FATF GAFI

Financial Action Task Force

Third Mutual Evaluation Follow-Up Report

Anti-Money Laundering and Combating the Financing of Terrorism

27 February 2009

Italy

Following the adoption of its third Mutual Evaluation (MER) in October 2005, in accordance with the normal FATF follow-up procedures, Italy was required to provide information on the measures it has taken to address the deficiencies identified in the MER. Since October 2005, Italy has been taking action to enhance its AML/CFT regime in line with the recommendations in the MER. The FATF recognizes that Italy has made significant progress and that Italy should henceforward report on a biennial basis on the actions it will take in the AML/CFT area.

THIRD MUTUAL EVALUATION
FOLLOW-UP REPORT

ITALY

This report provides an overview of the measures that Italy has taken to address the major deficiencies relating to Recommendations rated non-compliant (NC) or partially compliant (PC) since its last mutual evaluation. The progress shown indicates that sufficient action has been taken to address those major deficiencies, and in particular those related to core and key Recommendations(s) 5, 13, 23, 35 and Special Recommendations IV. It should be noted that the original rating does not take into account the subsequent progress made by the country.

I. Introduction

1. The purpose of this paper is to introduce Italy's third report back to the Plenary concerning the progress that it has made to remedy the deficiencies identified in its third mutual evaluation report (MER), and to consider Italy's application to move from regular follow up to biennial updates.

2. The MER of Italy, which was adopted in October 2005, was based on a Detailed Assessment Report of the International Monetary Fund (IMF). Italy was rated partially compliant (PC) on Recommendations 5 (customer due diligence), 13 (suspicious transaction reporting) and Special Recommendation IV (suspicious transaction reporting) and, as a result, was placed on the regular follow up process.

3. While subject to regular follow-up, Italy reported back to the Plenary in October 2007 and October 2008. At the October 2008 Plenary meeting, Italy indicated that it considered that sufficient actions for removal from the follow-up process had been taken. Hence, the Plenary decided that Italy could apply for removal from the regular follow-up process at this Plenary meeting.

4. This paper is based on the updated procedure for removal from the regular follow-up, as agreed by the FATF Plenary in October 2008[1]. The procedure requires a country to take sufficient, which is defined as a level essentially equivalent to compliant (C) or largely compliant (LC), and effective actions to be removed from regular follow-up with Recommendations 1, 3-5, 10, 13, 23, 26, 35-36, and 40 and Special Recommendations I – V (key and core Recommendations).

5. As prescribed by the mutual evaluation procedures, Italy has provided the Secretariat with a full report on its progress, including supporting material (laws and data to assess effectiveness). The Secretariat has drafted a detailed report, to describe and analyse the progress made for each of the (Special) Recommendations rated PC or non compliant (NC). This draft report was provided to Italy with a list of additional questions. The original assessors (IMF) have also been provided a copy of this draft. Comments from Italy and the assessors have been taken into account in the final draft. During the process, Italy has provided the Secretariat with all the information requested.

6. As a general note on all applications for removal from regular follow-up; the procedure is described[2] as a *paper based desk review*, and by its nature is less detailed than a mutual evaluation report, though the same level of analysis is carried out to ensure that criteria are met. The analysis

[1] Third Round of AML/CFT Evaluations Process and Procedures, paragraphs 39c and 40.

focuses on (Special) Recommendations that were rated PC/NC, which means that only a part of the Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) system is assessed. Also, the data and statistics that are provided can only be used as a rough indication of if the effectiveness of the system (and not to confirm full effectiveness). This means that any analysis for removal from the follow-up process may not in all cases be an accurate prediction of the result of a future mutual evaluation.

