Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance)

DIRECTIVE (EU) 2015/849 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 May 2015

on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) Flows of illicit money can damage the integrity, stability and reputation of the financial sector, and threaten the internal market of the Union as well as international development. Money laundering, terrorism financing and organised crime remain significant problems which should be addressed at Union level. In addition to further developing the criminal law approach at Union level, targeted and proportionate prevention of the use of the financial system for the purposes of money laundering and terrorist financing is indispensable and can produce complementary results.

(2) The soundness, integrity and stability of credit institutions and financial institutions, and confidence in the financial system as a whole could be seriously jeopardised by the efforts of criminals and their associates to disguise the origin of criminal proceeds or to channel lawful or illicit money for terrorist purposes. In order to facilitate their criminal activities, money launderers and financers of terrorism could try to take advantage of the freedom of capital movements and the freedom to supply financial services which

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the Union's integrated financial area entails. Therefore, certain coordinating measures are necessary at Union level. At the same time, the objectives of protecting society from crime and protecting the stability and integrity of the Union's financial system should be balanced against the need to create a regulatory environment that allows companies to grow their businesses without incurring disproportionate compliance costs.

(3) This Directive is the fourth directive to address the threat of money laundering. Council Directive 91/308/EEC[(4)] defined money laundering in terms of drugs offences and imposed obligations solely on the financial sector. Directive 2001/97/EC of the European Parliament and of the Council[(5)] extended the scope of Directive 91/308/EEC both in terms of the crimes covered and in terms of the range of professions and activities covered. In June 2003, the Financial Action Task Force (FATF) revised its Recommendations to cover terrorist financing, and provided more detailed requirements in relation to customer identification and verification, the situations where a higher risk of money laundering or terrorist financing may justify enhanced measures and also the situations where a reduced risk may justify less rigorous controls. Those changes were reflected in Directive 2005/60/EC of the European Parliament and of the Council[(6)] and in Commission Directive 2006/70/EC[(7)].

(4) Money laundering and terrorist financing are frequently carried out in an international context. Measures adopted solely at national or even at Union level, without taking into account international coordination and cooperation, would have very limited effect. The measures adopted by the Union in that field should therefore be compatible with, and at least as stringent as, other actions undertaken in international fora. Union action should continue to take particular account of the FATF Recommendations and instruments of other international bodies active in the fight against money laundering and terrorist financing. With a view to reinforcing the efficacy of the fight against money laundering and terrorist financing, the relevant Union legal acts should, where appropriate, be aligned with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by the FATF in February 2012 (the 'revised FATF Recommendations').

(5) Furthermore, the misuse of the financial system to channel illicit or even lawful money into terrorist purposes poses a clear risk to the integrity, proper functioning, reputation and stability of the financial system. Accordingly, the preventive measures laid down in this Directive should address the manipulation of money derived from serious crime and the collection of money or property for terrorist purposes.

(6) The use of large cash payments is highly vulnerable to money laundering and terrorist financing. In order to increase vigilance and mitigate the risks posed by such cash payments, persons trading in goods should be covered by this Directive to the extent that they make or receive cash payments of EUR 10 000 or more. Member States should be able to adopt lower thresholds, additional general limitations to the use of cash and further stricter provisions.

(7) The use of electronic money products is increasingly considered to be a substitute for bank accounts, which, in addition to the measures laid down in Directive 2009/110/EC of the European Parliament and of the Council[(8)], justifies subjecting those products

to anti-money laundering and countering the financing of terrorism (AML/CFT) obligations. However, in certain proven low-risk circumstances and under strict risk-mitigating conditions, Member States should be allowed to exempt electronic money products from certain customer due diligence measures, such as the identification and verification of the customer and of the beneficial owner, but not from the monitoring of transactions or of business relationships. The risk-mitigating conditions should include a requirement that exempt electronic money products be used exclusively for purchasing goods or services, and that the amount stored electronically be low enough to preclude circumvention of the AML/CFT rules. Such an exemption should be without prejudice to the discretion given to Member States to allow obliged entities to apply simplified customer due diligence measures to other electronic money products posing lower risks, in accordance with Article 15.

(8) As concerns the obliged entities which are subject to this Directive, estate agents could be understood to include letting agents, where applicable.

(9) Legal professionals, as defined by the Member States, should be subject to this Directive when participating in financial or corporate transactions, including when providing tax advice, where there is the greatest risk of the services of those legal professionals being misused for the purpose of laundering the proceeds of criminal activity or for the purpose of terrorist financing. There should, however, be exemptions from any obligation to report information obtained before, during or after judicial proceedings, or in the course of ascertaining the legal position of a client. Therefore, legal advice should remain subject to the obligation of professional secrecy, except where the legal professional is taking part in money laundering or terrorist financing, the legal advice is provided for the purposes of money laundering or terrorist financing, or the legal professional knows that the client is seeking legal advice for the purposes of money laundering or terrorist financing.

(10) Directly comparable services should be treated in the same manner when provided by any of the professionals covered by this Directive. In order to ensure respect for the rights guaranteed by the Charter of Fundamental Rights of the European Union (the ‘Charter’), in the case of auditors, external accountants and tax advisors, who, in some Member States, are entitled to defend or represent a client in the context of judicial proceedings or to ascertain a client's legal position, the information they obtain in the performance of those tasks should not be subject to the reporting obligations laid down in this Directive.

