situated in its territory to be relied on as a third party domestically, that Member State shall in any case permit them to recognise and accept, in accordance with Article 14, the outcome of the customer due diligence requirements laid down in Article 8(1)(a) to (c), carried out in accordance with this Directive by the same category of institution in another Member State and meeting the requirements laid down in Articles 16 and 18, even if the documents or data on which these requirements have been based are different to those required in the Member State to which the customer is being referred.

3 Where a Member State permits persons referred to in Article 2(1)(3)(a) to (c) situated in its territory to be relied on as a third party domestically, that Member State shall in any case permit them to recognise and accept, in accordance with Article 14, the outcome of the customer due diligence requirements laid down in Article 8(1)(a) to (c), carried out in accordance with this Directive by a person referred to in Article 2(1)(3)(a) to (c) in another Member State and meeting the requirements laid down in Articles 16 and 18, even if the documents or data on which these requirements have been based are different to those required in the Member State to which the customer is being referred.

#### *Article 16*

1 For the purposes of this Section, ‘third parties’ shall mean institutions and persons who are listed in Article 2, or equivalent institutions and persons situated in a third country, who meet the following requirements:

- a they are subject to mandatory professional registration, recognised by law;
- b they apply customer due diligence requirements and record keeping requirements as laid down or equivalent to those laid down in this Directive and their compliance with the requirements of this Directive is supervised in accordance with Section 2 of Chapter V, or they are situated in a third country which imposes equivalent requirements to those laid down in this Directive.

2 Member States shall inform each other and the Commission of cases where they consider that a third country meets the conditions laid down in paragraph 1(b).

#### *Article 17*

Where the Commission adopts a decision pursuant to Article 40(4), Member States shall prohibit the institutions and persons covered by this Directive from relying on third parties from the third country concerned to meet the requirements laid down in Article 8(1)(a) to (c).

#### *Article 18*

1 Third parties shall make information requested in accordance with the requirements laid down in Article 8(1)(a) to (c) immediately available to the institution or person covered by this Directive to which the customer is being referred.

2 Relevant copies of identification and verification data and other relevant documentation on the identity of the customer or the beneficial owner shall immediately be forwarded, on request, by the third party to the institution or person covered by this Directive to which the customer is being referred.

### *Article 19*

This Section shall not apply to outsourcing or agency relationships where, on the basis of a contractual arrangement, the outsourcing service provider or agent is to be regarded as part of the institution or person covered by this Directive.

## CHAPTER III

### REPORTING OBLIGATIONS

#### SECTION 1

#### **General provisions**

### *Article 20*

Member States shall require that the institutions and persons covered by this Directive pay special attention to any activity which they regard as particularly likely, by its nature, to be related to money laundering or terrorist financing and in particular complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose.

### *Article 21*

1 Each Member State shall establish a FIU in order effectively to combat money laundering and terrorist financing.

2 That FIU shall be established as a central national unit. It shall be responsible for receiving (and to the extent permitted, requesting), analysing and disseminating to the competent authorities, disclosures of information which concern potential money laundering, potential terrorist financing or are required by national legislation or regulation. It shall be provided with adequate resources in order to fulfil its tasks.

3 Member States shall ensure that the FIU has access, directly or indirectly, on a timely basis, to the financial, administrative and law enforcement information that it requires to properly fulfil its tasks.

### *Article 22*

1 Member States shall require the institutions and persons covered by this Directive, and where applicable their directors and employees, to cooperate fully:

- a by promptly informing the FIU, on their own initiative, where the institution or person covered by this Directive knows, suspects or has reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted;
- b by promptly furnishing the FIU, at its request, with all necessary information, in accordance with the procedures established by the applicable legislation.

2 The information referred to in paragraph 1 shall be forwarded to the FIU of the Member State in whose territory the institution or person forwarding the information is situated. The person or persons designated in accordance with the procedures provided for in Article 34 shall normally forward the information.

### Article 23

1 By way of derogation from Article 22(1), Member States may, in the case of the persons referred to in Article 2(1)(3)(a) and (b), designate an appropriate self-regulatory body of the profession concerned as the authority to be informed in the first instance in place of the FIU. Without prejudice to paragraph 2, the designated self-regulatory body shall in such cases forward the information to the FIU promptly and unfiltered.