7. Italy was rated PC or NC with the following Recommendations:

Core Recommendations[2] rated NC or PC
R.5 (PC), R13 (PC), SR.IV (PC)
Key Recommendations[3] rated NC or PC
R.23 (PC), R.35 (PC)
Other Recommendations rated PC
R.2, R.9, R.17, R.18, R.22, R.25, R.34
Other Recommendations rated NC
R.6, R.7, R.12, R.16, R.24, SR.VII,

8. This paper provides a summary of the main conclusions of this review (Section II), an overview of the main changes made to the AML/CFT system since the adoption of the MER (Section III), and a review and analysis of the measures taken to address the deficiencies in relation to the core, key and other (Special) Recommendations (Sections IV – VI).

II. Main conclusion and recommendations to the Plenary

9. The MER concluded that Italy had a comprehensive and sophisticated AML/CFT system which had generally not been updated to reflect the new provisions of the revised FATF standards (June 2003) at the time of the on-site mission (April 2005). The MER identified the following areas as "the most pressing challenging concern": *i)* implementation of more detailed risk-based customer due diligence (CDD); *ii)* need to increase levels of STR of non-banking financial intermediaries and to introduce a clear legal obligation to report Suspicious Transactions (STRs) related to terrorist financing; *iii)* few on-site inspections with regard to the securities and insurance sectors, Bancoposta (a postal savings institution) and non-prudentially supervised financial institutions; and *iv)* application of a more effective sanction regime. The MER also emphasised that the AML/CFT legal framework was too complex and needed to be consolidated in a single instrument so as to improve the clarity and effectiveness.

10. In support of the application to be removed from regular follow-up, Italy provided information regarding the changes and developments of the AML/CFT system since the approval of the MER. Some of the information had already been provided as part of the two earlier regular follow-up reports. However, the information provided with this application was more comprehensive and was supported by legal supporting documents and statistics to indicate the effectiveness of the system (see the annex to this report for a list of supporting documents).

[2] The core Recommendations as defined in the FATF procedures are R.1, R.5, R.10, R.13, SRII and SRIV.

[3] The key Recommendations are R.3, R.4, R.23, R.26, R.35, R.36, R.40, SRI, SRIII, and SRV.

11. The legislative centrepiece of the updated AML/CFT system is the AML/CFT Legislative Decree 231/2007 ("the Decree"), which was enacted in December 2007 and came into force on 1 January 2008 (some articles come into force on 30 April 2008). The Decree, which is composed of 68 articles and a technical annex, stipulates: *i)* general principles and definitions of AML/CFT measures; *ii)* the authorities in charge; *iii)* requirements and obligations of CDD, record keeping and STRs; *iv)* prohibition of bearer instruments and anonymous accounts and saving books; and *v)* sanctions. The existing AML/CFT laws and regulations were consolidated by this Decree. With the enactment of the Decree, efforts are being made to strengthen the administrative and enforcement function of AML/CFT. See the annex to this report for a copy of the Decree.

Overall conclusion

12. In respect of the FATF core and key Recommendations on which Italy was rated as NC or PC, Italy has taken sufficient action to resolve the deficiencies identified in the MER. Some questions remain, but none of these would normally cause a rating below LC for any of the core and key (Special) Recommendations. The majority of deficiencies related to other (Special) Recommendations rated PC/NC have also been addressed. The MER also, as a general remark, advised Italy that its legal framework was too complex and needed to be consolidated. Italy has responded positively, and enacted the AML/CFT Legislative Decree to consolidate the legal framework.

13. It is, therefore, recommended that 1Italy be moved from regular follow-up to biennial follow up, and be asked to update the Plenary on further progress in two years time (February 2011).

III. Overview of the main changes since the adoption of the MER

14. Many of the legal changes to Italy's AML/CFT system since the adoption of the MER in October 2005 are based on the European Union (EU) legal framework (3rd EU AML/CFT Directive[4] and Regulation (EC) 1781/2006[5]). 3rd EU AML/CFT Directive was domestically implemented by the enactment of the Decree. The EC Regulation is directly applicable in Italy and needs no implementing measures. Italy has also strengthened the administrative procedures so as to improve the effectiveness of the new AML/CFT regime, *i.e.* strengthened co-ordination among relevant authorities, the shortened on-site inspection cycle, and provision of guidance to Designated Non-Financial Businesses and Professions (DNFBPs) on STRs.

