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LEGISLATIVE DECREE 231/2007 – *Implementation of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and of Directive 2006/70/EC laying down implementing measures for Directive 2005/06/EC*

TECHNICAL ANNEX

NOTES

**Legislative Decree 231/2007**

**Implementation of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and of Directive 2006/70/EC laying down implementing measures for Directive 2005/06/EC**

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THE PRESIDENT OF THE REPUBLIC

Having regard to Articles 76 and 87 of the Constitution;

Having regard to Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering;

Having regard to Decree Law 143/1991, ratified with amendments by Law 197/1991, laying down urgent provisions to limit the use of cash and bearer instruments in transactions and prevent the use of the financial system for the purpose of money laundering;

Having regard to Law 52/1996 laying down provisions for the fulfilment of obligations deriving from Italy's membership of the European Community – 1994 Community Law, with special reference to Article 15;

Having regard to Legislative Decree 125/1997 laying down rules concerning the cross-border circulation of capital in implementation of Directive 91/308/EEC;

Having regard to Legislative Decree 153/1997 laying down supplementary provisions for the implementation of Directive 91/308/EEC;

Having regard to Legislative Decree 319/1998, reorganizing the Italian Foreign Exchange Office (UIC) in accordance with Article 1(1) of Law 433/1997;

Having regard to Legislative Decree 374/1999, concerning the extension of the provisions on money laundering and financial assets particularly susceptible to be used for the purpose of money laundering in accordance with Article 15 of Law 52/1996.

Having regard to Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Directive 91/308/EEC;

Having regard to Law 14/2003 laying down provisions for the fulfilment of obligations deriving from Italy's membership of the European Community – 2002 Community Law, with special reference to Article 1 and Annex B;

Having regard to Legislative Decree 196/2003, containing the Personal Data Protection Code;

Having regard to Legislative Decree 56/2004, in implementation of Directive 2001/97/EC on prevention of the use of the financial system for the purpose of money laundering;

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;

Having regard to Law 29/2006 laying down provisions for the fulfilment of obligations deriving from Italy's membership of the European Community – 2005 Community Law, with special reference to Articles 21 and 22;

Having regard to Commission Directive 2006/70/EC laying down implementing measures for Directive 2005/60/EC;

Having regard to Legislative Decree 109/2007 laying down measures of a patrimonial nature to prevent, counter and repress the financing of international terrorism and the activity of countries that threaten international peace and security in implementation of Directive 2005/60/EC;

Having regard to the preliminary decision of the Council of Ministers adopted in its meeting of 27 July 2007;

Having obtained the opinions of the competent committees of the Chamber of Deputies and the Senate of the Republic;

Having regard to the measure adopted by the Governor of the Bank of Italy on 16 October 2007 providing for the assumption of the activities performed by the Italian Foreign Exchange Office (UIC) as an instrumental entity of the Bank of Italy;

Having regard to the resolution of the Council of Ministers adopted in its meeting of 16 November 2007;

Having heard the opinion of the competent financial sector supervisory authorities and interested administrative bodies;

Having heard the opinion of the Personal Data Protection Commission, expressed in its meeting on 25 July 2007;

Acting on the proposal from the Minister for European Policies and the Minister for the Economy and Finance, in agreement with the Minister for Foreign Affairs, the Minister of Justice and the Minister of the Interior;

ISSUES  
the following legislative decree:

Title I  
GENERAL PROVISIONS

*Chapter I*  
COMMON PROVISIONS

Article 1  
*Definitions*

1. In this legislative decree:

- a) “Personal Data Protection Code” shall mean Legislative Decree 196/2003;
- b) “Consob” shall mean the Commissione nazionale per le società e la borsa (Italian Companies and Stock Exchange Commission);
- c) “Private Insurance Code” shall mean Legislative Decree 209/2005;
- d) “Bureau of Antimafia Investigation” shall mean the Direzione investigativa antimafia (DIA);
- e) “Directive” shall mean Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005;
- f) “FATF” shall mean the Financial Action Task Force;
- g) “Isvap” shall mean the Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo (Supervisory Authority for the Insurance Industry);
- h) “EU country” shall mean a country belonging to the European Union;
- i) “Non-EU country” shall mean a country not belonging to the European Union;
- l) “Consolidated Law on Banking” shall mean Legislative Decree 385/1993;
- m) “Consolidated Law on Finance” shall mean Legislative Decree 58/1998;
- n) “Consolidated Law on Public Security” shall mean Royal Decree 773/1931;
- o) “Consolidated Law on Foreign Exchange” shall mean Presidential Decree 148/1988;

2. In this legislative decree:

- a) “interested administrative bodies” shall mean the authorities and governmental bodies competent to issue authorizations or licences, receive declarations of commencement of activity referred to in Article 10(2)(e) and Article 14 or that supervise persons specified in Articles 12(1)(a), 12(1)(c) and 13(1)(b);
- b) “single electronic archive” shall mean an archive created and run using IT systems that provides for the centralized retention of all the information acquired in fulfilling the identification and regulation obligations in accordance with the principles laid down in this decree;
- c) “financial sector supervisory authorities” shall mean the authorities charged under current legislation with the supervision or control of persons specified in Articles 10(2)(a), 10(2)(b), 10(2)(c), 10(2)(d), 11 and 13(1)(a);

*d)* "shell bank" shall mean a bank or an entity engaged in equivalent activities that is incorporated in a jurisdiction in which it has no physical presence involving meaningful mind and management, and that is unaffiliated with a regulated financial group;

*e)* "customer" shall mean a person who establishes a continuous relationship or carries out transactions with persons subject to this decree specified in Articles 11 and 14 or a person to whom persons subject to this decree referred to in Articles 12 and 13 provide a professional service following the award of an engagement;

*f)* "payable-through accounts" shall mean cross-border correspondent banking relationships between financial intermediaries used to carry out transactions in their own name on behalf of customers;

*g)* "ID data" shall mean a natural person's first name and family name, place and date of birth, address, tax code and details of an ID document or, in the case of a person other than a natural person, its name, registered office and tax code or, for a legal person, VAT number;

*h)* "physical establishment" shall mean a place devoted to the performance of an institution's activity, with a stable address other than a simple electronic address in a country in which the person is authorized to perform the activity. In such place the institution must employ one or more persons full time, keep records of the activity performed and be subject to the controls carried out by the authority that issued the authorization to operate;

*i)* "means of payment" shall mean cash, bank and postal cheques, banker's drafts and the like, postal money orders, credit transfers and payment orders, credit cards and other payment cards, transferable insurance policies, pawn tickets and every other instrument available making it possible to transfer, move or acquire, including by electronic means, funds, valuables or financial balances;

*l)* "transaction" shall mean the transmission or movement of means of payment; for persons referred to in Article 12, it shall mean a specified or specifiable activity directed towards an objective of a financial or patrimonial nature modifying the existing legal situation, to be carried out by way of a professional service;

*m)* "split transaction" shall mean a single transaction from the economic standpoint whose value is equal to or higher than the limits established by this decree that is carried out by way of more than one transaction, each with a value lower than such limits, effected at different moments and within a fixed lapse of time set at seven days, without prejudice to the existence of a split transaction when there are elements for considering it to be such;

*n)* "related transactions" shall mean transactions that, although not carried out in performing one and the same contract, are related to each other in terms of the person carrying them out, their subject or purpose;

*o)* "politically exposed persons" shall mean natural persons of other EU and non-EU countries who are or have been entrusted with prominent public functions and the immediate family members and persons known to be close associates of such persons, identified on the basis of the criteria referred to in the technical annex to this decree;

*p)* "trust and company service providers" shall mean any natural or legal person which by way of business provides any of the following services to third parties:

1) forming companies or other legal persons;

2) acting as or arranging for another person to act as a manager or director of a company, a partner of a partnership, or a similar position in relation to other legal persons;

3) providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal entity;

4) acting as or arranging for another person to act as a trustee of an express trust or a similar legal entity;

5) acting as or arranging for another person to act as a nominee shareholder for another person other than a company that is listed on a regulated market and subject to disclosure requirements in conformity with Community legislation or subject to equivalent international standards;

q) “professional service” shall mean a professional or commercial service related to the activities performed by persons specified in Articles 12, 13 and 14 that, at the time it starts, is presumed to be of a certain duration;

r) “general government” shall mean all central government bodies, including schools of all kinds and levels, educational institutions, public enterprises and autonomous government bodies, the regions, the provinces, the municipalities, the mountain communities and their consortiums and associations, the universities, the NHS agencies and entities, and the agencies referred to in Legislative Decree 300/1999 as amended;

s) “continuous relationship” shall mean a long-term relationship consisting in performing the activity of institutions referred to in Article 11 that gives rise to a number of transactions involving the deposit, withdrawal or transfer of means of payment and that is not completed in a single transaction;

t) “customer register” shall mean a paper-based register containing the ID data referred to in subparagraph g), obtained in performing the identification obligation in accordance with the procedures provided for in this decree;

u) “beneficial owner” shall mean the natural person or persons who ultimately own or control the customer and/or the natural person on whose behalf a transaction or activity is being conducted, identified on the basis of the criteria referred to in the technical annex to this decree;

v) “bearer instrument” shall mean a credit instrument that legitimates the holder to exercise the right referred to therein merely by presenting it and whose transfer is achieved through the delivery of the instrument;

z) “FIU” shall mean the Financial Intelligence Unit, i.e. the national structure charged with receiving information from persons obliged to provide it on suspected money laundering or terrorist financing, requesting it from same, analyzing it and transmitting it to the competent authorities.

## Article 2

### *Definitions of money laundering and terrorist financing and purpose of the decree*

1. Exclusively for the purposes of this decree, if performed intentionally, the following actions shall constitute money laundering:

a) the conversion or transfer of property, carried out knowing that it constitutes the proceeds of criminal activity or of participation therein with the aim of hiding or dissimulating the illicit origin of the property or of helping any individual involved in such activity to avoid the legal consequences of his or her actions;

- b) hiding or dissimulating the real nature, origin, location, arrangement, transfer or ownership of property or rights thereto, carried out knowing that they it constitutes the proceeds of criminal activity or of participation therein;
  - c) the acquisition, detention or use of property, knowing at the time of receiving it that it constitutes the proceeds of criminal activity or of participation therein;
  - d) participation in one of the actions referred to in the preceding subparagraphs, association with others to perform such actions, attempts to perform them, the act of helping, instigating or advising someone to perform them or the fact of facilitating their performance.
2. Money laundering shall be considered such even if the activities that produced the property to be laundered were performed in another EU country or a non-EU country.
  3. The knowledge, intention or purpose that must be an aspect of the actions referred to in paragraph 1, may be inferred from objective factual circumstances.
  4. For the purposes of this decree, the definition of terrorist financing shall be that laid down in Article 1(1)(a) of Legislative Decree 109/2007.
  5. In order to prevent use of the financial system and the economy for the purpose of money laundering and terrorist financing, this decree lays down measures aimed at safeguarding these systems' integrity and proper conduct.
  6. The preventive action referred to in paragraph 5 shall be coordinated with the activities repressing money laundering crimes and terrorist financing.

Article 3  
*General principles*

1. The measures in this decree shall also be based on the active collaboration of the persons subject to its provisions, who shall adopt suitable and appropriate systems and procedures in relation to the obligations of adequately verifying customers, reporting suspicious transactions, retaining documents, internal control, assessing and managing risk, ensuring compliance with the relevant provisions, and communicating to prevent the carrying out of money laundering transactions and terrorist financing. They shall fulfil their obligations taking into account the information in their possession or acquired in connection with their institutional or professional activity.
2. Systems and procedures adopted pursuant to paragraph 1 shall comply with the prescriptions and guarantees established by this decree and by the legislation on the protection of personal data.
3. The measures in this decree shall be proportionate to the risk of money laundering and terrorist financing, in relation to the type of customer, the continuous relationship, the professional service, the product or the transaction.
4. The application of the measures laid down in this decree must be proportionate to the specific nature of each profession and the size of the businesses subject to this decree.

Article 4  
*Relationship to Community law*

1. The measures that, in relation to the tasks defined in this decree, the Ministry for the Economy and Finance, the FIU, the other government departments concerned and the

financial sector supervisory authorities may adopt shall take into account the measures adopted by the European Commission pursuant to Article 40 of the Directive.

