

Money laundering: prevention of the use of the financial system, including terrorist financing (repeal. Directive 91/308/EEC)

2004/0137(COD) - 26/10/2005 - Final act

PURPOSE : to adopt coordinating measures in order to prevent money launderers and terrorist financiers taking advantage of the freedom of capital movements and the freedom to supply financial services in the EU.

LEGISLATIVE ACT: Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

CONTENT : This directive applies to:

- 1) credit institutions;
- 2) financial institutions;
- 3) the following legal or natural persons acting in the exercise of their professional activities:
 - auditors, external accountants and tax advisors;
 - 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: buying and selling of real property or business entities; managing of client money, securities or other assets; opening or management of bank, savings or securities accounts; organisation of contributions necessary for the creation, operation or management of companies; creation, operation or management of trusts, companies or similar structures;
 - trust or company service providers not already covered under points above;
 - real estate agents;
 - 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;
 - casinos.

The directive imposes customer due diligence measures. Member States must prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks. Due diligence must be exercised by institutions and persons covered by the Directive in the following cases:

- when establishing a business relationship;

- 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;
- when there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold;
- when there are doubts about the veracity or adequacy of previously obtained customer identification data.

Customer due diligence measures shall comprise:

- identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;
- 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;
- obtaining information on the purpose and intended nature of the business relationship;
- 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.

The general rule is that 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. They 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.

Member States shall require the institutions and persons covered by the Directive to apply, on a risk-sensitive basis, enhanced customer due diligence measures, in addition to the measures referred to, 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 and in other situations representing a high risk of money laundering or terrorist financing which meet the technical criteria. The situations set out in the directive include those where:

- the customer has not been physically present for identification purposes;
- in respect of cross-frontier correspondent banking relationships with respondent institutions from third countries;
- in respect of transactions or business relationships with politically exposed persons residing in another Member State or in a third country.

The institutions and persons covered by the Directive must 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.

The Directive contains provisions on record keeping and statistical data. The institutions and persons

covered by the Directive must keep certain prescribed 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.

By 15 December 2009, and at least at three-yearly intervals thereafter, the Commission shall draw up a report on the implementation of the 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.

ENTRY INTO FORCE : 15/12/2005.

DATE FOR TRANSPOSITION : 15/12/2007.