

欧洲议会和欧盟理事会《关于修订理事会<关于防止利用金融系统洗钱的指令>的指令》
(2001)

**Council Directive on Prevention of the Use of the Financial System for the Purpose of Money
Laundering**

背景：1991年6月10日，欧洲共同体理事会在卢森堡通过了欧盟的第一个反洗钱指令，即《关于防止利用金融系统洗钱的指令》(91/308/EEC)。该指令的颁布考虑到建立欧洲经济共同体的条约，以及反洗钱行动与金融系统的密切相关性和其国际协作的本质。

2001年12月，欧洲议会和欧盟理事会在布鲁塞尔通过了欧盟的第二个反洗钱指令，即《关于修订理事会<关于防止利用金融系统洗钱的指令>的指令》(2001/97/EC)。2001/97/EC号指令考虑到建立欧盟的条约、服务贸易总协议（General Agreement on Trade in Service）的原则以及国际洗钱的新趋势，通过修订“信用机构”和“金融机构”的界定等来最大范围地覆盖金融业，对上游犯罪做出了进一步的核定，将履行必要义务的对象进行了扩展，对公证人等专业人员的相关行为和成员国应负义务做出了一定规定。

其中91/308/EEC号指令的第1、3、6、7、9、11条由2001/97/EC中的新条款代替，第2、8、10条分别添加了新内容，而第4、5、8、10、12条中的部分术语做了替代。本文以修订后的指令为准。

Article 1

For the purpose of this Directive:

(A) Credit institution means a credit institution, as defined in Article 1(1) first subparagraph of Directive 2000/12/EC(9) and includes branches within the meaning of Article 1(3) of that Directive[1] and located in the Community[2], of credit institutions having their head offices inside or outside the Community;

(B) 'Financial institution' means:

1. an undertaking[3] other than a credit institution whose principal activity is to carry out one or more of the operations included in numbers 2 to 12 and number 14 of the list set out in Annex I to Directive 2000/12/EC; these include the activities of currency exchange offices (bureaux de change)[4] and of money transmission/remittance offices[5];

2. an insurance company duly authorised in accordance with Directive 79/267/EEC(10), insofar[6] as it carries out activities covered by that Directive;

3. an investment firm as defined in Article 1(2) of Directive 93/22/EEC(11);

4. a collective investment undertaking[7] marketing its units[8] or shares.

This definition of financial institution includes branches located in the Community of financial institutions, whose head offices are inside or outside the Community,

(C) 'Money laundering' means the following conduct when committed intentionally:

- 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;
- 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;
- 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;
- 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 indents.

Knowledge, intent or purpose required as an element of the abovementioned activities may be inferred from objective factual circumstances.

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.

(D) 'Property' means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interests in such assets.

(E) 'Criminal activity' means any kind of criminal involvement in the commission of a serious crime.

Serious crimes are, at least:

- any of the offences defined in Article 3(1)(a) of the Vienna Convention[9];
- the activities of criminal organisations as defined in Article 1 of Joint Action 98/733/JHA(12);

- 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(13);

- corruption;

- an offence which may generate substantial proceeds and which is punishable by a severe sentence of imprisonment in accordance with the penal law[10] of the Member State.

Member States shall before 15 December 2004 amend the definition provided for in this indent in order to bring this definition into line with the definition of serious crime of Joint Action 98/699/JHA. The Council invites the Commission to present before 15 December 2004 a proposal for a Directive amending in that respect this Directive.

Member States may designate[11] any other offence as a criminal activity for the purposes of this Directive.

(F) 'Competent authorities' means the national authorities empowered by law or regulation to supervise the activity of any of the institutions or persons subject to this Directive.

Article 2

(A) Member States shall ensure that the obligations laid down in this Directive are imposed on the following institutions:

1. credit institutions as defined in point A of Article 1;

2. financial institutions as defined in point B of Article 1;

and on the following legal or natural persons acting in the exercise of their professional activities:

3. auditors, external accountants and tax advisors;

4. real estate agents;

5. notaries[12] and other independent legal professionals, when they participate, whether:

(a) 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;
- (b) or by acting on behalf of and for their client in any financial or real estate transaction;
6. dealers in high-value goods, such as precious stones or metals, or works of art, auctioneers, whenever payment is made in cash, and in an amount of EUR 15000 or more;

7. casinos.

(B) Member States shall ensure that money laundering as defined in this Directive is prohibited.

Article 3

1. Member States shall ensure that the institutions and persons subject to this Directive require identification of their customers by means of supporting evidence when entering into business relations, particularly, in the case of the institutions, when opening an account or savings accounts, or when offering safe custody facilities.