IV. Review of the measures taken in relation to the Core Recommendations

Recommendation 5, first deficiency[6]:

No requirement in either law and regulation for: the identification of customers with respect to occasional transactions that are wire transfers below the EUR 12 500 threshold.

15. This deficiency was linked to Special Recommendation VII and has been addressed by Regulation (EC) 1781/2006, in force since 1 January 2007. The EC Regulation, directly applicable in all EU members states with no need for domestic implementing legislation, provides rules for information on the payer accompanying transfers of funds so that identification of the payer is mandatory (article 5). Article 2, paragraph 7, of the Regulation specifies that "transfer of funds"

4 The 3rd EU AML/CFT Directive aims to implement the 40 FATF Recommendations (as revised in June 2003).

5 EC Regulation 1781/2006 aims to implement FATF Special Recommendation VII.

6 As the MER was initially drafted by the IMF as a DAR, it does not contain section numbers or paragraph numbers. In this report the shortcomings are, therefore, listed in the order of the table 1of the MER (summarising all shortcomings).

means "any transaction carried out on behalf of a payer through a payment service provider by electronic means". Pursuant to the risk based approach, exceptions are envisaged for e-money and mobile phone payments as well as payments sent to charities, of an amount not higher than 150 EUR. Furthermore, article 61.1 of the Decree confirms the requirement set by the EC Regulation.

16. To enhance effective implementation of the EC Regulation across Europe, within the EU, the 3L3 AML Taskforce[7] has published in October 2007, a common understanding among European supervisors concerning the application of Chapter III of the EC Regulation. It aims to guarantee a level playing field between European payment service providers by ensuring the complete traceability of transfers.

17. Italy also provided feedback on implementation of the EC Regulation. Italian supervisory bodies that monitor implementation of the EC Regulation have recorded satisfactory compliance levels, whereas it has been noted that wire transfers from abroad towards Italy are in some cases lacking in information on the payer.

18. The shortcoming identified in the MER is directly linked to Recommendation VII (which was rated NC at the time). With the EC Regulation in force and based on the information provided, this shortcoming seems to have been addressed.

Recommendation 5, second deficiency:

No requirement in either law or regulation to verify that the person purporting to act on behalf of the customer is so authorized. No requirements to verify the legal status of a customer that is a legal person.

19. When the MER was approved, there was neither a requirement in law or regulation to verify that the person purporting to act on behalf of the customer was authorized, nor a requirement to verify the legal status of customers that were legal persons. This has been addressed in the Decree (article 19, paragraph 1, letter a), which explicitly requires verification that the person purporting to act on behalf of the customer is authorised to do so, and the identification of that person. If the customer is a legal person, the Decree also requires verification of the identity and powers of the legal representative. Article 18, paragraph 1, letter a, also requires verification of the legal status of the customer.

20. There are additional CDD measures set by the Italian Stock Exchange Commission (Consob) for investment firms, and for financial salesmen acting on behalf of investment firms. The measures include the duty to verify the identity of (potential) customers (Legislative Decree n. 164/2007 and articles 39 - 42 of Consob Regulation on Intermediaries).

21. The degree of compliance with CDD requirements is described below (see description for Recommendation 23). Specifically with respect to this requirement, the Guardia die Finanza has detected and sanctioned breaches. Italy also noted that the Italian Civil Code also provides rules that require the verification of the authority to act on behalf of a third person.

22. The Decree defines the requirement to verify the identity of the person acting on behalf of the customer and the legal status of the legal person, and to verify the authorisation to do so. Infringement of this requirement is subject to sanctions. While some of these requirements were contained in other enforceable means at the time of the MER, all necessary provisions are now included in the Decree.