*Chapter II*  
AUTHORITIES

Article 5  
*The Ministry for the Economy and Finance*

1. The Minister for the Economy and Finance shall be responsible for the policies to prevent use of the financial system and the economy for the purpose of money laundering and terrorist financing. In these fields he shall foster collaboration between the FIU, the financial sector supervisory authorities, professional associations, the Bureau of Antimafia Investigation and the Finance Police, in accordance with current legislation and this decree. By the end of June of each year, he shall present a report to Parliament on the preventive action taken.
2. In performing the functions referred to in paragraph 1, the Minister for the Economy and Finance shall avail himself, without additional costs charged to the state budget, of the collaboration of the Financial Security Committee, set up by Decree Law 369/2001, ratified with amendments by Law 431/2001 and subsequently governed by Legislative Decree 109/2007. Where necessary in order to obtain information and opinions, meetings of the Committee shall also be attended, at the invitation of the Chairman, by representatives of the national bodies of professional associations and private employers' associations.
3. Without prejudice to the powers referred to in Article 3 of Legislative Decree 109/2007, the Financial Security Committee shall:
  - a) perform analysis and coordination in the field of preventing use of the financial system and the economy for the purpose of money laundering and terrorist financing;
  - b) present to the Minister for the Economy and Finance, by the end of May each year, a report containing an assessment of the action taken to prevent money laundering and terrorist financing and proposals to make it more effective. To this end the FIU, financial sector supervisory authorities, interested administrative bodies, professional associations, the Finance Police and the Bureau of Antimafia Investigation shall supply, by 30 March each year, statistics and information on the activities respectively performed during the previous calendar year as part of their supervision and control functions. The statistics shall cover at least the number of reports of suspicious transactions submitted to the FIU and the action taken on the basis of these reports, the number of cases investigated, persons prosecuted, persons condemned for money laundering or terrorist financing and the amounts of property frozen, sequestered or confiscated pursuant to Legislative Decree 109/2007;
  - c) render opinions pursuant to this decree;
  - d) provide the Minister for the Economy and Finance with advice on matters covered by this decree.
4. In matters concerning the prevention of the use of the financial system and the economy for the purpose of money laundering and terrorist financing, Articles 3(1), 3(2), 3(3), 3(4) and 3(14) of Legislative Decree 109/2007 shall apply.

5. The Ministry for the Economy and Finance shall handle relations with EU bodies and international organizations entrusted with drawing up policies and laying down standards in connection with the prevention of the use of the financial system and the economy for the purpose of money laundering and terrorist financing and shall ensure fulfilment of the obligations deriving from Italy's membership of the bodies and organizations referred to above.

6. The Ministry for the Economy and Finance shall exercise the powers to impose administrative sanctions referred to in this decree.

Article 6  
*Financial Intelligence Unit*

1. The Financial Intelligence Unit for Italy (FIU) shall be established at the Bank of Italy.

2. The FIU shall perform its functions in complete autonomy and independence. Implementing such principles, the Bank of Italy shall issue a regulation governing the organization and functioning of the FIU, including the confidentiality of the information acquired. The Bank of Italy shall allocate adequate financial means and resources to the FIU to ensure the effective pursuit of its institutional purposes.

3. The Director of the FIU, entrusted with autonomous responsibility for its management, shall be appointed with a measure approved by the Directorate of the Bank of Italy, acting on a proposal from the Governor of the Bank of Italy, from among persons with suitable integrity, experience and knowledge of the financial system. The appointment shall last five years and may be renewed only once.

4. For the effective performance of the tasks established by law and by international obligations, a Committee of Experts shall be instituted at the FIU, composed of the Director and four members with suitable integrity and experience. The members of the Committee shall be appointed, in compliance with the principle of gender balance, with a decree issued by the Minister for the Economy and Finance after consulting the Governor of the Bank of Italy and shall serve for a term of three years, which may be renewed for another three. Participation in the Committee shall not give rise to remuneration or to reimbursement of expenses. Committee meetings shall be called by the Director of the FIU at least once every six months. The Committee shall draw up an opinion on the activity of the FIU, which shall be an integral part of the documentation transmitted to the parliamentary committees pursuant to paragraph 5.

5. The Director of the FIU shall transmit, via the Minister for the Economy and Finance, an annual activity report to the competent parliamentary committees, together with a report by the Bank of Italy on the financial means and the resources assigned to the FIU.

6. The FIU shall perform the following activities:

- a) analyze financial flows with the aim of detecting and preventing money laundering and terrorist financing;
- b) receive the suspicious transaction reports referred to in Article 41 and conduct financial analyses thereon;
- c) acquire additional data and information furthering the performance of its institutional functions from persons required to make suspicious transaction reports referred to in Article 41;
- d) receive the communications of aggregated data referred to in Article 40;

e) avail itself of the data contained in the registry of accounts and deposits referred to in Article 20.4 of Law 413/1991 and in the tax registry referred to in Article 37 of Decree Law 223/2006, ratified with amendments by Law 248/2006.

7. Availing itself of the information gathered in the performance of its activities, the FIU:
- a) shall conduct analyses and studies on individual anomalies traceable to possible cases of money laundering or terrorist financing, on specific sectors of the economy deemed to be at risk, on categories of payment instruments and specific local economic conditions;
  - b) shall develop and disseminate models and patterns representing anomalous conduct on the economic and financial plane that may be signs of money laundering or terrorist financing;
  - c) may, on condition that such action is not prejudicial to investigations under way, suspend transactions suspected of involving money laundering or terrorist financing for up to five working days, including at the request of the Special Foreign Exchange Unit of the Finance Police, the Bureau of Antimafia Investigation or the judicial authorities, immediately informing such bodies thereof.

#### Article 7

##### *Financial sector supervisory authorities*

1. The financial sector supervisory authorities shall oversee compliance with the obligations established in this decree by persons supervised in the manner referred to in Article 53. Persons referred to in Article 13(1)(a) and entered in the register of auditors shall be supervised by Consob.
2. In compliance with the aims and within the scope of the regulatory powers provided for in their respective sectoral legal frameworks, the supervisory authorities, in agreement among themselves, shall issue provisions on the manner of fulfilling the obligations concerning adequate customer verification, internal organization, recording, procedures and controls intended to prevent the use of intermediaries and other persons performing financial activities referred to in Article 11 and Article 13(1)(a) for the purpose of money laundering and terrorist financing. For persons referred to in Article 13(1)(a) and also entered in the register of auditors, the provisions in question shall be issued by Consob. For persons referred to in Article 11(2)(a), the provisions in question shall be issued by the Bank of Italy.

#### Article 8

##### *Interested administrative bodies, professional associations and police forces*

1. The Ministry of Justice shall supervise competent professional colleges and associations in relation to the tasks referred to in this paragraph. Competent professional colleges and associations shall foster and verify, in accordance with the principles and in the manner laid down by current legislation, compliance with the obligations established in this decree by professionals referred to in Articles 12(1)(a) and 12(1)(c) entered in their respective registers and persons referred to in Article 13(1)(b).
2. Police forces, in compliance with their specific competences, shall participate in the activity of preventing use of the financial system and the economy for the purpose of money laundering and terrorist financing and shall perform the functions expressly provided for in this decree.
3. Pursuant to Article 47 the Bureau of Antimafia Investigation and the Special Foreign Exchange Unit of the Finance Police shall carry out investigations in relation to reports

transmitted by the FIU. Pursuant to Article 53 the Special Foreign Exchange Unit of the Finance Police shall also carry out controls to verify compliance with the obligations established in this decree and its implementing provisions.

4. In order to perform the necessary investigations of the reports of suspicious transactions:

*a)* the Bureau of Antimafia Investigation and the Special Foreign Exchange Unit of the Finance Police shall also avail themselves of the data contained in the section of the tax register referred to in the sixth and eleventh paragraphs of Article 7 of Presidential Decree 605/1973 as amended by Article 37(4) of Decree Law 223/2006 ratified, with amendments, by Law 248/2006;

*b)* members of the Special Foreign Exchange Unit of the Finance Police shall also exercise their powers under foreign exchange law. These powers shall extend to the military personnel belonging to the units of the Finance Police, to which the Special Foreign Exchange Unit of the Finance Police may delegate the performance of the tasks referred to in paragraph 3;

*c)* the powers referred to in the fourth paragraph of Article 1 and paragraphs 1 and 4 of Article 1-*bis* of Decree Law 629/1982, ratified with amendments by Law 726/1982 shall be exercised vis-à-vis persons referred to in Articles 10 to 14.

5. For the controls referred to in Article 53 on persons subject to anti-money-laundering obligations for which the Special Foreign Exchange Unit of the Finance Police is competent, including those carried out in collaboration with the FIU, the Unit shall exercise the powers referred to in paragraphs 4(*a*) and 4(*b*).

#### Article 9

##### *Exchange of information and cooperation between authorities and police forces*

1. All the information in the possession of the FIU, financial sector supervisory authorities, interested administrative bodies, professional associations and other bodies referred to in Article 8 relating to the implementation of this decree shall be covered by professional secrecy, including vis-à-vis the public administration. The cases of communication expressly provided for by current legislation shall be unaffected. Professional secrecy may not be invoked with respect to the judicial authorities when the information requested is needed for investigations or proceedings involving violations subject to penal sanctions.

2. By way of derogation from the obligation of professional secrecy, financial sector supervisory authorities shall cooperate with each other and with the FIU, including by exchanging information, in order to facilitate the performance of their respective functions.

3. By way of derogation from the obligation of professional secrecy, the FIU may exchange information and cooperate with analogous authorities of other states that pursue the same purposes, subject to reciprocity also as regards confidentiality of information, and may conclude memoranda of understanding to this end. In particular, the FIU may exchange data and information concerning suspicious transactions with analogous authorities of other states and for such purpose may also make use of specifically requested information in the possession of the Bureau of Antimafia Investigation and the Special Foreign Exchange Unit of the Finance Police. Apart from the cases referred to in this paragraph, the provisions of Articles 9 and 12 of Law 121/1981 shall apply. Information received from foreign authorities may be transmitted by the FIU to the competent Italian authorities, except where permission to do so is explicitly denied by the authority of the state that provided the information.

4. Without prejudice to paragraph 3, with the aim of facilitating the activities connected with the investigation of suspicious transaction reports, the FIU shall conclude memoranda of understanding with the Finance Police and the Bureau of Antimafia Investigation establishing the conditions and procedures for such bodies to exchange police data and information, directly as well as indirectly, with foreign and international counterparts, subject to reciprocity and by way of derogation from the obligation of professional secrecy.

5. Interested administrative bodies and professional associations shall provide the FIU with the information and other forms of cooperation requested.

6. Financial sector supervisory authorities, interested administrative bodies and professional associations shall inform the FIU of possible cases of failure to make suspicious transaction reports and of every fact that could be connected with money laundering or terrorist financing observed in respect of persons referred to in Articles 10.2, 11, 12, 13 and 14.

7. Where the judicial authorities have cause to believe that money has been laundered or money, property or other proceeds of illegal origin have been used in transactions carried out at supervised intermediaries, they shall notify the competent supervisory authority and the FIU, for the acts for which they are competent. The information communicated shall be covered by professional secrecy. Notification may be delayed when it could be prejudicial to the investigation. The supervisory authority and the FIU shall inform the judicial authorities of the steps taken and the measures adopted.

8. Paragraph 7 shall also apply where there is cause to believe that transactions carried out at supervised intermediaries are designed to serve the perpetration of one or more crimes of terrorism envisaged by the Penal Code or other provisions of law.

9. The FIU shall provide the general results of its studies to police forces, financial sector supervisory authorities, the Ministry for the Economy and Finance, the Ministry of Justice and the National Antimafia Prosecutor; without prejudice to Article 331 of the Code of Penal Procedure, the FIU shall provide the Bureau of Antimafia Investigation and the Special Foreign Exchange Unit of the Finance Police with the results of analyses and studies carried out on specific anomalies indicative of money laundering or terrorist financing.

10. The FIU and the investigative bodies shall cooperate to facilitate identification of every circumstance involving facts or situations knowledge of which can serve to prevent the use of the financial system and the economy for money laundering or terrorist financing. To this end, the investigative bodies may provide information to the FIU.

### *Chapter III*

#### PERSONS SUBJECT TO THE OBLIGATIONS

#### Article 10

##### *Persons covered by the decree*

1. This decree shall apply to persons referred to in Articles 11, 12, 13 and 14.
2. This decree, except for the identification and registration obligations of Title II, Chapters I and II, shall also apply to:
  - a) central securities depositories;

- b) companies operating regulated markets in financial instruments and persons that operate structures for trading in financial instruments and interbank funds;
- c) companies operating settlement services for transactions in financial instruments;
- d) companies operating clearing and guarantee services for transactions in financial instruments;
- e) the following activities whose performance remains subject to possession of licences, authorizations, entries in registers or a preliminary declaration of the start of the activity specifically required in the related legislation:
  - 1) commerce, including exporting and importing gold for industrial or investment purposes, for which the declaration referred to in Article 1 of Law 7/2000 is required;
  - 2) manufacture, intermediation and commerce, including exporting and importing precious objects, for which the licence referred to in Article 127 of the Consolidated Law on Public Security is required;
  - 3) manufacture of precious objects by craft enterprises subject to the requirement of entry in the register of assignees of identification marks kept by chambers of commerce, industry, crafts and agriculture;
  - 4) commerce in antiques requiring the advance declaration referred to in Article 126 of the Consolidated Law on Public Security ;
  - 5) operation of auction houses and art galleries requiring the licence referred to in Article 115 of the Consolidated Law on Public Security;
- f) the Italian branches of persons referred to in subparagraphs a) to e) having their registered office abroad;
- g) general government offices.

