

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the use of the financial system for the purpose of money laundering and terrorist financing (Text with EEA relevance) (repealed)

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

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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;

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- 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>(1)</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;

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- 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*

[<sup>F1</sup> 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 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 payment institutions as defined in Article 4(4) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market<sup>(2)</sup>, which mainly provide the payment service listed in point 6 of the Annex to that Directive, including natural and legal persons benefiting from a waiver under Article 26 of that Directive, and meeting the requirements laid down in Articles 16 and 18 of this Directive, even if the documents or data on

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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 referred to in Article 3(2) (a) and payment institutions as defined in Article 4(4) of Directive 2007/64/EC, which mainly provide the payment service listed in point 6 of the Annex to that Directive, 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 of this Directive, 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 of this Directive, 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.

#### **Textual Amendments**

- F1** Substituted by [Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC \(Text with EEA relevance\).](#)

#### *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).

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### *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.

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- (1) OJ L 275, 27.10.2000, p. 39.  
(2) [<sup>F1</sup>OJ L 319, 5.12.2007, p. 1]

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#### **Textual Amendments**

- F1** Substituted by Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (Text with EEA relevance).