2 Member States shall not be obliged to apply the obligations laid down in Article 22(1) to notaries, independent legal professionals, auditors, external accountants and tax advisors with regard to information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

### Article 24

1 Member States shall require the institutions and persons covered by this Directive to refrain from carrying out transactions which they know or suspect to be related to money laundering or terrorist financing until they have completed the necessary action in accordance with Article 22(1)(a). In conformity with the legislation of the Member States, instructions may be given not to carry out the transaction.

2 Where such a transaction is suspected of giving rise to money laundering or terrorist financing and where to refrain in such manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation, the institutions and persons concerned shall inform the FIU immediately afterwards.

### Article 25

1 Member States shall ensure that if, in the course of inspections carried out in the institutions and persons covered by this Directive by the competent authorities referred to in Article 37, or in any other way, those authorities discover facts that could be related to money laundering or terrorist financing, they shall promptly inform the FIU.

2 Member States shall ensure that supervisory bodies empowered by law or regulation to oversee the stock, foreign exchange and financial derivatives markets inform the FIU if they discover facts that could be related to money laundering or terrorist financing.

### Article 26

The disclosure in good faith as foreseen in Articles 22(1) and 23 by an institution or person covered by this Directive or by an employee or director of such an institution or person of the information referred to in Articles 22 and 23 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the institution or person or its directors or employees in liability of any kind.

### Article 27

Member States shall take all appropriate measures in order to protect employees of the institutions or persons covered by this Directive who report suspicions of money laundering or terrorist financing either internally or to the FIU from being exposed to threats or hostile action.

## SECTION 2

### **Prohibition of disclosure**

#### *Article 28*

1 The institutions and persons covered by this Directive and their directors and employees shall not disclose to the customer concerned or to other third persons the fact that information has been transmitted in accordance with Articles 22 and 23 or that a money laundering or terrorist financing investigation is being or may be carried out.

2 The prohibition laid down in paragraph 1 shall not include disclosure to the competent authorities referred to in Article 37, including the self-regulatory bodies, or disclosure for law enforcement purposes.

3 The prohibition laid down in paragraph 1 shall not prevent disclosure between institutions from Member States, or from third countries provided that they meet the conditions laid down in Article 11(1), belonging to the same group as defined by Article 2(12) of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate<sup>(17)</sup>.

4 The prohibition laid down in paragraph 1 shall not prevent disclosure between persons referred to in Article 2(1)(3)(a) and (b) from Member States, or from third countries which impose requirements equivalent to those laid down in this Directive, who perform their professional activities, whether as employees or not, within the same legal person or a network. For the purposes of this Article, a 'network' means the larger structure to which the person belongs and which shares common ownership, management or compliance control.

5 For institutions or persons referred to in Article 2(1)(1), (2) and (3)(a) and (b) in cases related to the same customer and the same transaction involving two or more institutions or persons, the prohibition laid down in paragraph 1 shall not prevent disclosure between the relevant institutions or persons provided that they are situated in a Member State, or in a third country which imposes requirements equivalent to those laid down in this Directive, and that they are from the same professional category and are subject to equivalent obligations as regards professional secrecy and personal data protection. The information exchanged shall be used exclusively for the purposes of the prevention of money laundering and terrorist financing.

6 Where the persons referred to in Article 2(1)(3)(a) and (b) seek to dissuade a client from engaging in illegal activity, this shall not constitute a disclosure within the meaning of the paragraph 1.

7 The Member States shall inform each other and the Commission of cases where they consider that a third country meets the conditions laid down in paragraphs 3, 4 or 5.

#### *Article 29*

Where the Commission adopts a decision pursuant to Article 40(4), the Member States shall prohibit the disclosure between institutions and persons covered by this Directive and institutions and persons from the third country concerned.

## CHAPTER IV

**RECORD KEEPING AND STATISTICAL DATA***Article 30*

Member States shall require the institutions and persons covered by this Directive to keep the following documents and information for use in any investigation into, or analysis of, possible money laundering or terrorist financing by the FIU or by other competent authorities in accordance with national law:

- (a) in the case of the customer due diligence, a copy or the references of the evidence required, for a period of at least five years after the business relationship with their customer has ended;
- (b) in the case of business relationships and transactions, the supporting evidence and records, consisting of the original documents or copies admissible in court proceedings under the applicable national legislation for a period of at least five years following the carrying-out of the transactions or the end of the business relationship.

