

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the use of the financial system for the purpose of money laundering and terrorist financing (Text with EEA relevance) (repealed)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 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>(1)</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>(2)</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>(3)</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>(4)</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>(5)</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>(6)</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>(7)</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.

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

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- (1) OJ L 164, 22.6.2002, p. 3.
- (2) 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).
- (3) OJ L 345, 19.12.2002, p. 1. Directive as last amended by Directive 2005/1/EC.
- (4) OJ L 145, 30.4.2004, p. 1.
- (5) OJ L 9, 15.1.2003, p. 3.
- (6) OJ L 351, 29.12.1998, p. 1.
- (7) OJ C 316, 27.11.1995, p. 49.