

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,

Directive by providing the necessary guidance to institutions and persons in this connection.

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 ⁽¹⁾, 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

(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.

⁽¹⁾ OJ L 309, 25.11.2005, p. 15.

- (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.
- (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 ⁽¹⁾ 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 ⁽²⁾.

(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:

Article 1

Subject-matter

This Directive lays down implementing measures for Directive 2005/60/EC as regards the following:

1. the technical aspects of the definition of politically exposed persons set out in Article 3(8) of that Directive;
2. technical criteria for assessing whether situations represent a low risk of money laundering or terrorist financing as referred to in Article 11(2) and (5) of that Directive;
3. technical criteria for assessing whether, in accordance with Article 2(2) of Directive 2005/60/EC, it is justified not to apply that Directive to certain legal or natural persons carrying out a financial activity on an occasional or very limited basis.

Article 2

Politically exposed persons

1. For the purposes of Article 3(8) of Directive 2005/60/EC, 'natural persons who are or have been entrusted with prominent public functions' shall include the following:

- (a) heads of State, heads of government, ministers and deputy or assistant ministers;

⁽¹⁾ 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).

⁽²⁾ 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).

- (b) members of parliaments;
- (c) 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;
- (d) members of courts of auditors or of the boards of central banks;
- (e) ambassadors, *chargés d'affaires* and high-ranking officers in the armed forces;
- (f) members of the administrative, management or supervisory bodies of State-owned enterprises.

None of the categories set out in points (a) to (f) of the first subparagraph shall be understood as covering middle ranking or more junior officials.

The categories set out in points (a) to (e) of the first subparagraph shall, where applicable, include positions at Community and international level.

2. For the purposes of Article 3(8) of Directive 2005/60/EC, 'immediate family members' shall include the following:

- (a) the spouse;
- (b) any partner considered by national law as equivalent to the spouse;
- (c) the children and their spouses or partners;
- (d) the parents.

3. For the purposes of Article 3(8) of Directive 2005/60/EC, 'persons known to be close associates' shall include the following:

- (a) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in paragraph 1;

(b) 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 de facto of the person referred to in paragraph 1.

4. Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph 1 of this Article for a period of at least one year, institutions and persons referred to in Article 2(1) of Directive 2005/60/EC shall not be obliged to consider such a person as politically exposed.

Article 3

Simplified customer due diligence

1. For the purposes of Article 11(2) of Directive 2005/60/EC, Member States may, subject to paragraph 4 of this Article, consider customers who are public authorities or public bodies and who fulfil all the following criteria as customers representing a low risk of money laundering or terrorist financing:

- (a) the customer has been entrusted with public functions pursuant to the Treaty on European Union, the Treaties on the Communities or Community secondary legislation;
- (b) the customer's identity is publicly available, transparent and certain;
- (c) the activities of the customer, as well as its accounting practices, are transparent;
- (d) either the customer is accountable to a Community institution or to the authorities of a Member State, or appropriate check and balance procedures exist ensuring control of the customer's activity.

2. For the purposes of Article 11(2) of Directive 2005/60/EC, Member States may, subject to paragraph 4 of this Article, consider customers who are legal entities which do not enjoy the status of public authority or public body but which fulfil all the following criteria as customers representing a low risk of money laundering or terrorist financing:

- (a) the customer is an entity that undertakes financial activities outside the scope of Article 2 of Directive 2005/60/EC but to which national legislation has extended the obligations of that Directive pursuant to Article 4 thereof;
- (b) the identity of the customer is publicly available, transparent and certain;

(c) the customer is subject to a mandatory licensing requirement under national law for the undertaking of financial activities and licensing may be refused if the competent authorities are not satisfied that the persons who effectively direct or will direct the business of such an entity, or its beneficial owner, are fit and proper persons;

(d) the customer is subject to supervision, within the meaning of Article 37(3) of Directive 2005/60/EC, by competent authorities as regards compliance with the national legislation transposing that Directive and, where applicable, additional obligations under national legislation;

(e) failure by the customer to comply with the obligations referred to in point (a) is subject to effective, proportionate and dissuasive sanctions including the possibility of appropriate administrative measures or the imposition of administrative sanctions.

Entity, as referred to in point (a) of the first subparagraph, shall include subsidiaries only in so far as the obligations of Directive 2005/60/EC have been extended to them on their own account.

For the purposes of point (c) of the first subparagraph, the activity conducted by the customer shall be supervised by competent authorities. Supervision is to be understood in this context as meaning the type of supervisory activity with the highest supervisory powers, including the possibility of conducting on-site inspections. Such inspections shall include the review of policies, procedures, books and records, and shall extend to sample testing.