2. The identification requirement shall also apply for any transaction with customers other than those referred to in paragraph 1, involving a sum amounting to EUR 15000 or more, whether the transaction is carried out in a single operation or in several operations which seem to be linked. Where the sum is not known at the time when the transaction is undertaken, the institution or person concerned shall proceed with identification as soon as it or he is apprised^[13] of the sum and establishes that the threshold has been reached.

3. By way of derogation^[14] from the preceding paragraphs, the identification requirements with regard to insurance policies written by insurance undertakings within the meaning of Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance (third life assurance Directive)⁽¹⁴⁾, where they perform activities which fall within the scope of that Directive shall not be required where the periodic premium^[15] amount or amounts to be paid in any given year does or do not exceed EUR 1000 or where a single premium is paid amounting to EUR 2500 or less. ^[16]If the periodic premium amount or amounts to be paid in any given year is or are increased so as to exceed the EUR 1000 threshold, identification shall be required.

4. Member States may provide that the identification requirement is not compulsory for insurance

policies in respect of pension schemes taken out[17] by virtue of[18] a contract of employment or the insured's occupation[19], provided that such policies contain no surrender clause and may not be used as collateral for a loan.

5. By way of derogation from the preceding paragraphs, all casino customers shall be identified if they purchase or sell gambling chips with a value of EUR 1000 or more.

6. Casinos subject to State supervision shall be deemed[20] in any event to have complied with the identification requirement laid down in this Directive if they register and identify their customers immediately on entry, regardless of the number of gambling chips purchased.

7. In the event of doubt as to whether the customers referred to in the above paragraphs are acting on their own behalf, or where it is certain that they are not acting on their own behalf, the institutions and persons subject to this Directive shall take reasonable measures to obtain information as to the real identity of the persons on whose behalf those customers are acting.

8. The institutions and persons subject to this Directive shall carry out such identification, even where the amount of the transaction is lower than the threshold laid down, wherever there is suspicion of money laundering.

9. The institutions and persons subject to this Directive shall not be subject to the identification requirements provided for in this Article where the customer is a credit or financial institution covered by this Directive or a credit or financial institution situated in a third country which imposes, in the opinion of the relevant Member States, equivalent requirements to those laid down by this Directive.

10. Member States may provide that the identification requirements regarding transactions referred to in paragraphs 3 and 4 are fulfilled when it is established that the payment for the transaction is to be debited[21] from an account opened in the customer's name with a credit institution subject to this Directive according to the requirements of paragraph 1.[22]

11. Member States shall, in any case, ensure that the institutions and persons subject to this Directive take specific and adequate measures necessary to compensate for the greater risk of money laundering which arises when establishing business relations or entering into a transaction with a customer who has not been physically present for identification purposes ('non-face to face' operations). Such measures shall ensure that the customer's identity is established, for example, by requiring additional documentary evidence, or supplementary measures to verify or certify the documents supplied, or confirmatory certification by an institution subject to this Directive, or by requiring that the first payment of the operations is carried out through an account opened in the customer's name with a credit institution subject to this Directive. The internal control procedures laid down in Article 11(1) shall take specific account of these measures.

Article 4

Member States shall ensure that the institutions and persons subject to this Directive keep the following for use as evidence in any investigation into money laundering:

- in the case of identification, a copy or the references[23] of the evidence required, for a period of at least five years after the relationship with their customer has ended,
- in the case of transactions, the supporting evidence and records, consisting of the original documents or copies admissible[24] in court proceedings under the applicable national legislation for a period of at least five years following execution of the transactions.

Article 5

Member States shall ensure that the institutions and persons subject to this Directive examine with special attention any transaction which they regard as particularly likely, by its nature, to be related to money laundering.

Article 6

1. Member States shall ensure that the institutions and persons subject to this Directive and their directors and employees cooperate fully with the authorities responsible for combating money laundering:

(a) by informing those authorities, on their own initiative[25], of any fact which might be an indication of money laundering;

(a) by furnishing those authorities, at their request, with all necessary information, in accordance with the procedures established by the applicable legislation.

2. The information referred to in paragraph 1 shall be forwarded to the authorities responsible for combating money laundering of the Member State in whose territory the institution or person forwarding the information is situated. The person or persons designated by the institutions and persons in accordance with the procedures provided for in Article 11(1)(a) shall normally forward

the information.

3. In the case of the notaries and independent legal professionals referred to in Article 2a(5), Member States may designate an appropriate self-regulatory body of the profession concerned as the authority to be informed of the facts referred to in paragraph 1(a) and in such case shall lay down the appropriate forms of cooperation between that body and the authorities responsible for combating money laundering.