#### Article 11

##### *Financial intermediaries and other persons engaged in financial activities*

1. For the purposes of this decree, financial intermediaries shall mean:
  - a) banks;
  - b) Poste italiane S.p.A.;
  - c) electronic money institutions;
  - d) Italian investment firms;
  - e) Italian asset management companies;
  - f) SICAVs;
  - g) insurance companies that operate in Italy in the branches referred to in Article 2(1) of the Private Insurance Code;
  - h) stockbrokers;
  - i) companies that provide tax collection services;
  - l) financial intermediaries entered in the special register referred to in Article 107 of the Consolidated Law on Banking;
  - m) financial intermediaries entered in the general register referred to in Article 106 of the Consolidated Law on Banking;

- n)* the Italian branches of persons referred to in the preceding subparagraphs having their registered office in a foreign country and the Italian branches of harmonized asset management companies and investment firms;
- o)* Cassa depositi e prestiti S.p.A.
2. Financial intermediaries shall also mean:
- a)* trust companies referred to in Law 1966/1939;
- b)* persons operating in the financial sector entered in the sections of the general list referred to in Article 155(4) of the Consolidated Law on Banking;
- c)* persons operating in the financial sector entered in the sections of the general list referred to in Article 155(5) of the Consolidated Law on Banking;
- d)* the Italian branches of persons referred to in subparagraphs *a)* and *c)* having their registered office abroad.
3. For the purposes of this decree, other persons engaged in financial activities shall mean:
- a)* financial salesmen entered in the register referred to in Article 31 of the Consolidated Law on Finance;
- b)* insurance intermediaries referred to in Articles 109(2)(*a*) and 109(2)(*b*) of the Private Insurance Code that operate in the branches referred to in paragraph 1(*g*);
- c)* loan brokers entered in the register referred to in Article 16 of Law 108/1996;
- d)* financial agents entered in the list referred to in Article 3 of Legislative Decree 374/1999.
4. The persons referred to in paragraphs 1(*n*) and 2(*d*) shall fulfil the obligations concerning adequate customer verification and retention, including by way of measures and procedures equivalent to those established by this decree, without prejudice to Article 5 of the Personal Data Protection Code. If the non-EU country's legislation does not permit the application of equivalent measures, financial intermediaries must so inform the financial sector supervisory authorities.
5. Persons performing financial activities referred to in paragraph 3 shall fulfil their registration obligations with the communication referred to in Article 36(4).
6. The guidelines and procedures applied, in relation to the obligations established by this decree, by financial intermediaries to branches and majority-controlled subsidiaries located in non-EU countries shall be notified to the financial sector supervisory authority.

Article 12  
*Professionals*

1. For the purposes of this decree, professionals shall include:
- a)* persons entered in the registers of book-keepers, accountants and labour consultants;
- b)* every other person who renders services provided by experts and consultants and other persons who provide services in accounting and tax matters on a professional basis;
- c)* notaries and lawyers when, in the name and on behalf of their customers, they carry out any transaction of a financial or real-estate nature and when they assist their customers in arranging or carrying out transactions involving:
- 1) the transfer in any way of real rights to immovable property or economic activities;

- 2) the management of money, financial instruments or other property;
  - 3) the opening or management of bank accounts, deposit books and securities accounts;
  - 4) the organization of the contributions needed for the constitution, management or administration of companies;
  - 5) the constitution, management or administration of companies, entities, trusts and comparable legal persons;
- d) providers of services to companies and trusts, except for persons referred to in subparagraphs a), b) and c).
2. The obligation to report suspicious transactions referred to in Article 41 shall not apply to persons referred to in paragraphs 1(a), 1(b) and 1(c) for information they receive from a customer or obtain in relation thereto during the examination of the customer's legal position or the performance of duties in defending or representing same in a legal proceeding or in relation to such a proceeding, including advice on the initiation or the means of avoiding a proceeding, where such information is received or obtained before, during or after the proceeding.
  3. The obligations referred to in Title II, Chapters I and II, shall not apply to the mere activity of drawing up and/or transmitting income tax returns or to the performance of the requirements in relation to personnel management referred to in the first paragraph of Article 2 of Law 12/1979.

#### Article 13.

##### *Auditors*

1. For the purposes of this decree auditors shall mean:
  - a) auditing firms entered in the special register referred to in Article 161 of the Consolidated Law on Finance;
  - b) persons entered in the register of auditors.
2. Persons referred to in paragraph 1 shall comply with Article 12(2).

#### Article 14

##### *Other persons*

1. For the purposes of this decree, "other persons" shall mean persons performing the below-listed activities engagement in which is conditional on having the licences or authorizations or being entered in the registers, or on the prior declaration of commencement of activity, specifically required by the provisions shown next to each activity:
  - a) credit recovery on behalf of third parties -- possession of the licence referred to in Article 115 of the Consolidated Law on Public Security;
  - b) custody and transport of cash and securities or valuables by means of sworn private security guards -- possession of the licence referred to in Article 134 of the Consolidated Law on Public Security;
  - c) transport of cash, securities or valuables without the use of sworn private security guards -- entry in the register of natural and legal persons that perform road haulage for third parties, referred to in Law 298/1974;

d) management of casinos -- possession of the authorizations granted by the laws in force and satisfaction of the requirement referred to in Article 5(3) of Decree Law 457/1997, ratified with amendments by Law 30/1998;

e) offer, through the Internet or other electronic or telecommunication networks, of games, betting and contests with prizes in cash -- possession of the authorizations granted by the Ministry for the Economy and Finance -- State Monopolies Administration pursuant to Article 1(539) of Law 266/2005;

f) real-estate broking -- entry in the special section of the register instituted at the Chamber of Commerce, Industry, Crafts and Agriculture, pursuant to Law 39/1989.

## Title II REQUIREMENTS

### *Chapter I* CUSTOMER DUE DILIGENCE

#### Section I General provisions

#### Article 15 *Customer due diligence requirements for financial intermediaries and other persons engaged in financial activity*

1. Financial intermediaries and the other persons engaged in financial activities referred to in Article 11 shall comply with the customer due diligence requirements in connection with relationships and transactions relating to the performance of their institutional or professional activity, in particular in the following cases:

- a) when establishing a continuous relationship;
- b) when carrying out occasional transactions involving the transmission or transfer of means of payment amounting to €15,000 or more, whether the transaction is carried out in a single operation or in several operations that appear to be related or split;
- c) when there is a suspicion of money laundering or terrorist financing, regardless of any applicable derogation, exemption or threshold;
- d) when there are doubts about the veracity or adequacy of previously obtained customer identification data.

2. Within the scope of their organizational autonomy, intermediaries may identify classes of transactions and amounts that they deem not significant for the purposes of observing operations that appear to be related.

3. The customer due diligence requirements shall also be complied with in the cases where banks, electronic money institutions and Poste Italiane S.p.A. act as a go-between or are otherwise party to transfers of cash or bearer instruments, in euros or foreign currency, amounting to €15,000 or more carried out in whatsoever capacity between different persons.

4. Financial agents referred to in Article 11(3)(d) shall comply with the customer due diligence requirements also for transactions smaller than €15,000.

#### Article 16

##### *Customer due diligence requirements for professionals and external auditors*

1. Professionals referred to in Article 12 shall comply with the customer due diligence requirements in performing their professional activity on an individual, partnership or incorporated basis in the following cases:

a) when the professional service involves means of payment, goods or services worth €15,000 or more;

b) when they perform occasional professional services involving the transmission or transfer of means of payment amounting to €15,000 or more, regardless of whether the transaction is carried out in a single operation or in several operations that appear to be related or split;

c) whenever a transaction is of indeterminate or indeterminable amount. For the purposes of the customer due diligence requirement, the establishment, management or administration of companies, entities, trusts or similar legal persons shall always be treated as a transaction of indeterminable amount;

d) when there is a suspicion of money laundering or terrorist financing, regardless of any applicable derogation, exemption or threshold;

e) when there are doubts about the veracity or adequacy of previously obtained customer identification data.

2. External auditors referred to in Article 13 shall comply with the customer identification and data verification requirements in performing their professional activity on an individual, partnership or incorporated basis, in the cases indicated in subparagraphs a), d) and e) of paragraph 1.

#### Article 17

##### *Customer due diligence requirements for other persons*

1. Persons referred to in Articles 14(1)(a), 14(1)(b), 14(1)(c) and 14(1)(f) shall comply with the customer due diligence requirements in connection with transactions relating to the performance of their professional activity in the following cases:

a) when establishing a continuous relationship or when engaged by customers to perform a professional service;

b) when carrying out occasional transactions involving the transmission or transfer of means of payment amounting to €15,000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be related or split;

c) when there is a suspicion of money laundering or terrorist financing, regardless of any applicable derogation, exemption or threshold;

d) when there are doubts about the veracity or adequacy of previously obtained customer identification data.

#### Article 18

##### *Substance of customer due diligence requirements*

1. Customer due diligence measures shall consist in the following activities:

- a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;
- b) identifying, where applicable, the beneficial owner and verifying his identity;
- c) obtaining information on the purpose and intended nature of the continuous business relationship or professional service;
- d) conducting ongoing monitoring of the continuous relationship or professional service.

#### Article 19

##### *Manner of satisfying the requirements*

1. The customer due diligence requirements referred to in Article 18 shall be satisfied through the procedures described below:

- a) identification and verification of the identity of the customer and beneficial owner shall be carried out in the presence of the customer, including by employees or collaborators, on the basis of a currently valid identity document from among those listed in the technical annex before the continuous relationship is established or when the engagement to perform a professional service is awarded or a transaction executed. Where the customer is a company or entity, the actual existence of the power of representation shall be verified and the information necessary to identify and verify the identity of the representatives delegated to sign for the transaction shall be obtained;
- b) identification and verification of the identity of the beneficial owners shall be performed at the same time as identification of the customer and requires, for legal persons, trusts and the like, the adoption of adequate measures, commensurate with the risk, to understand the customer's ownership and control structure. To identify and verify the identity of the beneficial owner, persons subject to such requirement may use public registers, lists, acts or publicly available documents containing information on beneficial owners, ask their own customers for the pertinent data or otherwise obtain the information;
- c) ongoing monitoring of the continuous relationship or professional service shall be conducted by analyzing transactions concluded throughout the course of that relationship to verify that such transactions are consistent with the obligated institution or person's knowledge of its customer, his business activities and risk profile, including, where necessary, the source of funds, and by ensuring that the documents, data or information held are kept up to date.

2. The Minister for the Economy and Finance may issue a decree adopting implementing provisions for compliance with the requirements referred to in paragraph 1 after consulting the Financial Security Committee.

#### Article 20

##### *Risk-based approach*

1. The customer due diligence procedures shall be applied by calibrating them to the risk associated with the type of customer, continuous relationship, professional service, operation, product or transaction in question. Institutions and persons subject to this decree must be able to demonstrate to the competent authorities referred to in Article 7 or to the professional

associations referred to in Article 8 that the extent of the measures adopted is appropriate in view of the risk of money laundering or terrorist financing. To assess the risk of money laundering or terrorist financing, subject institutions or persons shall comply with the instructions referred to in Article 7(2) and with the following general criteria:

a) with reference to the customer:

- 1) legal form;
- 2) principal activity;
- 3) behaviour at the time the transaction is carried out or the continuous relationship established or the professional service performed;
- 4) geographical area in which the residence or business office of the customer or counterparty is located;

b) with reference to the transaction, continuous relationship or professional service:

- 1) type of transaction, continuous relationship or professional service;
- 2) manner of performing the transaction, continuous relationship or professional service;
- 3) amount;
- 4) frequency of the transactions and duration of the continuous relationship or professional service;
- 5) reasonableness of the transaction, continuous relationship or professional service in relation to the customer's activity;
- 6) geographical area of destination of the product, object of the transaction or continuous relationship.

Article 21  
*Obligations of the customer*

1. Customers shall provide, on their own responsibility, all the necessary and updated information for the natural and legal persons subject to this decree to comply with the customer due diligence requirements. For the identification of beneficial owners, customers shall provide in writing, on their own responsibility, all the necessary and updated information in their possession.

Article 22  
*Procedures*

1. The customer due diligence procedures shall apply to all new customers and, based on an assessment of the risk, to existing customers.

Article 23  
*Obligation to refrain*

1. When institutions or persons subject to this decree are unable to comply with the customer due diligence requirements laid down by Articles 18(1)(a), 18(1)(b) and 18(1)(c), they may not establish the continuous relationship or carry out transactions or professional services or must terminate the continuous relationship or professional service and must assess whether to make a report to the FIU pursuant to Title II, Chapter III.

3. Institutions and persons subject to this decree shall refrain from carrying out transactions that they suspect are related to money laundering or terrorist financing and shall immediately send a suspicious-transaction report to the FIU.