3. For the purposes of Article 11(5) of Directive 2005/60/EC, Member States may, subject to paragraph 4 of this Article, allow the institutions and persons covered by that Directive to consider products which fulfil all the following criteria, or transactions related to such products, as representing a low risk of money laundering or terrorist financing:

- (a) the product has a written contractual base;
- (b) the related transactions are carried out through an account of the customer with a credit institution covered by Directive 2005/60/EC or a credit institution situated in a third country which imposes requirements equivalent to those laid down in that Directive;
- (c) the product or related transactions are not anonymous and their nature is such that it allows for the timely application of Article 7(c) of Directive 2005/60/EC;

- (d) the product is subject to a predetermined maximum threshold;
- (e) the benefits of the product or related transactions cannot be realised for the benefit of third parties, except in the case of death, disablement, survival to a predetermined advanced age, or similar events;
- (f) in the case of products or related transactions allowing for the investment of funds in financial assets or claims, including insurance or other kind of contingent claims:
 - (i) the benefits of the product or related transactions are only realisable in the long term;
 - (ii) the product or related transactions cannot be used as collateral;
 - (iii) during the contractual relationship, no accelerated payments are made, no surrender clauses are used and no early termination takes place.

For the purposes of point (d) of the first subparagraph, the thresholds established in Article 11(5)(a) of Directive 2005/60/EC shall apply in the case of insurance policies or savings products of similar nature. Without prejudice to the third subparagraph, in the other cases the maximum threshold shall be EUR 15 000. Member States may derogate from that threshold in the case of products which are related to the financing of physical assets and where the legal and beneficial title of the assets is not transferred to the customer until termination of the contractual relationship, provided that the threshold established by the Member State for the transactions related to this type of product, whether the transaction is carried out in a single operation or in several operations which appear to be linked, does not exceed EUR 15 000 per year.

Member States may derogate from the criteria set out in points (e) and (f) of the first subparagraph in the case of products the characteristics of which are determined by their relevant domestic public authorities for purposes of general interest, which benefit from specific advantages from the State in the form of direct grants or tax rebates, and the use of which is subject to control by those authorities, provided that the benefits of the product are realisable only in the long term and that the threshold established for the purposes of point (d) of the first subparagraph is sufficiently low. Where appropriate, that threshold may be set as a maximum annual amount.

4. In assessing whether the customers or products and transactions referred to in paragraphs 1, 2 and 3 represent a low risk of money laundering or terrorist financing, Member States shall pay special attention to any activity of those customers or to any type of product or transaction which may be regarded as particularly likely, by its nature, to be used or abused for money laundering or terrorist financing purposes.

Member States shall not consider that customers or products and transactions referred to in paragraphs 1, 2 and 3 represent a low risk of money laundering or terrorist financing if there is information available to suggest that the risk of money laundering or terrorist financing may not be low.

Article 4

Financial activity on an occasional or very limited basis

1. For the purposes of Article 2(2) of Directive 2005/60/EC, Member States may, subject to paragraph 2 of this Article, consider legal or natural persons who engage in a financial activity which fulfils all the following criteria as not falling within the scope of Article 3(1) or (2) of that Directive:

- (a) the financial activity is limited in absolute terms;
- (b) the financial activity is limited on a transaction basis;
- (c) the financial activity is not the main activity;
- (d) the financial activity is ancillary and directly related to the main activity;
- (e) with the exception of the activity referred to in point (3)(e) of Article 2(1) of Directive 2005/60/EC, the main activity is not an activity mentioned in Article 2(1) of that Directive;
- (f) the financial activity is provided only to the customers of the main activity and is not generally offered to the public.

For the purposes of point (a) of the first subparagraph, the total turnover of the financial activity may not exceed a threshold which must be sufficiently low. That threshold shall be established at national level, depending on the type of financial activity.

For the purposes of point (b) of the first subparagraph, Member States shall apply a maximum threshold per customer and single transaction, whether the transaction is carried out in a single operation or in several operations which appear to be linked. That threshold shall be established at national level, depending on the type of financial activity. It shall be sufficiently low in order to ensure that the types of transactions in question are an impractical and inefficient method for laundering money or for terrorist financing, and shall not exceed EUR 1 000.

For the purposes of point (c) of the first subparagraph, Member States shall require that the turnover of the financial activity does not exceed 5 % of the total turnover of the legal or natural person concerned.

2. In assessing the risk of money laundering or terrorist financing occurring for the purposes of Article 2(2) of Directive 2005/60/EC, Member States shall pay special attention to any financial activity which is regarded as particularly likely, by its nature, to be used or abused for money laundering or terrorist financing purposes.

Member States shall not consider that the financial activities referred to in paragraph 1 represent a low risk of money laundering or terrorist financing if there is information available to suggest that the risk of money laundering or terrorist financing may not be low.

3. Any decision pursuant to Article 2(2) of Directive 2005/60/EC shall state the reasons on which it is based. Member States shall provide for the possibility of withdrawing that decision should circumstances change.

4. Member States shall establish risk-based monitoring activities or take any other adequate measures to ensure that the exemption granted by decisions pursuant to Article 2(2) of Directive 2005/60/EC is not abused by possible money launderers or financiers of terrorism.

Article 5

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 December 2007 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 6

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 1 August 2006.

For the Commission

Charlie McCREEVY

Member of the Commission