

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

2004/0137(COD) - 01/08/2006 - Implementing legislative act

ACT: Commission Directive 2006/70/EC 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.

CONTENT: the purpose of this implementing Directive is threefold.

Firstly, to clarify the definition of “politically exposed person”.

Secondly, to establish when and to whom the “simplified customer due diligence” procedures may apply.

Thirdly, to set out the technical criteria for exempting certain legal or natural persons, who carry out a financial activity on an occasional or very limited basis.

Politically exposed persons.

The Directive defines “*natural persons who are or have been entrusted with prominent public functions*” as:

- heads of state, heads of government, ministers and deputy or assistant ministers;
- members of Parliament;
- members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
- members of courts of auditors or of the boards of central banks;
- ambassadors, chargés d'affaires and high ranking officers in the armed forces;
- members of the administrative, management or supervisory bodies of state owned enterprises.

“*Immediate family members*” are defined as:

- the spouse;
- any partner considered by national law as equivalent to the spouse;
- the children and their spouses or partners;
- the parents.

“*Persons known to be close associates*” are defined as:

- any person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations.
- any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit of the person who have been entrusted with prominent public functions (see above).

Lastly, persons falling under the concept of politically exposed persons should not be considered as such after they have ceased to exercise prominent public functions.

Simplified customer due diligence

The application of the simplified customer due diligence procedures should be restricted to just a few cases. In cases where the simplified procedure may apply institutions and persons will still be expected to monitor business transaction in order to detect complex or unusually large transactions which have no apparent economic justification or lawful purpose. The institutions that may benefit from the “simplified customer due diligence procedures” include;

- domestic public authorities;
- the ECB and the Community institutions since these entities do not appear to present a high risk of money laundering or a conduit for terrorist financing. They have, therefore, been recognised as low-risk customers;
- general insurance services;
- savings benefits for children;
- some investment insurance policies and some leasing agreements;
- low value consumer credit.

“Low-risk customers” which act anonymously or try to hide their identity will be considered a risk factor and therefore suspicious.

Financial activity on an occasional or very limited basis.

In certain circumstances, natural persons or legal entities may conduct financial activities on an occasional or very limited basis – such as hotels providing currency exchange services to their clients, in which case, Directive 2005/60/EC allows such persons/entities to be exempted from its provisions. This implementing Directive sets out the conditions for exemptions. Exemptions will be based on references to quantitative thresholds, transactions and turn over. The thresholds will be decided at a national level and depend on the type of activity concerned.

The Directive does state that those activities which are most likely to be abused by terrorists – i.e. money transmission or remittance services – will not be exempted from the scope of Directive 2005/60/EC. Further, as soon as a person or entity engages in activities that provide a full range of financial services, they will then lose their exemption. Member States are requested to ensure that the exemption decisions are not abused for money laundering or terrorist financing purposes by setting up a “risk-based” monitoring system.

Specifically speaking the Directive states that exemptions may be granted on condition that:

- the financial activity is limited in absolute terms;
- the financial activity is limited on a transaction basis;
- the financial activity is not the main activity;
- the financial activity is ancillary and directly related to the main activity;
- the financial activity is provided only to the customers of the main activity and is not generally offered to the public.

The total turnover of the financial activity must be sufficiently low. Although the individual Member States must decide the level of threshold it will not exceed EUR 1000, nor must the total turnover of the legal or natural person concerned exceed 5%.

TRANSPOSITION: 15 December 2007.

ENTRY INTO FORCE: 24 August 2006.