(11) It is important expressly to highlight that ‘tax crimes’ relating to direct and indirect taxes are included in the broad definition of ‘criminal activity’ in this Directive, in line with the revised FATF Recommendations. Given that different tax offences may be designated in each Member State as constituting ‘criminal activity’ punishable by means of the sanctions as referred to in point (4)(f) of Article 3 of this Directive, national law definitions of tax crimes may diverge. While no harmonisation of the definitions of tax crimes in Member States' national law is sought, Member States should allow, to the greatest extent possible under their national law, the exchange of information or the provision of assistance between EU Financial Intelligence Units (FIUs).

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(12) There is a need to identify any natural person who exercises ownership or control over a legal entity. In order to ensure effective transparency, Member States should ensure that the widest possible range of legal entities incorporated or created by any other mechanism in their territory is covered. While finding a specified percentage shareholding or ownership interest does not automatically result in finding the beneficial owner, it should be one evidential factor among others to be taken into account. Member States should be able, however, to decide that a lower percentage may be an indication of ownership or control.

(13) Identification and verification of beneficial owners should, where relevant, extend to legal entities that own other legal entities, and obliged entities should look for the natural person(s) who ultimately exercises control through ownership or through other means of the legal entity that is the customer. Control through other means may, inter alia, include the criteria of control used for the purpose of preparing consolidated financial statements, such as through a shareholders' agreement, the exercise of dominant influence or the power to appoint senior management. There may be cases where no natural person is identifiable who ultimately owns or exerts control over a legal entity. In such exceptional cases, obliged entities, having exhausted all other means of identification, and provided there are no grounds for suspicion, may consider the senior managing official(s) to be the beneficial owner(s).

(14) The need for accurate and up-to-date information on the beneficial owner is a key factor in tracing criminals who might otherwise hide their identity behind a corporate structure. Member States should therefore ensure that entities incorporated within their territory in accordance with national law obtain and hold adequate, accurate and current information on their beneficial ownership, in addition to basic information such as the company name and address and proof of incorporation and legal ownership. With a view to enhancing transparency in order to combat the misuse of legal entities, Member States should ensure that beneficial ownership information is stored in a central register located outside the company, in full compliance with Union law. Member States can, for that purpose, use a central database which collects beneficial ownership information, or the business register, or another central register. Member States may decide that obliged entities are responsible for filling in the register. Member States should make sure that in all cases that information is made available to competent authorities and FIUs and is provided to obliged entities when the latter take customer due diligence measures. Member States should also ensure that other persons who are able to demonstrate a legitimate interest with respect to money laundering, terrorist financing, and the associated predicate offences, such as corruption, tax crimes and fraud, are granted access to beneficial ownership information, in accordance with data protection rules. The persons who are able to demonstrate a legitimate interest should have access to information on the nature and extent of the beneficial interest held consisting of its approximate weight.

(15) For that purpose, Member States should be able, under national law, to allow for access that is wider than the access provided for under this Directive.

(16) Timely access to information on beneficial ownership should be ensured in ways which avoid any risk of tipping off the company concerned.

(17) In order to ensure a level playing field among the different types of legal forms, trustees should also be required to obtain, hold and provide beneficial ownership information to obliged entities taking customer due diligence measures and to communicate that information to a central register or a central database and they should disclose their status to obliged entities. Legal entities such as foundations and legal arrangements similar to trusts should be subject to equivalent requirements.

(18) This Directive should also apply to activities of obliged entities which are performed on the internet.

(19) New technologies provide time-effective and cost-effective solutions to businesses and to customers and should therefore be taken into account when evaluating risk. The competent authorities and obliged entities should be proactive in combating new and innovative ways of money laundering.

(20) The representatives of the Union in the governing bodies of the European Bank for Reconstruction and Development are encouraged to implement this Directive and to publish on its website AML/CFT policies, containing detailed procedures that would give effect to this Directive.

(21) The use of gambling sector services to launder the proceeds of criminal activity is of concern. In order to mitigate the risks relating to gambling services, this Directive should provide for an obligation for providers of gambling services posing higher risks to apply customer due diligence measures for single transactions amounting to EUR 2 000 or more. Member States should ensure that obliged entities apply the same threshold to the collection of winnings, wagering a stake, including by the purchase and exchange of gambling chips, or both. Providers of gambling services with physical premises, such as casinos and gaming houses, should ensure that customer due diligence, if it is taken at the point of entry to the premises, can be linked to the transactions conducted by the customer on those premises. However, in proven low-risk circumstances, Member States should be allowed to exempt certain gambling services from some or all of the requirements laid down in this Directive. The use of an exemption by a Member State should be considered only in strictly limited and justified circumstances, and where the risks of money laundering or terrorist financing are low. Such exemptions should be subject to a specific risk assessment which also considers the degree of vulnerability of the applicable transactions. They should be notified to the Commission. In the risk assessment, Member States should indicate how they have taken into account any relevant findings in the reports issued by the Commission in the framework of the supranational risk assessment.

(22) The risk of money laundering and terrorist financing is not the same in every case. Accordingly, a holistic, risk-based approach should be used. The risk-based approach is not an unduly permissive option for Member States and obliged entities. It involves the use of evidence-based decision-making in order to target the risks of money laundering and terrorist financing facing the Union and those operating within it more effectively.