Member States shall not be obliged to apply the obligations laid down in paragraph 1 to notaries, independent legal professionals, auditors, external accountants and tax advisors with regard to information they receive from or obtain on one of their clients, in the course of ascertaining^[26] the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

Article 7

Member States shall ensure that the institutions and persons subject to this Directive refrain^[27] from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the authorities referred to in Article 6. Those authorities may, under conditions determined by their national legislation, give instructions not to execute the operation. Where such a transaction is suspected of giving rise to money laundering and where to refrain in such manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money-laundering operation, the institutions and persons concerned shall apprise the authorities immediately afterwards.

Article 8

1. The institutions and persons subject to this Directive and their directors and employees shall not disclose to the customer concerned nor to other third persons that information has been transmitted to the authorities in accordance with Articles 6 and 7 or that a money laundering investigation is being carried out.

2. Member States shall not be obliged under this Directive to apply the obligation laid down in paragraph 1 to the professions mentioned in the second paragraph of Article 6(3).

Article 9

The disclosure in good faith to the authorities responsible for combating money laundering by an institution or person subject to this Directive or by an employee or director of such an institution or person of the information referred to in Articles 6 and 7 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the institution or person or its directors or employees in liability of any kind.

Article 10

Member States shall ensure that if, in the course of inspections carried out in the institutions or persons subject to this Directive by the competent authorities, or in any other way, those authorities discover facts that could constitute evidence of money laundering, they inform the authorities responsible for combating money laundering.

Member States shall ensure that supervisory bodies empowered by law or regulation to oversee the stock, foreign exchange and financial derivatives markets^[28] inform the authorities responsible for combating money laundering if they discover facts that could constitute evidence of money laundering.

Article 11

1. Member States shall ensure that the institutions and persons subject to this Directive:

(a) establish adequate procedures of internal control and communication in order to forestall and prevent operations related to money laundering;

(b) take appropriate measures so that their employees are aware of the provisions contained in this Directive. These measures shall include participation of their relevant employees in special training programmes to help them recognise operations which may be related to money laundering as well as to instruct them as to how to proceed in such cases.

Where a natural person falling within any of Article 2a(3) to (7) undertakes his professional activities as an employee of a legal person, the obligations in this Article shall apply to that legal person rather than to the natural person.

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

Article 12

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 2a, which engage in activities which are particularly likely to be used for money-laundering purposes.

[1] directive[di5rektiv, dai5rektiv] 指示

[2] European Community: 欧洲经济共同体

[3] undertaking[7QndE5teikiN] 事业,企业

[4] currency exchange offices (bureaux de change):外币兑换所

[5] money transmission/remittance offices:可以从事汇款业务的单位

[6] insofar[7insEu5fB:] 在…范围内

[7] collective investment undertaking:集体投资企业, 如基金公司

[8] unit[5ju:nIt] 单位, 如契约型基金的基金单位; share:股份, 如公司型基金的基金股份

[9] Vienna Convention: 维也纳公约。可参见本书有关《维也纳公约》的部分。

[10] penal law: 刑法

[11] designate[5dezi^neit] 指明

[12] notary[5nEutEri] 公证人

[13] apprise[E5praiz] 通知

[14] derogation[9derEJ^eIFEn] 部分废除（合同、条约或法律等）

[15] premium[5primjEm] 保险费

[16] By way of derogation ... amounting to EUR 2500 or less.:为了从以上各条款中免除一部分出示身份证明的要求，在欧盟理事会 1992 年 11 月 10 日的有关直接寿险在法律、规则和行政规定方面的协作的 92/96/EEC 号指令（第三号寿险指令）下，当其行为在该指令范围内时，由保险企业开出的保单的身份验证要求可以免除，即在任一给定年度的已付或将付定期保费金额不超过 1000 欧元或一次性保费金额不超过 2500 欧元。

[17] take out:申请取得、参加

[18] by virtue of:由于

[19] pension schemes taken out by virtue of a contract of employment or the insured's occupation:经由雇用合同或被保险人的职业取得的退休金计划

[20] deem[di:m] 认为

[21] debited[5debitid] 记入借方

[22] Member States...to the requirements of paragraph 1:成员国可规定，顾客以其在据第 1 款要求的本指令下的信用机构中所开立的账户来借记支付第 3 款和第 4 款所指的交易时，要求进行身份验证。

[23] reference[5refrEns] 证明

[24] admissible[Ed5misEbl] 可接纳的

[25] on one's own initiative:主动地

[26] ascertain [7AsE5tein] 探知、确定

[27] refrain [ri5frein] 限制、制止

[28] financial derivatives markets: 金融衍生市场