[7] A joint working group dealing with AML/CFT issues, created by CEBS (Committee of European Banking Supervisors), CESR (Committee of European Securities Regulators) and CEIOPS (Committee of European Insurance and Occupational Pensions Supervisors).

Recommendation 5, third deficiency:

No requirement in law or regulation for financial institutions to take reasonable measures to understand the ownership and control structure that is a legal person and to determine who are the natural persons that ultimately own or control the customer; no requirement to identify and verify the identity of the settlor, trustee or person exercising effective control over trusts and the beneficiaries.

23. This shortcoming has also been addressed through the Decree. It indicates that identification and verification of the identity of the beneficial owners is performed at the same time as identification of the customer (article 19, paragraph 1, letter b). The identification requirements apply to legal persons and trusts ("and the like"), and include a requirement to understand the customer's ownership and control structure. Additionally, beneficial ownership has also been defined in the Decree as 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 (article 1, paragraph 2, letter u).

24. A potential weakness may be the lack of definition of a trust in the Decree. While the deficiency underlying the rating referred to "the settlor, trustee and beneficiaries", the Decree refers to trusts and its beneficial owners. This is likely to hamper the effectiveness of the Decree as many employees of a financial institution in a civil law country like Italy may not necessarily know what the specific features of a legal arrangement are compared to a legal person an d would not know that they need to identify and verify the settlor, trustee and beneficiary. Legal persons are defined by law, the Civil Code (first book, title II) lists all legal persons, including associations and foundations.

25. The obligations are monitored / supervised by the authorities (see section on Recommendation 23 below). Italy reports that the obligation to identify and verify the identity of the beneficial owner is one of the most challenging CDD measures in practice, and that financial institutions and DNFBPs have highlighted the difficulties they have in complying with the requirements. These complaints are, in fact, an indicator that the private sector is not ignoring the requirements. In response, the authorities are currently preparing risk based approach (RBA) guidance to facilitate the implementation of this measure, in accordance with FATF RBA Guidelines. Meanwhile, inspections carried out so far do not show any specific critical situation in relation to this requirement, although the Guardia di Finanza has detected and sanctioned breaches.

26. The Decree addresses the elements of this third deficiency related to Recommendation 5, and the implementation is monitored by supervisors. The apparent lack of a definition of trusts (as a customer), may have a negative impact on the effective implementation of these provisions, although Italy does not report any problems in this area (because specific instructions on CDD on trusts are part of the training programmes for employees, which are mandatory pursuant to the Decree.

Recommendation 5, fourth deficiency:

The exemption from CDD with respect to banks and branches abroad are not contingent upon whether they are located in jurisdictions that effectively implement the FATF Recommendations.

27. Italy was criticized in the MER because it allowed its banks to apply simplified CDD measures, without determining if these simplified measure were justified by effective implementation of the FATF Recommendations. Subsequently, the MER recommended to Italy that the exemption from CDD in the case of customers that are banks or branches abroad should be limited to those that are located in jurisdictions that effectively implement the FATF Recommendations.

28. Italy has responded to this recommendation by determining criteria for equivalence. Most of this was done at the EU level (by a voluntary Common Understanding). Italy reports that this was

done on the basis of: *i)* evaluations conducted by international bodies (*e.g.* FATF MERs and follow-up reports); *ii)* information available through bilateral channels; and *iii)* feedback from financial intelligence units (FIUs) and supervisors on international co-operation with their counterparts. The EU framework only targets non-EU/European Economic Area (EEA) countries, and does not include an analysis of whether EU[8] or EEA member states (Iceland, Liechtenstein and Norway) effectively implement the FATF Recommendations. These countries are automatically considered to be equivalent. This is because, as Italy indicates, EU/EEA countries are legally obliged to implement the 3rd EU AML/CFT Directive, and failure to implement the 3rd EU AML/CFT Directive can be sanctioned by the EU Court of Justice. See the annex for a copy of the Common Understanding.