4. Where refraining is impossible because there is a legal obligation to receive the act or because execution of the transaction, by its nature, cannot be deferred or because refraining could impede investigations, the entities and persons subject to this decree shall inform the FIU immediately after carrying out the transaction.

5. Persons referred to in Articles 12(1)(a), Articles 12(1)(b) and Articles 12(1)(c) shall not be required to apply paragraph 1 in the course of ascertaining the legal position of a client or defending or representing a client in legal proceedings or in relation to such proceedings, including advice on the possibility of instituting or avoiding legal proceedings.

Article 24  
*Casinos*

1. Persons performing the activity of casino management, indicated in Article 14(1)(d), shall identify and verify the identity of all customers who purchase or exchange gambling chips or other means of gambling amounting to €2,000 or more.

2. The customer due diligence requirements shall be deemed to have been satisfied if public casinos register, identify and verify the identity of their customers immediately on or before entry, regardless of the amount of gambling chips purchased, and, with effect from 30 April 2008, adopt suitable procedures to link ID data with each customer's purchases and exchange of gambling chips for an amount equal to or exceeding that specified in paragraph 1.

3. The following information shall be acquired and retained using the procedures referred to in Article 39:

a) the ID data;

b) the date of the transaction;

c) the value of the transaction and the means of payment used.

4. Persons performing the activity of on-line casino management, indicated in Article 14(1)(e), shall identify and verify the identity of every customer holding €1,000 or more and permit the recharging of gambling accounts, purchases and exchanges of means of gambling exclusively through means of payment, including electronic money, for which it is possible to satisfy the identification requirements established by this decree. To this end, they must obtain and record the information concerning:

a) the ID data declared by the customer upon opening gambling accounts or applying for on-line gambling access credentials;

b) the date on which gambling accounts are opened and recharged and on which collections are made on such accounts;

c) the value of the above-mentioned transactions and the means of payment used;

d) the IP address, date, time and duration of the electronic connections during which the customer, accessing the on-line casino manager's systems, carries out the above-mentioned transactions.

5. By way of derogation from Article 36, the data referred to in paragraph 4(d) shall be retained by persons referred to in Article 14(1)(e) for a period of two years from the date of communication. The same data shall be retained for the period provided for in Article 36 by the providers of electronic communication and may be requested from them by the control bodies referred to in Article 53.

6. The sectoral supervisory authorities and control bodies, including the Special Foreign Exchange Unit of the Finance Police, within their respective spheres of competence, shall report to the Financial Security Committee at least once a year on the adequacy of the systems adopted by the individual casinos to prevent and combat money laundering and terrorist financing.

## Section II Simplified customer due diligence

### Article 25 *Simplified requirements*

1. Persons subject to this decree shall not be subject to the requirements provided for in Section I if the customer is:

a) one of the persons indicated in Articles 11(1), 11(2)(b) and 11(2)(c);

b) an EU credit or financial institution covered by the Directive;

c) a credit or financial institution located in a non-EU country that establishes equivalent requirements to those laid down in the Directive and provides for control on compliance with such requirements.

2. The Minister for the Economy and Finance, after consulting the Financial Security Committee, shall issue a decree identifying the non-EU countries whose regime is deemed equivalent.

3. Identification and verification shall not be required if the customer is an office of general government or an institution or organization performing public functions in accordance with the treaty on European Union, the treaties on the European Communities or secondary Community law.

4. In the cases referred to in paragraphs 1 and 3, institutions and persons subject to this decree shall nonetheless gather sufficient information to establish whether the customer can benefit from one of the exemptions provided for in those paragraphs.

5. The simplified customer due diligence requirements shall not apply where there is a reason to believe that the identification made pursuant to this article is not reliable or where it does not permit the necessary information to be acquired.

6. Institutions and persons subject to this decree shall be authorized not to apply customer due diligence in respect of:

a) life insurance policies where the annual premium is not more than €1,000 or the single premium is not more than €2,500;

b) supplementary pension schemes governed by Legislative Decree 252/2005, provided that they do not envisage redemption clauses other than those referred to in Article 14 of such decree and may not be used as collateral for a loan except in the circumstances provided for by the legislation in force;

c) compulsory and supplementary pension regimes or similar systems that provide retirement benefits, where contributions are made by way of deduction from income payments and the rules do not permit the re-assignment of a member's interest except to his survivors;

d) electronic money as defined in Article 1(2)(h-ter) of the Consolidated Law on Banking, where, if the device cannot be recharged, the maximum amount stored in the device is no more than €150 or, where, if the device can be recharged, a limit of €2,500 is imposed on the total amount transacted in a calendar year, except when an amount of €1,000 or more is redeemed in that same calendar year by the bearer pursuant to Article 3(3) of Regulation (EC) 1781/2006;

e) any other product or transaction characterized by a low risk of money laundering or terrorist financing that satisfies the technical criteria established by the European Commission in accordance with Article 40(1)(b) of the Directive, if authorized by the Minister for the Economy and Finance in the manner referred to in Article 26.

#### Article 26

##### *Technical criteria and simplified customer due diligence procedures*

1. The Minister for the Economy and Finance, after consulting the Financial Security Committee, may issue a decree authorizing the total or partial application of simplified due diligence procedures to persons and products representing a low risk of money laundering or terrorist financing, on the basis of the criteria referred to in the Technical Annex.

#### Article 27

##### *Exclusions*

1. When the European Union adopts a decision regarding a non-EU country in accordance with Article 40(4) of the Directive, institutions and persons subject to this decree may not apply simplified due diligence to credit and financial institutions or listed companies from the country concerned or to other persons on the basis of situations that satisfy the technical criteria established by the European Commission in accordance with Article 40(1)(b) of the Directive.

### Section III

#### Enhanced customer due diligence

Article 28  
*Enhanced requirements*

1. Institutions and persons covered by the Directive shall apply enhanced due diligence measures when there is a greater risk of money laundering or terrorist financing and always in the cases indicated in paragraphs 2, 4 and 5.

2. When the customer is not physically present, institutions and persons subject to this decree shall take specific and adequate steps to compensate for the greater risk by applying one or more of the following measures:

*a)* ascertaining the customer's identity on the basis of additional documents, data or information;

*b)* adopting supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by a credit or financial institution covered by the Directive;

*c)* ensuring that the first payment relating to the transaction is carried out through an account in the customer's name with a credit institution.

3. The customer identification and due diligence requirements shall nonetheless be deemed satisfied, even without the customer's physical presence, in the following cases:

*a)* where the customer is already identified in connection with an existing relationship, provided the existing information is up to date;

*b)* for transactions carried out using night safes or automated teller machines, by correspondence or through persons who perform valuables transport activity or by means of payment cards; such transactions shall be imputed to the person in whose name the relationship is established;

*c)* for customers whose ID data and other information to be acquired are shown by public acts, authenticated private writings or qualified certificates used for generating a digital signature associated with electronic documents pursuant to Article 24 of Legislative Decree 82/2005;

*d)* for customers whose ID data and other information to be acquired are shown by a declaration of the Italian consular representation, as indicated in Article 6 of Legislative Decree 153/1997.

4. In the case of correspondent accounts with non-EU respondent institutions, credit institutions must:

*a)* gather sufficient information about the respondent institution to fully understand the nature of the respondent's business and to determine, on the basis of public registers, lists, acts or publicly available documents, the reputation of the institution and the quality of the supervision to which it is subject;

*b)* assess the quality of the anti-money-laundering and anti-terrorist-financing controls to which the respondent institution is subject;

*c)* obtain the authorization of the general manager, his delegate or a person performing an equivalent function before opening new correspondent accounts;

*d)* define in writing the terms of the agreement with the respondent and the respective obligations of each institution;

*e)* with respect to payable-through accounts, ascertain that the respondent credit institution has performed ongoing due diligence on the customer and is able to provide relevant due diligence data to the counterparty financial intermediary upon request.

5. In respect of transactions, continuous relationships or professional services with politically exposed persons resident in another EU country or a non-EU country, institutions and persons subject to this decree must:

*a)* establish adequate risk-based procedures to determine whether the customer is a politically exposed person;

*b)* obtain the authorization of the general manager, his delegate or a person performing an equivalent function before establishing a continuous relationship with such customers;

*c)* take all necessary measures to establish the source of wealth and source of funds that are involved in the continuous relationship or the transaction;

*d)* conduct enhanced ongoing monitoring of the continuous relationship or professional service.

6. Financial intermediaries may not open or maintain correspondent accounts with a shell bank or with a bank known to allow a shell bank to use its accounts.

7. Institutions and persons subject to this decree shall pay special attention to any money laundering or terrorist financing threat that may arise from products or transactions that might favour anonymity and take measures, if needed, to prevent their use for money laundering or terrorist financing purposes.

#### Section IV Performance by third parties

##### Article 29 *Scope and responsibility*

1. In order to avoid repeating the customer due diligence procedures referred to in Articles 18(1)(a), 18(1)(b) and 18(1)(c), institutions and persons subject to this decree may rely on third parties to satisfy the customer due diligence requirements. The ultimate responsibility for satisfying such requirement shall rest with the institutions and persons subject to this decree that resort to third parties.

##### Article 30 *Manner of performance of customer due diligence by third parties*

1. The customer due diligence requirements referred to in Articles 18(1)(a), 18(1)(b) and 18(1)(c) shall be deemed satisfied, even in the absence of the customer, when suitable attestation is provided by one of the following persons with whom customers have continuous relationships or whom they have engaged to perform a professional service in connection with which they have already been identified in person:

*a)* intermediaries referred to in Article 11(1);

b) credit institutions and financial institutions of member states of the European Union, as defined in Articles 3(1), 3(2)(b), 3(2)(c) and 3(2)d) of the Directive;

c) banks having their registered office and head office in countries not belonging to the European Union provided that such countries are members of the Financial Action Task Force (FATF), and branches in such countries of Italian banks and of banks of other FATF member countries;

d) professionals referred to in Article 12(1), in respect of other professionals.

2. The attestation must be able to confirm that the person who must be identified and the holder of the account or of the relationship established with the attesting intermediary or professional are identical and the exactness of the information transmitted at a distance.

3. The attestation may consist in a credit transfer drawing on the account for which the customer has been identified in person, containing a code issued to the customer by the intermediary that must make the identification.

4. In no case may the attestation be issued by persons that have no physical establishments in any country.

5. The sectoral supervisory authorities may provide for additional forms and particular procedures of attestation pursuant to Article 7(2), including in the light of the evolution of distance communication techniques.

6. Where doubts arise at any time about the customer's identity, the persons obligated under this decree shall carry out a new identification that establishes his identity with certainty.

7. For customers contact with whom was made through a person engaged in financial activity referred to in Article 11(3), the intermediary may make the identification by obtaining the necessary information from the person engaged in financial activity, even without the simultaneous presence of the customer.

8. In the case of continuous relationships involving consumer credit, leasing, electronic money issuance and other types of transaction indicated by the Bank of Italy, the identification may be made by external collaborators tied to the intermediary by a special agreement in which the requirements established by this decree are specified and the procedures for satisfying them are regulated in accordance therewith.

#### Article 31

##### *Recognition at European Union level of satisfaction of due diligence by third parties*

1. In the cases provided for in Article 30(1)(a), persons referred to in Article 11 shall recognize the results of customer due diligence measures provided for in Articles 18(1)(a), 18(1)(b) and 18(1)(c) performed by a credit institution or financial institution of another EU country, provided they satisfy the requirements referred to in Articles 32 and 34, even if the documents or data on which such requirements are based are different from those required in the EU country to which the customer is being referred.

2. In the cases provided for in Article 30(1)(d), persons referred to in Articles 12(1)(a), 12(1)(b) and 12(1)(c) shall recognize the results of the customer due diligence measures provided for in Articles 18(1)(a), 18(1)(b) and 18(1)(c) performed by a person referred to in

Article 2(1)(3)(a), 2(1)(3)(b) or 2(1)(3)(c) of the Directive located in another EU country, provided they satisfy the requirements referred to in Articles 32 and 34, even if the documents or data on which such requirements are based are different from those required in the EU country to which the customer is being referred.

#### Article 32

##### *Requirements for third parties*

1. For the purposes of this section, “third parties” shall mean the institutions or persons enumerated in Article 2 of the Directive or equivalent institutions and persons located in a non-EU country that satisfy the following requirements:

- a) they are subject to mandatory professional registration, recognized by law;
- b) they apply customer due diligence requirements and record-keeping requirements identical or equivalent to those laid down in the Directive and are supervised for their compliance with the requirements of Chapter V, Section 2, of the Directive, or they are located in a non-EU country that imposes equivalent requirements to those laid down by this decree.

#### Article 33

##### *Exclusions*

1. When the European Union adopts a decision regarding a non-EU country in accordance with Article 40(4) of the Directive, persons subject to this decree may not rely on third parties of the non-EU country concerned to satisfy the requirements referred to in Articles 18(1)(a), 18(1)(b) and 18(1)(c).