*Article 31*

1 Member States shall require the credit and financial institutions covered by this Directive to apply, where applicable, in their branches and majority-owned subsidiaries located in third countries measures at least equivalent to those laid down in this Directive with regard to customer due diligence and record keeping.

Where the legislation of the third country does not permit application of such equivalent measures, the Member States shall require the credit and financial institutions concerned to inform the competent authorities of the relevant home Member State accordingly.

2 Member States and the Commission shall inform each other of cases where the legislation of the third country does not permit application of the measures required under the first subparagraph of paragraph 1 and coordinated action could be taken to pursue a solution.

3 Member States shall require that, where the legislation of the third country does not permit application of the measures required under the first subparagraph of paragraph 1, credit or financial institutions take additional measures to effectively handle the risk of money laundering or terrorist financing.

*Article 32*

Member States shall require that their credit and financial institutions have systems in place that enable them to respond fully and rapidly to enquiries from the FIU, or from other authorities, in accordance with their national law, as to whether they maintain or have maintained during the previous five years a business relationship with specified natural or legal persons and on the nature of that relationship.

*Article 33*

1 Member States shall ensure that they are able to review the effectiveness of their systems to combat money laundering or terrorist financing by maintaining comprehensive statistics on matters relevant to the effectiveness of such systems.

2 Such statistics shall as a minimum cover the number of suspicious transaction reports made to the FIU, the follow-up given to these reports and indicate on an annual basis the number of cases investigated, the number of persons prosecuted, the number of persons convicted for

money laundering or terrorist financing offences and how much property has been frozen, seized or confiscated.

3 Member States shall ensure that a consolidated review of these statistical reports is published.

## CHAPTER V

### ENFORCEMENT MEASURES

#### SECTION 1

##### **Internal procedures, training and feedback**

###### *Article 34*

1 Member States shall require that the institutions and persons covered by this Directive establish adequate and appropriate policies and procedures of customer due diligence, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication in order to forestall and prevent operations related to money laundering or terrorist financing.

2 Member States shall require that credit and financial institutions covered by this Directive communicate relevant policies and procedures where applicable to branches and majority-owned subsidiaries in third countries.

###### *Article 35*

1 Member States shall require that the institutions and persons covered by this Directive take appropriate measures so that their relevant employees are aware of the provisions in force on the basis of this Directive.

These measures shall include participation of their relevant employees in special ongoing training programmes to help them recognise operations which may be related to money laundering or terrorist financing and to instruct them as to how to proceed in such cases.

Where a natural person falling within any of the categories listed in Article 2(1)(3) performs his professional activities as an employee of a legal person, the obligations in this Section shall apply to that legal person rather than to the natural person.

2 Member States shall ensure that the institutions and persons covered by this Directive have access to up-to-date information on the practices of money launderers and terrorist financiers and on indications leading to the recognition of suspicious transactions.

3 Member States shall ensure that, wherever practicable, timely feedback on the effectiveness of and follow-up to reports of suspected money laundering or terrorist financing is provided.

## SECTION 2

### **Supervision**

#### *Article 36*

1 Member States shall provide that currency exchange offices and trust and company service providers shall be licensed or registered and casinos be licensed in order to operate their business legally. Without prejudice to future Community legislation, Member States shall provide that money transmission or remittance offices shall be licensed or registered in order to operate their business legally.

2 Member States shall require competent authorities to refuse licensing or registration of the entities referred to in paragraph 1 if they are not satisfied that the persons who effectively direct or will direct the business of such entities or the beneficial owners of such entities are fit and proper persons.

#### *Article 37*

1 Member States shall require the competent authorities at least to effectively monitor and to take the necessary measures with a view to ensuring compliance with the requirements of this Directive by all the institutions and persons covered by this Directive.

2 Member States shall ensure that the competent authorities have adequate powers, including the power to compel the production of any information that is relevant to monitoring compliance and perform checks, and have adequate resources to perform their functions.

3 In the case of credit and financial institutions and casinos, competent authorities shall have enhanced supervisory powers, notably the possibility to conduct on-site inspections.

4 In the case of the natural and legal persons referred to in Article 2(1)(3)(a) to (e), Member States may allow the functions referred to in paragraph 1 to be performed on a risk-sensitive basis.

5 In the case of the persons referred to in Article 2(1)(3)(a) and (b), Member States may allow the functions referred to in paragraph 1 to be performed by self-regulatory bodies, provided that they comply with paragraph 2.

