

Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of ‘politically exposed person’ and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis

COMMISSION DIRECTIVE 2006/70/EC

of 1 August 2006

laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of ‘politically exposed person’ and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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<sup>(1)</sup>, and in particular points (a), (b) and (d) of Article 40(1) thereof,

Whereas:

- (1) Directive 2005/60/EC requires institutions and persons covered to apply, on a risk-sensitive basis, enhanced customer due diligence measures in respect of transactions or business relationships with politically exposed persons residing in another Member State or in a third country. In the context of this risk analysis, it is appropriate for the resources of the institutions and persons covered to be focused in particular on products and transactions that are characterised by a high risk of money laundering. Politically exposed persons are understood to be persons entrusted with prominent public functions, their immediate family members or persons known to be close associates of such persons. In order to provide for a coherent application of the concept of politically exposed person, when determining the groups of persons covered, it is essential to take into consideration the social, political and economic differences between countries concerned.
- (2) Institutions and persons covered by Directive 2005/60/EC may fail to identify a customer as falling within one of the politically exposed person categories, despite having taken reasonable and adequate measures in this regard. In those circumstances, Member States, when exercising their powers in relation to the application of that Directive, should give due consideration to the need to ensure that those persons do not automatically incur liability for such failure. Member States should also consider facilitating compliance with that Directive by providing the necessary guidance to institutions and persons in this connection.

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- (3) Public functions exercised at levels lower than national should normally not be considered prominent. However, where their political exposure is comparable to that of similar positions at national level, institutions and persons covered by this Directive should consider, on a risk-sensitive basis, whether persons exercising those public functions should be considered as politically exposed persons.
- (4) Where Directive 2005/60/EC requires institutions and persons covered to identify close associates of natural persons who are entrusted with prominent public functions, this requirement applies to the extent that the relation with the associate is publicly known or that the institution or person has reasons to believe that such relation exists. Thus it does not presuppose active research on the part of the institutions and persons covered by the Directive.
- (5) Persons falling under the concept of politically exposed persons should not be considered as such after they have ceased to exercise prominent public functions, subject to a minimum period.
- (6) Since the adaptation, on a risk-sensitive basis, of the general customer due diligence procedures to low-risk situations is the normal tool under Directive 2005/60/EC, and given the fact that simplified customer due diligence procedures require adequate checks and balances elsewhere in the system aiming at preventing money laundering and terrorist financing, the application of simplified customer due diligence procedures should be restricted to a limited number of cases. In these cases, the requirements for institutions and persons covered by that Directive do not disappear, and these are expected to, *inter alia*, conduct ongoing monitoring of the business relations, in order to be able to detect complex or unusually large transactions which have no apparent economic or visible lawful purpose.
- (7) Domestic public authorities are generally considered as low-risk customers within their own Member State and, in accordance with Directive 2005/60/EC, may be subject to simplified customer due diligence procedures. However, none of the Community institutions, bodies, offices or agencies, including the European Central Bank (ECB), directly qualify in the Directive for simplified customer due diligence under the 'domestic public authority' category or, in the case of the ECB, under the 'credit and financial institution' category. However, since these entities do not appear to present a high risk of money laundering or terrorist financing, they should be recognised as low-risk customers and benefit from the simplified customer due diligence procedures provided that appropriate criteria are fulfilled.
- (8) Furthermore, it should be possible to apply simplified customer due diligence procedures in the case of legal entities undertaking financial activities which do not fall under the definition of financial institution under Directive 2005/60/EC but which are subject to national legislation pursuant to that Directive and comply with requirements concerning sufficient transparency as to their identity and adequate control mechanisms, in particular enhanced supervision. This could be the case for undertakings providing general insurance services.

- (9) It should be possible to apply simplified customer due diligence procedures to products and related transactions in limited circumstances, for example where the benefits of the financial product in question cannot generally be realised for the benefit of third parties and those benefits are only realisable in the long term, such as some investment insurance policies or savings products, or where the financial product aims at financing physical assets in the form of leasing agreements in which the legal and beneficial title of the underlying asset remains with the leasing company or in the form of low value consumer credit, provided the transactions are carried out through bank accounts and are below an appropriate threshold. State controlled products which are generally addressed to specific categories of clients, such as savings products for the benefit of children, should benefit from simplified customer due diligence procedures even if not all the criteria are fulfilled. State control should be understood as an activity beyond normal supervision on financial markets and should not be construed as covering products, such as debt securities, issued directly by the State.
- (10) Before allowing use of simplified customer due diligence procedures, Member States should assess whether the customers or the products and related transactions represent a low-risk of money laundering or terrorist financing, notably by paying special attention to any activity of these customers or to any type of products or transactions which may be regarded as particularly likely, by their nature, to be used or abused for money laundering or terrorist financing purposes. In particular, any attempt by customers in relation to low-risk products to act anonymously or hide their identity should be considered as a risk factor and as potentially suspicious.
- (11) In certain circumstances, natural persons or legal entities may conduct financial activities on an occasional or very limited basis, as a complement to other non-financial activities, such as hotels that provide currency exchange services to their clients. Directive 2005/60/EC allows Member States to decide that financial activities of that kind fall outside its scope. The assessment of the occasional or very limited nature of the activity should be made by reference to quantitative thresholds in relation to the transactions and the turnover of the business concerned. These thresholds should be decided at national level, depending on the type of financial activity, in order to take account of differences between countries.
- (12) Moreover, a person engaging in a financial activity on an occasional or very limited basis should not provide a full range of financial services to the public but only those needed for improving the performance of its main business. When the main business of the person relates to an activity covered by Directive 2005/60/EC, the exemption for occasional or limited financial activities should not be granted, except in relation to traders in goods.
- (13) Some financial activities, such as money transmission or remittance services, are more likely to be used or abused for money laundering or terrorist financing purposes. It is therefore necessary to ensure that these or similar financial activities are not exempted from the scope of Directive 2005/60/EC.
- (14) Provision should be made for decisions pursuant to Article 2(2) of Directive 2005/60/EC to be withdrawn as quickly as possible if necessary.

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- (15) Member States should ensure that the exemption decisions are not abused for money laundering or terrorist financing purposes. They notably should avoid adopting decisions under Article 2(2) of Directive 2005/60/EC in cases where monitoring or enforcement activities by national authorities present special difficulties as a result of overlapping competences between more than one Member State, such as the provision of financial services on board ships providing transport services between ports situated in different Member States.
- (16) The application of this Directive is without prejudice to the application of Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism<sup>(2)</sup> and Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan<sup>(3)</sup>.
- (17) The measures provided for in this Directive are in accordance with the opinion of the Committee on the Prevention of Money Laundering and Terrorist Financing,

HAS ADOPTED THIS DIRECTIVE:

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- (1) [OJ L 309, 25.11.2005, p. 15.](#)
- (2) [OJ L 344, 28.12.2001, p. 70.](#) Regulation as last amended by Decision 2006/379/EC ([OJ L 144, 31.5.2006, p. 21](#)).
- (3) [OJ L 139, 29.5.2002, p. 9.](#) Regulation as last amended by Commission Regulation (EC) No 674/2006 ([OJ L 116, 29.4.2006, p. 58](#)).