#### Article 34

##### *Obligations of third parties*

1. Third parties shall make information requested in accordance with the requirements of Articles 18(1)(a), 18(1)(b) and 18(1)(c) immediately available to the institution or person subject to this decree to which the customer is being referred.
2. Copies of identification and verification data and other relevant documentation on the identity of the customer or beneficial owner shall be transmitted without delay, on request, by the third party to the institution or person subject to this decree to which the customer is being referred.
3. Recourse to foreign third parties shall be permitted, provided that the legislation applicable to them imposes requirements equivalent to those laid down in paragraphs 1 and 2.

#### Article 35

##### *Outsourcing or agency relationships*

1. This section shall not apply to outsourcing or agency relationships where, on the basis of a contractual relationship, the outsourcing service provider or agent is to be regarded as part of the institution or person subject to this decree.

#### Chapter II

### RECORDING REQUIREMENTS

#### Article 36

##### *Recording requirements*

1. Persons indicated in Articles 11, 12, 13 and 14 shall retain the documents and record the information acquired in satisfying the customer due diligence requirements for use in any investigation into, or analysis of, possible money laundering or terrorist financing conducted by the FIU or other competent authorities. In particular:

*a)* in the case of customer due diligence, they shall retain a copy or the references of the documents required for a period of ten years after the continuous relationship or professional service has ended;

*b)* in the case of transactions, continuous relationships and professional services, they shall keep the supporting evidence and records, consisting of the original documents or copies admissible in court proceedings, for a period of ten years following the carrying-out of the transaction or the end of the continuous relationship or professional service.

2. Persons indicated in Articles 11, 12, 13 and 14 shall record the following information with the procedures indicated in this chapter and keep records thereof for a period of ten years:

*a)* for continuous relationships and professional services: the date of establishment and the customer's ID data, together with the names and addresses of the persons delegated to operate on behalf of the holder of the relationship and, where applicable, the code of the relationship;

*b)* for all transactions amounting to €15,000 or more, whether carried out in a single operation or in several operations which appear to be related or split: the date, the payment details, the amount, the type of transaction, the means of payment and the ID data of the person carrying out the transaction and, where applicable, of the person on whose behalf it is being carried out.

3. The information referred to in paragraph 2 shall be recorded promptly and in any case not later than the thirtieth day following the carrying out of the transaction or the opening, variation or closure of the continuous relationship or the end of the professional service.

4. For persons referred to in Article 11(1), the time limit referred to in paragraph 3 shall elapse from the day on which they receive the data from persons referred to in Article 11(3) or from other parties who operate on behalf of the intermediaries, who must in turn forward the data within thirty days.

5. For intermediaries referred to in Article 109(2)(b) of the Private Insurance Code, the data communication requirements, pertaining to transactions involving the collection of premiums or payment of amounts due to the insured, shall apply only if such activities are expressly provided for in the agreement signed or ratified by the company.

6. Data and information recorded pursuant to this chapter may be used for tax purposes in accordance with the provisions in force.

#### Article 37 *Single electronic archive*

1. For the purposes of compliance with the registration requirements referred to in Article 36, financial intermediaries referred to in Articles 11(1) and 11(2)(a), auditing firms referred to in Article 13(1)(a) and the other persons referred to in Article 14(1)(e) shall create a single electronic archive.

2. The single electronic archive shall be set up and managed in such a way as to ensure the clarity, completeness and immediacy of the data, their retention according to uniform criteria, maintenance of the chronological order of the data, the possibility of deriving integrated records, and ease of consultation. It must be structured in a way that limits the burden on the different obligated persons, takes their operating particularities into account, and simplifies recording.

3. The creation of a single electronic archive shall be mandatory only in the event that there are data or information to be recorded.

4. An autonomous service centre may be used to create, keep and manage the single electronic archive, without prejudice to the specific responsibilities imposed by law on the obligated person and provided the latter is ensured direct and immediate access to the archive.

5. Financial intermediaries belonging to the same group may use a single service centre to keep and manage their own archives so that a delegate may extract integrated records at group level, including under the provisions of Article 41. The logical distinction and separation of the records of each intermediary must always be ensured.

6. The ID data and other information relating to continuous relationships, professional services and transactions may also be kept in electronic archives other than the single archive, provided the possibility of extracting integrated information and the chronological order of the information and data is ensured.

7. The Bank of Italy shall issue provisions on the keeping of the single electronic archive, in agreement with the other supervisory authorities and after consulting the FIU.

8. For persons referred to in Articles 11(1)(o), 11(2)(b), 11(2)(c) and 11(2)(d), the Bank of Italy shall establish simplified recording procedures.

#### Article 38

##### *Recording procedures for professionals referred to in Article 12 and auditors referred to in Article 13(1)(b)*

1. For the purposes of compliance with the recording requirements of Article 36, professionals referred to in Article 12 and persons referred to in Article 13(1)(b) shall institute an archive set up and managed using IT systems, without prejudice to the provisions of paragraph 2.

2. As an alternative to the archive, the persons indicated in paragraph 2 may establish an anti-money-laundering customer register in which they keep customer ID data. The documentation and additional data and information shall be kept in the file on each customer.

3. The customer register shall be numbered progressively and initialed on each page by the obligated person or a person appointed by him in writing, with an indication at the bottom of the last sheet of the number of pages of which the register is composed and the signature of the above-mentioned persons. The register shall be kept in an orderly manner, without blank spaces or erasures.

4. The data and information recorded with the procedures referred to in paragraph 2 shall be made available within three days upon request.

5. Where persons referred to in paragraph 1 perform their activity in more than one business office, they may institute a customer register for each of them.

6. The safekeeping of documents, attestations and acts with a notary and keeping of notary's registers in accordance with Law 89/1913 and with the regulation referred to in Royal Decree 1326/1914 as amended, and the description of means of payment pursuant to Article 35(22) of Decree Law 223/2006, ratified with amendments by Law 248/2006, shall constitute suitable procedures for recording data and information.

7. The Ministry of Justice shall issue provisions applying this article after consulting the professional associations.

#### Article 39

##### *Recording procedure for persons indicated in Articles 14(1)(a), 14(1)(b), 14(1)(c), 14(1)(d) and 14(1)(f)*

1. For the purposes of compliance with the registration requirements referred to in Article 36, persons referred to in Articles 14(1)(a), 14(1)(b), 14(1)(c), 14(1)(d) and 14(1)(f) shall use the IT systems with which they are equipped for the performance of their activity, processing the information contained therein every month.

2. The data and information recorded with the procedures referred to in paragraph 1 shall be made available within three days upon request.

3. As an alternative to the procedures referred to in paragraph 1, the single electronic archive may be established or the procedures indicated in Article 38 may be used.

4. The Ministry for the Economy and Finance, in concert with the Ministry of the Interior, after consulting the trade associations, shall specify technical details for this article and for Article 24(3).

5. For persons subject to this article, the Ministry for the Economy and Finance, in concert with the Ministry of the Interior, may establish different recording procedures from those provided for in this article.

#### Article 40

##### *Aggregate data*

1. The financial intermediaries specified in Article 11(1)(a), 11(1)(b), 11(1)(c), 11(1)(d), 11(1)(e), 11(1)(f), 11(1)(g), 11(1)(l), 11(1)(n), and 11(1)(o) and Article (2)(a), and the auditing firms indicated in Article 13(1)(a) shall send the FIU, at monthly intervals, the aggregate data on their business activity in order to allow analyses to reveal if there is any money-laundering or terrorist financing activity in any particular areas of the country.

2. The FIU shall identify the types of data to be sent using a risk-based approach and define how these data are aggregated and transmitted, including by direct access to the single electronic archive.

### CHAPTER III

#### REPORTING OBLIGATIONS

##### Article 41

### *Reporting of suspicious transactions*

1. The persons specified in Articles 10(2), 11, 12, 13 and 14 shall send a report of any suspicious transactions to the FIU whenever they know, suspect or have reason to suspect that money-laundering or terrorist financing is being or has been carried out or attempted. The suspicion may arise from the characteristics, size or nature of the transaction or from any other circumstance ascertained as a result of the functions carried out, also taking account of the economic capacity and the activity engaged in by the person in question, on the basis of information available to the reporters, acquired in the course of their work or following the acceptance of an assignment.
2. For the purpose of facilitating the identification of suspicious transactions, on the proposal of the FIU, anomaly indicators are issued and periodically updated:
  - a) for the persons specified in Article 10(2)(a), 10(2)(b), 10(2)(c), 10(2)(d), and 10(2)(f), for financial intermediaries and other persons carrying out financial activities referred to in Article 11 and for the persons specified in Article 13(1)(a), even if they are simultaneously entered in the auditors' register, by order of the Bank of Italy;
  - b) for professionals referred to in Article 12 and for auditors indicated under Article 13(1)(b), with a Minister of Justice decree, after consulting the professional associations;
  - c) for the persons indicated Article 10(2)(e) and (g), and for those indicated in Article 14 with a Minister of the Interior decree.
3. Before the anomaly indicators drawn up under paragraph 2 are issued, they shall be submitted to the Financial Security Committee to ensure coordination.
4. Reports shall be made without delay, where possible before the transaction is effected, as soon as the person required to make a report has grounds for suspicion.
5. Persons required to make a report shall not execute the transaction until a report has been made, unless it is impossible not to execute it given normal operating procedures or if not executing it could obstruct the investigation.
6. Reports of suspicious transactions carried out in the meaning of and for the effects of this present chapter shall not constitute a violation of secrecy requirements, professional secrecy or any limits to the communication of information imposed by contract or by laws, regulations or administrative provisions and, if the reports are made for the envisaged purposes and in good faith, they shall not incur liability of any kind.

### Article 42

#### *Reporting procedures for financial intermediaries and asset management companies referred to in Article 10(2)*

1. The persons specified in Articles 10(2)(a), 10(2)(b), 10(2)(c), 10(2)(d), 11(1), and 11(2), in the context of organizational autonomy, shall ensure uniform behaviour of staff in identifying the transactions referred to in Article 41 and can arrange procedures for examining transactions, including with the use of auxiliary information technology, and including on the basis of data obtained from the single electronic archive.
2. The head of the branch, office, other operating, organizational or structural unit of the intermediary in charge of the administration and the actual management of customer relations is required to report

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without delay any transactions referred to in Article 41 to the owner of the business, the legal representative or his/her delegate.

3. Persons referred to in Article 11(3) shall fulfill their reporting obligations as under paragraphs (1) and (2) by sending their report to the owner of the business or to the legal representative of the reference intermediary or his/her delegate, for the purposes referred to in Article 41(1).

4. The owner of the business, the legal representative or his/her delegate shall examine any report received and, if it is considered founded, taking account of all the information available, including that obtainable from the single electronic archive, shall transmit it to the FIU, without naming the source.

#### Article 43

##### *Reporting procedures for professionals*

1. The professionals referred to in Articles 12(1)(a) and 12(1)(c) shall send the report referred to in Article 41 directly to the FIU or to the professional associations referred to in paragraph (2).

2. The professional associations that according to paragraph (1) can receive the report of a suspicious transaction from one of their members are named by decree of the Minister for the Economy and Finance, in agreement with the Ministry of Justice.

3. Associations that have received a report shall transmit it without delay to the FIU, without naming the source.

2. Associations that have received a report shall keep a record of the name of the reporter for the purposes referred to in Article 45(3).

#### Article 44

##### *Reporting procedures for the auditing firms referred to in Article 13(1)(a)*

1. For the auditing firms referred to in Article 13(1)(a), the person responsible for managing customer relations and who participates in providing the service, is required to report without delay transactions referred to in Article 41 to the legal representative or his/her delegate.

2. The legal representative or his/her delegate shall examine the report received and, if he/she considers it well founded taking account of all the information available, including that obtainable from complying with the recording requirements referred to in Article 36, and send it to the FIU without naming the source.

#### Article 45

##### *Protection of privacy*

1. The persons with reporting obligations under Article 41 shall adopt adequate measures to ensure the maximum protection of the identity of the individuals who make reports. Acts and documents that give the identifying particulars of such individuals must be kept under the direct responsibility of the owner or legal representative of the business or his/her delegate.

2. The professional associations referred to in Article 43(2) shall adopt adequate measures to ensure the maximum protection of the identity of professionals who make a report. Acts and documents that

give the identifying particulars of such individuals must be kept under the direct responsibility of the president or of his/her delegate.

3. The FIU, the Finance Police and the Bureau of Antimafia Investigation, for the purpose of analyzing or of making a thorough investigation of a report made under Article 47, can request further information from the person who made the report from the person who made the report in the following ways:

a) if the report is made according to the procedures given in Articles 42 and 44, the information shall be requested from the financial intermediary or the auditing firm referred to in Article 13(1)(a);

b) in the case of professional associations identified pursuant to Article 43(2), the information shall be requested from the competent association;

c) in the case of a report made by a professional who is not a member of a professional association, or by other persons referred to in Articles 10(2)(e), 13(1)(b) and 14, the information shall be requested from the individual making the report, taking adequate measures to ensure confidentiality as under paragraph 5.