## SECTION 3

### **Cooperation**

#### *Article 38*

The Commission shall lend such assistance as may be needed to facilitate coordination, including the exchange of information between FIUs within the Community.



## SECTION 4

### Penalties

#### Article 39

1 Member States shall ensure that natural and legal persons covered by this Directive can be held liable for infringements of the national provisions adopted pursuant to this Directive. The penalties must be effective, proportionate and dissuasive.

2 Without prejudice to the right of Member States to impose criminal penalties, Member States shall ensure, in conformity with their national law, that the appropriate administrative measures can be taken or administrative sanctions can be imposed against credit and financial institutions for infringements of the national provisions adopted pursuant to this Directive. Member States shall ensure that these measures or sanctions are effective, proportionate and dissuasive.

3 In the case of legal persons, Member States shall ensure that at least they can be held liable for infringements referred to in paragraph 1 which are committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- a a power of representation of the legal person;
- b an authority to take decisions on behalf of the legal person, or
- c an authority to exercise control within the legal person.

4 In addition to the cases already provided for in paragraph 3, Member States shall ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 3 has made possible the commission of the infringements referred to in paragraph 1 for the benefit of a legal person by a person under its authority.

## CHAPTER VI

### IMPLEMENTING MEASURES

#### Article 40

1 In order to take account of technical developments in the fight against money laundering or terrorist financing and to ensure uniform implementation of this Directive, the Commission may, in accordance with the procedure referred to in Article 41(2), adopt the following implementing measures:

- a clarification of the technical aspects of the definitions in Article 3(2)(a) and (d), (6), (7), (8), (9) and (10);
- b establishment of technical criteria for assessing whether situations represent a low risk of money laundering or terrorist financing as referred to in Article 11(2) and (5);
- c establishment of technical criteria for assessing whether situations represent a high risk of money laundering or terrorist financing as referred to in Article 13;
- d establishment of technical criteria for assessing whether, in accordance with Article 2(2), it is justified not to apply this Directive to certain legal or natural persons carrying out a financial activity on an occasional or very limited basis.

2 In any event, the Commission shall adopt the first implementing measures to give effect to paragraphs 1(b) and 1(d) by 15 June 2006.

3 The Commission shall, in accordance with the procedure referred to in Article 41(2), adapt the amounts referred to in Articles 2(1)(3)(e), 7(b), 10(1) and 11(5)(a) and (d) taking into account Community legislation, economic developments and changes in international standards.

4 Where the Commission finds that a third country does not meet the conditions laid down in Article 11(1) or (2), Article 28(3), (4) or (5), or in the measures established in accordance with paragraph 1(b) of this Article or in Article 16(1)(b), or that the legislation of that third country does not permit application of the measures required under the first subparagraph of Article 31(1), it shall adopt a decision so stating in accordance with the procedure referred to in Article 41(2).

#### *Article 41*

1 The Commission shall be assisted by a Committee on the Prevention of Money Laundering and Terrorist Financing, hereinafter ‘the Committee’.

2 Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof and provided that the implementing measures adopted in accordance with this procedure do not modify the essential provisions of this Directive.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3 The Committee shall adopt its Rules of Procedure.

4 Without prejudice to the implementing measures already adopted, the implementation of the provisions of this Directive concerning the adoption of technical rules and decisions in accordance with the procedure referred to in paragraph 2 shall be suspended four years after the entry into force of this Directive. On a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the Treaty and, to that end, shall review them prior to the expiry of the four-year period.

## CHAPTER VII

### FINAL PROVISIONS

#### *Article 42*

By 15 December 2009, and at least at three-yearly intervals thereafter, the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and the Council. For the first such report, the Commission shall include a specific examination of the treatment of lawyers and other independent legal professionals.

#### *Article 43*

By 15 December 2010, the Commission shall present a report to the European Parliament and to the Council on the threshold percentages in Article 3(6), paying particular attention to the possible expediency and consequences of a reduction of the percentage in points (a)(i), (b)(i) and (b)(iii) of Article 3(6) from 25 % to 20 %. On the basis of the report the Commission may submit a proposal for amendments to this Directive.

*Article 44*

Directive 91/308/EEC is hereby repealed.

References made to the repealed Directive shall be construed as being made to this Directive and should be read in accordance with the correlation table set out in the Annex.

