

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the use of the financial system for the purpose of money laundering and terrorist financing (Text with EEA relevance) (repealed)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

ENFORCEMENT MEASURES

SECTION 1

Internal procedures, training and feedback

Article 34

1 Member States shall require that the institutions and persons covered by this Directive establish adequate and appropriate policies and procedures of customer due diligence, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication in order to forestall and prevent operations related to money laundering or terrorist financing.

2 Member States shall require that credit and financial institutions covered by this Directive communicate relevant policies and procedures where applicable to branches and majority-owned subsidiaries in third countries.

Article 35

1 Member States shall require that the institutions and persons covered by this Directive take appropriate measures so that their relevant employees are aware of the provisions in force on the basis of this Directive.

These measures shall include participation of their relevant employees in special ongoing training programmes to help them recognise operations which may be related to money laundering or terrorist financing and to instruct them as to how to proceed in such cases.

Where a natural person falling within any of the categories listed in Article 2(1)(3) performs his professional activities as an employee of a legal person, the obligations in this Section shall apply to that legal person rather than to the natural person.

2 Member States shall ensure that the institutions and persons covered by this Directive have access to up-to-date information on the practices of money launderers and terrorist financiers and on indications leading to the recognition of suspicious transactions.

3 Member States shall ensure that, wherever practicable, timely feedback on the effectiveness of and follow-up to reports of suspected money laundering or terrorist financing is provided.

SECTION 2

Supervision

Article 36

1 Member States shall provide that currency exchange offices and trust and company service providers shall be licensed or registered and casinos be licensed in order to operate their business legally. Without prejudice to future Community legislation, Member States shall provide that money transmission or remittance offices shall be licensed or registered in order to operate their business legally.

2 Member States shall require competent authorities to refuse licensing or registration of the entities referred to in paragraph 1 if they are not satisfied that the persons who effectively direct or will direct the business of such entities or the beneficial owners of such entities are fit and proper persons.

Article 37

1 Member States shall require the competent authorities at least to effectively monitor and to take the necessary measures with a view to ensuring compliance with the requirements of this Directive by all the institutions and persons covered by this Directive.

2 Member States shall ensure that the competent authorities have adequate powers, including the power to compel the production of any information that is relevant to monitoring compliance and perform checks, and have adequate resources to perform their functions.

3 In the case of credit and financial institutions and casinos, competent authorities shall have enhanced supervisory powers, notably the possibility to conduct on-site inspections.

4 In the case of the natural and legal persons referred to in Article 2(1)(3)(a) to (e), Member States may allow the functions referred to in paragraph 1 to be performed on a risk-sensitive basis.

5 In the case of the persons referred to in Article 2(1)(3)(a) and (b), Member States may allow the functions referred to in paragraph 1 to be performed by self-regulatory bodies, provided that they comply with paragraph 2.

SECTION 3

Cooperation

Article 38

The Commission shall lend such assistance as may be needed to facilitate coordination, including the exchange of information between FIUs within the Community.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

SECTION 4

Penalties

Article 39

1 Member States shall ensure that natural and legal persons covered by this Directive can be held liable for infringements of the national provisions adopted pursuant to this Directive. The penalties must be effective, proportionate and dissuasive.

2 Without prejudice to the right of Member States to impose criminal penalties, Member States shall ensure, in conformity with their national law, that the appropriate administrative measures can be taken or administrative sanctions can be imposed against credit and financial institutions for infringements of the national provisions adopted pursuant to this Directive. Member States shall ensure that these measures or sanctions are effective, proportionate and dissuasive.

3 In the case of legal persons, Member States shall ensure that at least they can be held liable for infringements referred to in paragraph 1 which are committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- a a power of representation of the legal person;
- b an authority to take decisions on behalf of the legal person, or
- c an authority to exercise control within the legal person.

4 In addition to the cases already provided for in paragraph 3, Member States shall ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 3 has made possible the commission of the infringements referred to in paragraph 1 for the benefit of a legal person by a person under its authority.