4. Reports of suspicious transactions, any requests for further details, as well as requests for an exchange of information about the suspicious transactions reported between the FIU, the Finance Police, the Bureau of Antimafia Investigation, the supervisory authorities and the professional associations shall be sent electronically, in such a way as to ensure that the report only reaches the people concerned and that the information sent is received intact and in its entirety.

5. The FIU, the *Finance Police*, and the Bureau of Antimafia Investigation shall adopt, including on the basis of memoranda of understanding and having consulted the Financial Security Committee, adequate measures to ensure the maximum protection of the identity of those who make reports.

6. In the event of a complaint or a report within the meaning of Articles 331 and 347 of the Code of Penal Procedure, the identity of the natural persons who have made a report, even if it is known, shall not be mentioned.

7. The identity of natural persons can only be revealed when the judicial authority, by reasoned decree, deems it indispensable for the purposes of ascertaining the crimes that are the subject of proceedings.

8. In cases other than those envisaged in paragraph 7, in the event of seizure of acts or documents, all necessary precautions shall be taken to ensure the protection of the identity of the natural persons who have made the reports.

#### Article 46

##### *Ban on communication*

1. Those subject to reporting obligations under Article 41 and whosoever may in any case be aware of a report's having been made shall be prohibited from passing on this information except in the cases envisaged by this decree.

2. The ban under paragraph 1 shall not include communications made for investigative purposes, nor communications made to sectoral supervisory authorities in the course of the controls envisaged in Article 53 or in other cases of communications foreseen by law.

3. The persons subject to reporting obligations may not inform the interested party or third parties that a report of a suspicious transaction has been made or that an investigation is being or may be conducted into money laundering or terrorist financing.

4. The ban under paragraph 1 shall not prevent communication between financial intermediaries belonging to the same group, even if they are located in third countries, on the condition that they apply measures equivalent to those foreseen by the present decree.

5. The ban under paragraph 1 shall not prevent communication between persons referred to in Article 12(1)(a), 12(1)(b) or 12(1)(c) who perform their professional services in association, as employees or collaborators, even if located in third countries, on the condition that they apply measures equivalent to those foreseen by the present decree.

6. In cases relating to the same customer or the same transactions involving two or more financial intermediaries or two or more persons referred to in Article 12(1)(a), 12(1)(b) or 12(1)(c), the ban under paragraph 1 shall not prevent communication between the intermediaries or persons in question, on the condition that they are located in a third country that imposes obligations equivalent to those foreseen by the present decree, without prejudice to the provisions of Articles 42, 43 and 44 of the Personal Data Protection Code. The information exchanged may only be used for the purpose of the prevention of money laundering or terrorist financing.

7. An attempt by one of the persons referred to in Article 12(1)(a), 12(1)(b) or 12(1)(c) to dissuade the customer from carrying out an illegal activity does not constitute a communication forbidden by paragraph 6.

8. When the European Commission adopts a decision under Article 40(4) of the Directive, the communications referred to in paragraphs 4, 5 and 6 are forbidden. .

#### Article 47

##### *Analysis of the report*

1. When the FIU receives a report, it shall:

*a)* based on the results of the analyses and studies carried out and inspections, conduct more thorough examination, from the financial point of view, of the reports received and of suspicious transactions that have not been reported but of which it is aware on the basis of data and information contained in its own files archives or on the basis of information received from the investigative bodies referred to Article 9(10), from the sectoral supervisory authorities, from professional associations and from FIUs abroad;

*b)* on the basis of memoranda of understanding, conduct an in-depth analysis involving the competences of the sectoral supervisory authorities, which shall supplement the information by supplying further information from their own archives;

*c)* close the reports considered unfounded, keeping them on file for ten years, following procedures that allow consultation by the investigative bodies referred to in Article 8(3), on the basis of the memoranda of understanding.

*d)* apart from the cases envisaged by subparagraph *c*, without prejudice to that envisaged under Article 331 of the Code of Penal Procedure, transmit the reports, compiled within the meaning of this paragraph and including a technical report containing the information on the transactions provoking the suspicion of money laundering or terrorist financing, without delay, including on the basis of memoranda of understanding, to the Bureau of Antimafia Investigation and the Special Foreign

Exchange Unit of the Finance Police, , , which will inform the National Antimafia Prosecutor, whenever it relates to organized crime.

#### Article 48

##### *Return flow of information*

1. The transmission of a report to the investigative bodies referred to in Article 8(3) or the closure of a report shall be communicated, when this does not affect the result of the investigations, by the FIU directly to the reporter or via the professional associations referred to in Article 43(2).
2. The investigative bodies referred to in Article 8(3) shall inform the FIU of reports of suspicious transactions that are no longer under investigation.
3. The FIU, the Finance Police and the Bureau of Antimafia Investigation shall provide to the Financial Security Committee, in the context of the communication referred to in Article 5(3)(b), information on the types and phenomena observed in the preceding calendar year, in the context of activities to prevent money laundering and terrorist financing, and on the results of the reports divided by category of reporter, transaction type and geographical area.
4. The return flow of information shall be subject to the same ban on communication to customers or third parties referred to in Article 46(1).

#### TITLE III

##### FURTHER MEASURES

#### Article 49

##### *Limitations on the use of cash and bearer instruments*

1. It is forbidden for any reason to transfer cash or bank or postal bearer deposit instruments or bearer instruments in euro or foreign currency between different persons when the value of the transaction, even if subdivided, is €5000 or more in total. Transfers may however be made through banks, electronic money institutions and Poste Italiane S.p.A.
2. Transferring cash by means of persons referred to in paragraph 1 must be done according to an order accepted in writing by such persons, after prior delivery to them of the cash. From the third working day following that of such acceptance, the beneficiary shall have the right to obtain the payment in the province of domicile.
3. Communication by the debtor to the creditor of acceptance under paragraph 2 produces the effect referred to in the first paragraph of Article 1277 of the Italian Civil Code and, if the creditor refuses to accept the payment, that of the power of deposit referred to in Article 1210 of the Code.
4. Bank and postal cheques are issued by the banks and Poste Italiane S.p.A. with a “not transferable” clause. Customers must make a written request for cheques without this clause.
5. Bank and postal cheques issued for amounts of €5000 or more must carry the personal or business name of the beneficiary and the “not transferable” clause.

6. Bank and postal cheques issued to the order of the drawer can be endorsed for payment exclusively into a bank or Poste Italiane S.p.A.

7. Bankers' drafts, postal money orders and promissory notes shall be issued in the personal or business name of the beneficiary and carry the "not transferable" clause

8. The issuing of bankers' drafts, postal orders and promissory notes for amounts below €5000 without the "not transferable" clause can be requested by the customer in writing.

9. Anyone requesting a banker's draft, promissory note or equivalent instrument made out in the name of third parties and issued with the "non transferable" clause, can request the withdrawal of the provision if the instrument is returned to the issuer.

10. For each bank or postal cheque requested without the "non transferable" clause or for each bankers' draft or postal order or promissory note issued without such clause, the sum of €1.50 must be paid for stamp duty. All endorsements must contain the tax code of the endorser on pain of nullity.

11. Persons authorized to use the communications referred to in Article 7(6) of Presidential Decree 605/1973 as amended can ask the bank or Poste Italiane S.p.A. for the identifying particulars and tax code of the persons to whom bank or postal cheques without the "not transferable" clause have been issued, or who have requested bankers' drafts or postal orders or promissory notes without such clause, or who have presented such instruments for encashment. The technical procedures for sending the data referred to in this paragraph are contained in a provision made by the Director of the Agenzia delle Entrate (Revenue Agency). The documentation regarding the data themselves constitute proof within the meaning of Article 234 of the Code of Penal Procedure.

12. Bearer bank or postal deposit books may not have a balance of €5000 or more.

13. Bearer bank or postal deposit books with a balance of €5000 or more in existence on the date of entry into force of this decree must be closed by the bearer, or their balance reduced to below said amount by 30 June 2009. Banks and Poste Italiane S.p.A. must publicize and give ample information about this provision.

14. If the bearer bank or postal deposit books are transferred, the transferor shall, within 30 days, communicate the identifying particulars of the transferee and the date of the transfer to the bank or Poste Italiane S.p.A.

15. The provisions under paragraphs 1, 5 and 7 shall not apply to transfers in which the bank or Poste Italiane S.p.A. are parties, nor to transfers between the latter done in person or through the specialized carriers referred to in Article 14(1)(c).

16. The provisions under paragraph 1 shall not apply to transfers of certificates representing shares in which one or more of the persons indicated in Articles 11(1)(a), 11(1)(b) and 11(1)(d), 11(1)(e), 11(1)(f) or 11(1)(g) are parties.

17. The provisions remain unchanged regarding payments made to the State or other public entities and payments made by the latter to other persons. The possibility of making a payment in the meaning of Article 494 of the Code of Civil Procedure is also upheld.

18. It is forbidden to transfer cash for amounts of €2000 or more by means of persons providing payment services in the form of encashment and transfer of funds, solely as regards transactions for which loan and financial brokers are used, except as provided in paragraph 19. The ban shall not apply to the electronic money referred to in Article 25(6)(d).

19. The transfer of cash for amounts of €2000 or more but less than €5000 made by means of persons providing payment services in the form of encashment and transfer of funds, and loan and financial brokers which the traders themselves use, shall be allowed only if the person ordering the transaction gives the intermediary a copy of the documentation necessary to attest the appropriateness of the transaction in relation to such person's own economic profile.

20. The provisions contained in this present article shall enter into force on 30 April 2008.

#### Article 50

##### *Ban on anonymous or fictitiously named accounts or savings books*

1. The opening in any form of accounts or savings books anonymously or in a fictitious name is prohibited.

2. The use in any form of accounts or savings books anonymously or in a fictitious name opened in a foreign country is prohibited.

#### Article 51

##### *Obligation to report to the Ministry for the Economy and Finance any infractions referred to in this Title*

1. The persons subject to this decree who, by reason of their work and within the limits of their functions and activities, learn of infractions of the provisions contained in Article 49 (1), Article 49 (5), Article 49 (6), Article 49 (7), Article 49 (12), Article 49 (13), Article 49(14) or Article 50 shall, within 30 days, inform the Ministry for the Economy and Finance for the service of notification and other obligations envisaged by Article 14 of Law 689/ 1981.

2. In the case of infractions regarding bank cheques, cashiers' cheques, bearer books or similar instruments, the communication must be made by the institution (bank or Poste Italiane S.p.A.) that accepting the payment and by the institution (bank or Poste Italiane S.p.A.) that carries out the extinction, unless the person required to report is certain that the other person required to report has already done so.

3. Whenever the infraction is a transfer reported pursuant to Article 41(1), the person that has reported the suspicious transaction shall not be required to make a communication pursuant to paragraph 1.

#### TITLE IV

#### SUPERVISION AND CONTROL

#### Article 52

##### *Control bodies*

1. Without prejudice to the provisions of the Italian Civil Code and special laws, the Board of Auditors, the Supervisory Board, the Management Control Committee, the supervisory body referred to in Article 6(1)(b) of Legislative Decree 231/2001 and all the persons charged with management

control who are listed with the persons subject to the present decree shall monitor compliance with the regulations it contains.

2. The bodies and persons referred to in paragraph 1 shall:

*a)* communicate, without delay, to the sectoral supervisory authorities all the acts or deeds coming to their notice in the course of their duties which could constitute a violation of the provisions issued under Article 7(2).

*b)* communicate, without delay, to the owner of the business or the legal representative or his/her delegate, any infractions of the provisions under Article (41) that come to their notice.

*c)* communicate, within thirty days, to the Ministry for the Economy and Finance any infractions of the provisions under Article 49(1), (5), (6), (7), (12), (13) and (14) and Article 50 that come to their notice.

*d)* communicate, within thirty days, to the FIU any infractions of the provisions contained in Article 36 that come to their notice.

#### Article 53

##### *Controls*

1. The sectoral supervisory authorities, in their respective competences, shall verify the adequacy of their organizational and procedural arrangements and compliance with the obligations contained in this decree and its implementing provisions by the persons indicated in Articles 10(2)(*a*), 10(2)(*b*), 10(2)(*c*), 10(2) (*d*) and 10(2)(*f*), financial intermediaries specified in Article 11(1), other persons engaged in financial activities indicated in Articles 11(3)(*a*) and 11(3)(*b*), and auditing firms referred to in Article 13(1)(*a*). The controls on financial intermediaries under Article 11(1)(*m*), can also be carried out, with the prior agreement of the relevant supervisory authority, by the Special Foreign Exchange Unit of the of the Finance Police.

2. Controls on compliance with the obligations contained in this present decree and relative implementing provisions by persons listed in Articles 10(2)(*e*) and 10(2)(*g*), intermediaries under Article 11(2), other persons engaged in financial activities under Articles (11)(3)(*c*) and 11(3)(*d*), professionals referred to in Articles 12(1)(*b*) and 12(1)(*d*), and other persons referred to in Article 14 shall be carried out by the Special Foreign Exchange Unit of the Finance Police.