*Article 45*

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 December 2007. They shall forthwith communicate to the Commission the text of those provisions together with a table showing how the provisions of this Directive correspond to the national provisions adopted.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 46*

This Directive shall enter into force on the 20th day after its publication in the *Official Journal of the European Union*.

*Article 47*

This Directive is addressed to the Member States.

Done at Strasbourg, 26 October 2005.

*For the European Parliament*

*The President*

J. BORRELL FONTELLES

*For the Council*

*The President*

D. ALEXANDER

*Status: This is the original version (as it was originally adopted).*

## ANNEX

## CORRELATION TABLE

<b>This Directive</b>	<b>Directive 91/308/EEC</b>
Article 1(1)	Article 2
Article 1(2)	Article 1(C)
Article 1(2)(a)	Article 1(C) first point
Article 1(2)(b)	Article 1(C) second point
Article 1(2)(c)	Article 1(C) third point
Article 1(2)(d)	Article 1(C) fourth point
Article 1(3)	Article 1(C), third paragraph
Article 1(4)	
Article 1(5)	Article 1(C), second paragraph
Article 2(1)(1)	Article 2a(1)
Article 2(1)(2)	Article 2a(2)
Article 2(1)(3)(a), (b) and (d) to (f)	Article 2a(3) to (7)
Article 2(1)(3)(c)	
Article 2(2)	
Article 3(1)	Article 1(A)
Article 3(2)(a)	Article 1(B)(1)
Article 3(2)(b)	Article 1(B)(2)
Article 3(2)(c)	Article 1(B)(3)
Article 3(2)(d)	Article 1(B)(4)
Article 3(2)(e)	
Article 3(2)(f)	Article 1(B), second paragraph
Article 3(3)	Article 1(D)
Article 3(4)	Article 1(E), first paragraph
Article 3(5)	Article 1(E), second paragraph
Article 3(5)(a)	
Article 3(5)(b)	Article 1(E), first indent
Article 3(5)(c)	Article 1(E), second indent
Article 3(5)(d)	Article 1(E), third indent
Article 3(5)(e)	Article 1(E), fourth indent
Article 3(5)(f)	Article 1(E), fifth indent, and third paragraph
Article 3(6)	

*Status: This is the original version (as it was originally adopted).*

Article 3(7)	
Article 3(8)	
Article 3(9)	
Article 3(10)	
Article 4	Article 12
Article 5	Article 15
Article 6	
Article 7(a)	Article 3(1)
Article 7(b)	Article 3(2)
Article 7(c)	Article 3(8)
Article 7(d)	Article 3(7)
Article 8(1)(a)	Article 3(1)
Article 8(1)(b) to (d)	
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*Status: This is the original version (as it was originally adopted).*

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- (1) Opinion delivered on 11 May 2005 (not yet published in the Official Journal).
- (2) [OJ C 40, 17.2.2005, p. 9.](#)
- (3) Opinion of the European Parliament of 26 May 2005 (not yet published in the Official Journal) and Council Decision of 19 September 2005.
- (4) [OJ L 166, 28.6.1991, p. 77.](#) Directive as amended by Directive 2001/97/EC of the European Parliament and of the Council ([OJ L 344, 28.12.2001, p. 76.](#))
- (5) [OJ L 182, 5.7.2001, p. 1.](#)
- (6) [OJ L 281, 23.11.1995, p. 31.](#) Directive as amended by Regulation (EC) No 1882/2003 ([OJ L 284, 31.10.2003, p. 1.](#))
- (7) [OJ L 271, 24.10.2000, p. 4.](#)
- (8) [OJ L 184, 17.7.1999, p. 23.](#)
- (9) [OJ L 164, 22.6.2002, p. 3.](#)
- (10) [OJ L 126, 26.5.2000, p. 1.](#) Directive as last amended by Directive 2005/1/EC ([OJ L 79, 24.3.2005, p. 9.](#))
- (11) [OJ L 345, 19.12.2002, p. 1.](#) Directive as last amended by Directive 2005/1/EC.
- (12) [OJ L 145, 30.4.2004, p. 1.](#)
- (13) [OJ L 9, 15.1.2003, p. 3.](#)
- (14) [OJ L 351, 29.12.1998, p. 1.](#)
- (15) [OJ C 316, 27.11.1995, p. 49.](#)
- (16) [OJ L 275, 27.10.2000, p. 39.](#)
- (17) [OJ L 35, 11.2.2003, p. 1.](#)