3. The professional associations referred to in Article 8(1) shall perform the activity envisaged therein without prejudice to the power to carry out controls of the Special Foreign Exchange Unit of the Finance Police.

4. The FIU shall verify compliance with provisions regarding the prevention and repression of money laundering or terrorist financing with regard to the reporting of suspicious transactions and cases of failure to report suspicious transactions. For this purpose, the FIU may request the collaboration of the Special Foreign Exchange Unit of the Finance Police.

5. The supervisory authorities and the Special Foreign Exchange Unit of the of the Finance Police may make inspections and require the presentation or transmission of documents, acts and any other useful information. In the interests of administrative economy and containment of the costs borne by supervised intermediaries, the supervisory authorities and the Special Foreign Exchange Unit of the of the Finance Police shall plan their respective control activities and coordinate their procedures.

#### Article 54

##### *Staff training*

1. Those persons subject to the obligations and the professional associations shall adopt measures for the adequate training of staff and collaborators for the correct application of the provisions of this decree.
2. The measures referred to in paragraph 1 shall include training programmes to ensure recognition of activities potentially linked to money laundering or terrorist financing.
3. The competent authorities, in particular the FIU, the Finance Police and the Bureau of Antimafia Investigation, shall provide updated information about money-laundering and terrorist financing practices.

#### Title V

### SANCTIONS AND FINAL PROVISIONS

#### *Chapter I*

### CRIMINAL SANCTIONS

#### Article 55

##### *Criminal sanctions*

1. Unless the act constitutes a more serious crime, anyone contravening the provisions contained in Title II, Chapter I, concerning customer identification due diligence, shall be punished with a fine of from €2,600 to €13,000.
2. Unless the act constitutes a more serious crime, the executor of the transaction who fails to give the identifying particulars of the person for whom the transactions is executed or who provides false particulars shall be punished with from 6 to 12 months' imprisonment and a fine of from €500 to €5,000.
3. Unless the act constitutes a more serious crime, the executor of the transaction who fails to provide information on the purpose and the nature of the continuous relationship or the professional service or who provides false information in this regard shall be punished with from 6 months' to 3 years' imprisonment and a fine of from €5,000 to €50,000.
4. Anyone who is so required who fails to record the information referred to in Article 36, or who does so late or incompletely shall be punished with a fine of from €2,600 to €13,000.
5. Anyone who is so required who fails to make the communication referred to in Article 52(2) shall be punished with imprisonment of up to 1 year and a fine of from €100 to- €1,000.
6. If the customer identification and recording requirements are fulfilled using fraudulent means such as to obstruct the identification of the person who effected the transaction, the sanctions referred to in paragraphs 1, 2 and 4 shall be doubled.

7. If the persons referred to in Article 11(1)(h), and 11(3)(c) and 11(3)(d) fail to make the communication envisaged by Article 36(4) or do so late or incompletely, the sanction referred to in paragraph 4 shall apply.

8. Unless the act constitutes a more serious crime, anyone who is so required who violates the bans on disclosure referred to in Articles 46(1) and 48(4) shall be punished with imprisonment of from 6 months to 1 year or with a penalty of from €5,000 to €50,000.

9. Anyone who with the intention of profiting for him/herself or for others, makes improper use, not being the legitimate holder, of credit or payment cards or any other similar kind of document permitting cash withdrawal or purchase of goods or provision of services, shall be punished with 1 to 5 years' imprisonment and a fine of from €310 to €1,550. The same penalty shall apply to anyone who, for the purpose of profiting for him/herself or for others, falsifies or alters credit or payment cards or any other similar kind of document permitting cash withdrawal or purchase of goods or provision of services, or who holds, transfers or purchases such cards or documents from an illegal source or in any case that have been falsified or altered, as well as payment orders produced with them.

## *Chapter II* ADMINISTRATIVE SANCTIONS

### Article 56

1. In cases of failure to comply with the provisions recalled or adopted within the meaning of Articles 7(2), 54 and 61(1) a pecuniary administrative sanction of between €10,000 and €200,000 shall be imposed on the persons indicated in Article 10(2)(a), 10(2)(b), 10(2)(c) and 10(2)(d), the financial intermediaries referred to in subparagraphs a), b) and c) of Article 11(1) and Article 11(2)(a), 11(2)(b) and 11(2)(c), the other persons performing the financial activities referred to in Article 11(3)(b) and the auditing firms referred to in Article 13(1)(a).

2. The financial sector supervisory authorities that oversee the persons indicated in Article 11(1)(m), 11(3)(c) and 11(3)(d) shall activate the procedure for deletion from the register referred to in Article 106 of the Consolidated Law on Banking for serious infringements of the obligations imposed in this legislative decree.

3. Except in the circumstances envisaged in paragraphs 4 and 5, the Bank of Italy shall impose the sanction provided for in paragraph 1; insofar as they are compatible, the provisions of Article 145 of the Consolidated Law on Banking shall apply.

4. For the financial intermediaries referred to in Article 11(1)(g) and for the other persons performing the financial activities referred to in Article 11(3)(b), the procedure for imposing the sanction in paragraph 1 shall be that provided for in Title XVIII, Chapter VII of the Private Insurance Code.

5. For the auditing firms referred to in Article 13(1)(a), the sanction shall be applied by Consob; insofar as they are compatible, the provisions of Article 195 of the Consolidated Law on Finance shall apply.

### Article 57

#### *Violations of Title I, Chapter II and of Title II, Chapters II and III*

1. Unless the act constitutes a crime, failure to comply with the suspension measure referred to in Article 6(7)(c) shall be punished with a fine of from €5,000 to €200,000.

2. Failure to create the single electronic archive referred to in Article 37 shall be punished with a fine of from €50,000 to €500,000. In the most serious cases, taking account of the gravity of the violation inferred from the circumstances in which it occurred and from the value of the suspicious transaction that was not reported, the provision imposing the sanctions shall be accompanied by an order that the persons fined publish, at their own initiative and cost, the decree imposing the sanction in at least two newspapers distributed nationwide, of which one shall be a financial paper.

3. Failure to set up the customer register referred to in Article 38 or to adopt the recording procedures referred to in Article 39 shall be punished with a fine of from €5,000 to €50,000.

4. Unless the act constitutes a crime, failure to report suspicious transactions shall be punished with a fine of from 1 to 40 per cent of the amount of the non-reported transaction. In the most serious cases, taking account of the gravity of the violation inferred from the circumstances in which it occurred and from the value of the suspicious transaction that was not reported, the provision imposing the sanction shall be accompanied by an order that the persons fined publish, at their own initiative and cost, the decree imposing the sanction in at least two newspapers distributed nationwide, of which one shall be a financial paper.

5. Violations of the disclosure requirements in respect of the FIU shall be punished with a fine of from €5,000 to €50,000.

#### Article 58 *Violations of Title III*

1. Without prejudice to the validity of the transactions, violations of the provisions of Article 49(1), 49(5), 49(6) and 49(7) shall be subject to a fine of from 1 to 40 per cent of the amount transferred.

2. Violations of the requirement referred to in Article 49(12) shall be punished by a fine of from 20 to 40 per cent of the balance.

3. Violations of the requirement contained in Article 49(13) and 49(14) shall be punished by a fine of from 10 to 20 per cent of the balance in the bearer passbooks.

4. Violations of the requirements contained in Article 49(18) and 49(19) shall be punished by a fine of from 20 to 40 per cent of the amount transferred.

5. Violations of the prohibition referred to in Article 50(1) shall be punished by a fine of from 10 to 40 per cent of the balance.

6. Violations of the obligation referred to in Article 50(2) shall be punished by a fine of from 10 to 40 per cent of the balance.

7. Violations of the obligation referred to in Article 51(1) of this decree shall be punished by a fine of from 3 to 30 per cent of the transaction amount, passbook balance or account balance.

#### Article 59 *Joint and several liability of the entities*

1. For the violations indicated in Articles 57 and 58, the joint and several liability of the persons referred to in Article 6 of Law 689/1981 shall continue to apply even when the

perpetrator of the violation has not been identified or when same is no longer actionable under that law.

*Article 60*  
*Procedures*

1. The FIU, financial sector supervisory authorities, interested administrative bodies, the Finance Police and the Bureau of Antimafia Investigation shall verify, in relation to their tasks and within the limits of their powers, violations indicated in Articles 57 and 58 and execute notification pursuant to Law 689/1981.
2. After consulting the committee provided for in Article 1 of Presidential Decree 114/2007, in a separate decree the Ministry for the Economy and Finance shall impose the sanctions provided for in Articles 57 and 58. The provisions of Law 689/1981 shall apply. Article 16 of that law shall apply only to violations of Article 49(1), 49(5) and 49(7), for amounts not exceeding €250,000. Reduced sanctions shall not be open to persons who have already availed themselves of this option for another violation of Articles 49(1), 49(5) or 49(7), notification of which was received by the interested party within the 365 days preceding receipt of the notification of charges for the violation that is the subject of the new proceeding.
3. In order to allocate the sums collected in connection with the administrative sanctions provided for in this decree and in Legislative Decree 109/2007, the criteria sanctioned in Law 168/1951 shall apply.
4. The Ministry for the Economy and Finance shall determine in a separate decree the remuneration of the members of the committee referred to in paragraph 2, following the procedures indicated in the Presidential Decree laying down the rules for implementing Article 29 of Decree Law 223/2006, ratified with amendments by Law 248/2006.
5. Records relating to persons in whose regard a definitive sanction is issued on the basis of this article shall be retained in the information system of the FIU for a period of ten years.
6. The measures by which the administrative fines provided for in this decree are imposed shall be notified to the supervisory authorities, the FIU and the professional associations, for initiatives within their respective spheres of competence.
7. The information referred to in Articles 5 and 6 shall be transmitted via computer.

*Chapter III*  
FINAL PROVISIONS

*Article 61*  
*Regulation (EC) 1781/2006*

1. For transfers of funds referred to in Article 2(7) of Regulation (EC) 1781/2006, the obligations relative to verifying the complete information on the payer, and on the data registration and maintenance provided for in the same regulation, shall continue to obtain.

2. In order to ensure a risk-based approach to anti-money-laundering and anti-terrorist financing measures, the payment service providers referred to in Article 2(5) of Regulation (EC) 1781/2006 shall not be obliged to adopt the measures referred to in Article 9(2) of that regulation in respect of payment service providers of countries that have established an exemption threshold for the obligations to transmit information on the payer, provided for under Special Recommendation VII of the Financial Action Task Force. The present provision shall not apply in the case of transfers of over €1,000 or 1,000 USD.

3. The Bank of Italy shall issue instructions for the application of Regulation (EC) 1781/2006 in respect of the payment service providers.

#### Article 62

##### *Provisions concerning the Italian Foreign Exchange Office*

1. The tasks and powers assigned to the Italian Foreign Exchange Office by Legislative Decree 319/1998, the Consolidated Law on Banking, Decree Law 143/1991, ratified with amendments by Law 197/1991, and subsequent measures regarding financial controls, the prevention of money laundering and the prevention of the financing of international terrorism shall be transferred to the Bank of Italy, together with the related material, human and financial resources.

2. Every reference to the Italian Foreign Exchange Office contained in laws or legislative acts shall be understood as referring to the Bank of Italy.

3. The Italian Foreign Exchange Office is abolished. Pursuant to and for the effects of Article 5(3) of Legislative Decree 319/1998, the Bank of Italy shall succeed to the rights and legal relationships of the Italian Foreign Exchange Office. For income tax purposes, Article 172 of the income tax code referred to in Presidential Decree 917/1986, except for paragraph 7, shall apply insofar as it is compatible. The succession shall take place by applying to employees of the Italian Foreign Exchange Office the same employment relationship regime that is provided for the staff of the Bank of Italy, with accrued seniority of rank and service maintained and without prejudice to the economic and pension treatment to which employees of the Italian Foreign Exchange Office are already entitled.

4. Until the regulation referred to in Article 6(2) is issued, the tasks and functions assigned to the FIU shall be performed on a transitional basis by the Anti-Money-Laundering Department of the abolished Italian Foreign Exchange Office.

5. The provisions of this article shall enter into force on 1 January 2008.

#### Article 63

##### *Amendments to current legislation*

1. Article 7(6) of Presidential Decree 605/1973 shall be amended as follows:

a) the phrase “and the existence of any transaction in the preceding period, concluded outside of a continuous relationship” shall be inserted after the words “existence of relationships” ;

b) the phrase “and of the persons who have any relationship with financial operators or make transactions outside of a continuous relationship on their own behalf or on behalf or in the

name of third parties” shall be inserted after the words “the identifying particulars data of the account holders”;

2. In the fourth sentence of Article 7(11) of Presidential Decree 605/1973 the words “in the preliminary investigative phase” shall be replaced by the following: “both for the purposes of the preliminary inquiries and in the course of exercising the functions envisaged in Article 371-bis of the Code of Penal Procedure.”

3. After Article 25-septies of Legislative Decree 231/2001 the following shall be inserted:

“Article 25-octies (*Receiving stolen property, money laundering and the use of money, assets or benefits of illegal provenance*). – 1. In relation to the crimes referred to in Articles 648, 648-bis and 648-ter of the Penal Code, a fine of from 200 to 800 units shall apply to the entity. In the event that the money, assets or other benefits derive from a crime for which the maximum prison term exceeds five years the fine shall be between 400 and 1000 units.

“2. In cases of conviction for one of the crimes referred to in paragraph 1, the interdictory sanctions provided for in Article 9(2) shall be applied to the entity for a period of no more than 2 years.

“3. In relation to the illegal acts referred to in paragraphs 1 and 2, the Ministry of Justice, after consulting the FIU, shall formulate the observations referred to in Article 6 of Legislative Decree 231/2001.”

4. After Article 648-ter of the penal code the following article shall be added:

“Article 648-quater (*Confiscation*). – In the event of a condemnation or application of the sentence on request of the parties, in accordance with article 444 of the Code of Penal Procedure, for one of the crimes envisaged in Articles 648-bis and 648-ter, the confiscation of the property that constitutes the product or gain shall always be ordered, except if said property belongs to persons unconnected with the crime.

“When it is not possible to proceed with the confiscation referred to in the first paragraph, the judge shall order the confiscation of the sums of money, property or other benefits at the offender’s disposal, including through an interposed person, for an amount equivalent to the product, gain or price of the crime.

“In relation to crimes referred to in Articles 648-bis and 648-ter, the public prosecutor can carry out, in the terms and for the purposes referred to in Article 430 of the Code of Penal Procedure, all necessary investigative activities regarding the property, money or the other benefits to be confiscated in accordance with the previous paragraphs.”

5. In Article 37(5) of Decree Law 223/2006, ratified with amendments by Law 248/2006 the words “in paragraph 4” shall be replaced by the following: “in the sixth paragraph of Article 7 of Presidential Decree 605/1973.”

6. In Article 3(3) of Legislative Decree 109/2007 the words “by the Supervisory Authority for the Insurance Industry” shall be inserted after the words “by the Italian Companies and Stock Exchange Commission”.

#### Article 64 *Repealed laws*

1. The following shall be repealed:

a) as from 30 April 2008, Chapter I of Decree Law 143/1991, ratified with amendments by Law 197/1991, with the exception of Article 5(14) and 5(15), and Articles 10, 12, 13, 14 and the related implementing provisions;

b) Articles 1, 4, 5, 6 and 7 of Legislative Decree 374/1999;

c) Articles 150 and 151 of Law 388/2000;

d) Legislative Decree 56/2004 and the related implementing provisions;

e) Article 5-*sexies* of Decree Law 7/2005, ratified with amendments by Law 43/2005;

f) Article 10(5) and 10(6) of Law 146/2006, ratifying and executing the United Nations Convention against Transnational Organized Crime and its Protocols, adopted by the General Assembly on 15 November 2000 and on 31 May 2001;

g) the second sentence of Article 1(882) of Law 296/2006;

h) Articles 8, 9, 10(2), 10(3), 13(4) and 13(5) of Legislative Decree 109/2007.

Article 65  
*Technical Annex*

1. In order to identify correctly the persons referred to in Article 1(2)(o) and 1(2)(u), and to ensure the correct application of Articles 19(1)(a) and 26, reference shall be made to the provisions of the technical annex to this decree.

2. The technical annex referred to in paragraph 1 shall be amended or supplemented with a decree issued by the Minister for the Economy and Finance after consulting the Financial Security Committee.

Article 66  
*Transitional and final provisions*

1. The provisions issued to implement repealed or replaced provisions shall continue to be applied, insofar as they are compatible, up to the date of entry into force of the implementing measures of the present decree.

2. The provisions referred to in Articles 37(7), 38(7) and 39(4) shall be issued within eighteen months of the entry into force of this decree.

3. The data and other information referred to in Articles 45(4) and 60(7) shall be transmitted electronically within twelve months of the entry into force of this decree.

4. The definition in Article 1(2)(r) shall be amended by decree of the Minister for the Economy and Finance, in concert with the Minister for Public Administration Reform and Innovation.

5. The Minister for the Economy and Finance, in agreement with the Bank of Italy, can by a decree specify further means of payment deemed capable of being used for money laundering purposes, in addition to those indicated in Article(2)(i), and set limits for the use of same.

6. After consulting the Committee for Financial Security, the Minister for the Economy and Finance shall identify further natural persons for the purposes of the definition referred to in Article 1(2)(p).

7. The Minister for the Economy and Finance may issue a decree changing the amount limits established by Article 49.

8. The following shall be added to Article 22-*bis*(2) of Law 689/1981, after subparagraph (g): “g-*bis*) combating money laundering”.

9. The financial intermediary referred to in Article 11(1)(o) shall comply with the provisions of Article 37 from the date of entry into force of the provisions of subparagraphs 7 and 8 of the latter article, and according to the procedures and terms envisaged.

Article 67  
*Concordance provisions*

1. In Article 1(1)(h) of Legislative Decree 109/2007, the anti-money-laundering law shall mean the present decree.

2. In Article 7(1) of Legislative Decree 109/2007, the persons specified in Article 2 of Legislative Decree 56/2004 shall be understood to mean the persons referred to in Articles 10(2), 11, 12, 13 and 14 of the present decree.

Article 68  
*Invariance clause*

1. No new or additional charges to the public finances must derive from the implementation of this legislative decree.

2. General government bodies shall make provision for the implementation of the tasks deriving from the provisions of this decree using the human, instrumental and financial resources available under the current legislation.

*(omissis)*

TECHNICAL ANNEX

Article 1  
*Article 1(2)(0)*  
*Politically exposed persons*

1. Natural persons who are or have been entrusted with prominent public functions shall mean:

*a)* heads of state, heads of government, ministers and undersecretaries;

*b)* members of parliament;

*c)* members of supreme courts, constitutional courts and other high-level judicial bodies, whose rulings are not generally subject to further appeal, barring exceptional circumstances;

- d) members of state audit offices and of the boards of directors of central banks;
- e) ambassadors, *chargés d'affaires* and high-ranking officials in the armed forces;
- f) members of the administrative, management or supervisory bodies of state-owned enterprises.

Middle and lower-ranking officials are not included in any of the categories specified above. The categories from subparagraphs a) through e) comprise, where applicable, positions at European and international level.

2. Close relatives shall mean:

- a) spouses;
- b) children and their spouses;
- c) those who in the last five-year period have lived with the persons referred to in the previous subparagraphs;
- d) parents.

3. For the purposes of identifying the persons with whom the natural persons listed in paragraph 1 above are known to have close relationships, reference shall be made to:

- a) any natural person who is known to have joint beneficial ownership of legal entities or any other close business relationship with a person referred to in paragraph 1;
- b) any natural person who is the sole beneficial owner of legal entities or legal persons known to have been de facto established for the benefit of a person referred to in paragraph 1.

4. Without prejudice to the application of enhanced customer due diligence measures, and adopting a risk-based approach, when a person has ceased to hold prominent public functions for at least one year, the persons subject to this decree shall not be obliged to consider that person as politically exposed.

## Article 2

### *Article 1(2)(u). Beneficial owner*

1. Beneficial owner shall mean:

a) in the case of companies:

- 1) the natural person or persons who ultimately own or control a legal entity through direct or indirect ownership or control over a sufficient percentage of the capital stock or voting rights in that legal entity, including through bearer share holdings, provided that it is not 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 per cent plus one share shall be deemed sufficient to meet this criterion;
- 2) the natural person or persons who otherwise exercise 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:

- 1) where the future beneficiaries have already been determined, the natural person or persons who are beneficiary of 25 per cent or more of the property of a legal entity;
- 2) where the individuals that benefit from the legal entity have yet to be determined, the class of persons in whose main interest the legal entity is set up or operates;
- 3) the natural person or persons who exercise control over 25 per cent or more of the property of a legal entity.

Article 3  
*Article 19(1)(a)*  
*Valid identification documents*

1. ID cards and other identification documents referred to in Articles 1 and 35 of Presidential Decree 445/2000 shall be considered valid for identification purposes. For the identification of non-EU citizens and of minors the current provisions shall apply; with reference to unborn children, identification shall be made in respect of the legal representative. The identification may also be performed by a designated public official or by means of an authenticated photograph, in which case the data of the birth certificate of the interested party shall be acquired and included in the single electronic archive or register of customers.

Article 4  
*Article 26. Technical criteria and simplified customer  
due diligence procedures*

1. For the purposes of the application of Article 26, persons and products representing a low risk of money laundering or terrorist financing shall mean:

a) public authorities or bodies that act as customers, provided the following criteria are satisfied:

- 1) the customer has been entrusted with public functions in accordance with the Treaty on European Union, the treaties establishing the European Communities and the secondary legislation of the European Community;
- 2) the identity of the customer is publicly available, transparent and certain;
- 3) the customer's activities and accounting procedures are transparent;
- 4) the customer gives account of its operations to a European institution or to the authorities of an EU country, or there are controls and counterweights ensuring verification of customer activity;

b) legal entities other than the authorities and public bodies referred to in subparagraph (a) that act as customers, provided the following requirements are satisfied:

- 1) the customer is an entity that performs financial activities lying outside the scope of Article 2 of Directive 2005/60/EC but to which national law has been extended, in accordance with Article 4 of the Directive;
- 2) the identity of the customer is publicly available, transparent and certain;

- 3) the customer has obtained authorization to perform the financial activities based on national law and such authorization may be refused if the competent authorities are not adequately persuaded of the competence and integrity of the persons who manage or will manage the activity of this entity or of its beneficial owner;
- 4) pursuant to Article 37(3) of Directive 2005/60/EC, the competent authorities supervise compliance of customers with the national legislation adopted in accordance with the Directive and, where applicable, of the additional requirements provided for by national law;
- 5) failure of customers to comply with the requirements referred to in point 1) above are subject to effective, proportionate and deterrent sanctions, including the possibility of suitable administrative measures or the imposition of administrative sanctions;
- c) products or transactions linked to products that meet the following requirements:
- 1) the product is based on a written contract;
  - 2) the transactions in question are carried out through a customer account held with a credit institution subject to Directive 2005/60/EC or one located in a third country that imposes obligations equivalent to those established by the Directive;
  - 3) the product or transaction in question is not anonymous and is of a kind that enables the prompt application of Article 7(c) of Directive 2005/60/EC;
  - 4) there is a predetermined maximum limit on the product's value;
  - 5) the benefits of the product or of the transaction in question cannot go to third parties except in the case of death, invalidity, survival beyond a predetermined age or similar events;
  - 6) in the case of products or transactions that envisage the investment of funds in financial assets or credit, including insurance and other kinds of potential credit, the benefits of the product or transaction are only realized in the long term, the product or transaction cannot be used as a guarantee, no advance payments are made, no surrender clauses used and there is no early repayment during the contractual relationship.
1. The criteria referred to in point 1(a) shall be applied only to customers and not to their subsidiaries, unless these also meet the criteria in their own right.
  2. For the purposes of the application of point 1(a)(3), the activity performed by the customer shall be subject to supervision by the competent authorities. In this context, supervision shall mean that based on the most intensive powers, including the possibility of conducting on-site inspections. Such inspections may include the review of policies, procedures, books and registers and comprise sample verifications.
  3. For the purposes of the application of point 1(c)(4) the thresholds established in Article 25(6)(a) of this decree shall apply in the case of insurance policies or analogous investment products. Without prejudice to the paragraph that follows, in the other cases the maximum threshold shall be €15,000. A derogation from this threshold may be possible in the case of products that are linked to the financing of material activities and when the legal and beneficial ownership of the activities is not transferred to the customer until the end of the contractual relationship, so long as the threshold established for the transactions connected with this type of product, whether carried out in a single operation or in several which appear to be related, does not exceed €25,000 per annum.

4. The criteria referred to in point 1(c)(5) and 1(c)(6) may be subject to a derogation in the case of products whose characteristics are determined by the Minister for the Economy and Finance to be in the general interest, which benefit from special state advantages in the form of direct allocations or tax reimbursements and whose use is subject to supervision by the public authorities, so long as the benefits of the products may only be realized in the long term and the threshold established for the purposes of applying point (c)(4) is sufficiently low. Where appropriate, this threshold may be established in the form of a maximum annual amount.
6. In assessing whether customers or products and the transactions referred to in points *a*), *b*) and *c*) present a low risk of money laundering or terrorist financing, the Minister for the Economy and Finance shall pay particular attention to any activity of these customers or any type of product or transaction that could be considered as particularly susceptible, by virtue of their nature, to use or abuse for money laundering or terrorist financing purposes. The customers or products and transactions referred to in point 1*a*), 1*b*) and 1*c*), cannot be considered to be at low risk of money laundering or terrorist financing if the available information indicates that the risk of money laundering or terrorist financing may not be low.