29. The criteria for non-EU/non-EEA countries are set out in the EU Common Understanding and are as follows: all FATF members are considered equivalent, except when an FATF member has at least one NC on Recommendations 1, 4, 5, 10, 13, 17, 23, 29, 30 and 40, and Special Recommendations II and IV (which are not the same Recommendations as for FATF follow-up). An FATF member can also lose its equivalence status if the FATF determines that a member jurisdiction does not follow-up on a Recommendation rated as NC. However, EU member states can domestically challenge any lowering of the status of an FATF member, based on the information available on the AML/CFT situation in the interested country or jurisdiction. In this respect, factors such as the existence of threats of money laundering or terrorist financing, concerns on the level of compliance with AML/CFT standards and on the effectiveness of the measures in place should be taken into account.

30. Similar criteria apply for non-FATF jurisdictions. These jurisdictions can be determined to be equivalent if a country fully or largely complies with all of the following Recommendations: 1, 4, 5, 10, 13, 17, 23, 29, 30 and 40 and Special Recommendations II and IV (which are not the same Recommendations as for FATF follow-up). However, any PC rating can be overcome if the FATF-style regional body (FSRBs) of which the non-FATF jurisdiction is a member determines that the country has taken sufficient action to remedy the deficiencies that led to this rating. As with FATF-members, EU members can set the criteria aside based on the information available on the AML/CFT situation in the interested country or jurisdiction. In this respect, factors such as the existence of threats of money laundering or terrorist financing, concerns on the level of compliance with AML/CFT standards and on the effectiveness of the measures in place should be taken into account.

31. The Common Understanding was implemented by Ministerial Decree (dated 12 August 2008) (see the Annex for a copy). The Ministerial Decree specifies the countries that are considered equivalent to EU and EEA countries, in line with paragraph 1 of article 4 of the Common Understanding. The list is updated from time to time, based on new information available. The Ministerial Decree includes a provision that requires the Italian financial institutions to notify the Italian supervisory authorities in cases where their branches or intermediaries abroad cannot apply measures equivalent to the domestic AML/CFT provisions. No such notifications have been received so far. Another exception is that the exemption from CDD on credit or financial institutions of EU/EEA countries does not apply whenever ML/TF risks are present, or if the financial institution (FI) cannot gather sufficient information to determine if the client FI should benefit from the exemption.

32. Italy has followed-up on this deficiency in the MER. The Common Understanding provides a policy basis and the Ministerial Regulation provides a legal basis for granting equivalence status. For non EU/EEA members, the criteria that are used to determine adequate compliance with the FATF Recommendations are different from those used by the FATF for the follow-up procedure. The fact that this framework is not applied in the case of EU/EEA countries is a potential gap, especially

[8] Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

considering that several EU member states would currently not match the criteria for equivalence. Italy, however, explains that EU/EEA members are by law obliged to implement the 3rd EU AML/CFT Directive and their compliance is assumed, or enforced by legal action by the European Commission (EC).

Recommendation 5, fifth deficiency:

Other than for telephone and internet banking, and electronic money, no requirement for enhanced due diligence in higher risk situations, e.g., for non-resident customers, private banking, legal persons and arrangements such as trusts or for companies that have nominee shareholders or shares in bearer form.

33. At the time of the on-site, there were only few provisions in Italy for enhanced or simplified due diligence. As a result, the assessors recommended that Italy require enhanced due diligence in higher risk situations (for example for non-resident customers, private banking, legal persons and arrangements such as trusts, or for companies that have nominee shareholders or shares in bearer form).

34. Italy has taken some action to address the deficiencies. The Decree (section 3) provides that designated entities (FIs and DNFBPs), apply enhanced due diligence if there is a higher risk of money laundering (ML) or terrorist financing (TF). This is a general rule that applies in all cases. In addition, the Decree lists three possible situations when enhanced due diligence is always required. These are: *i)* customers not physically present for identification purposes; *ii)* cross-border correspondent banking relationships with respondent institutions from foreign countries; and *iii)* transactions or business relationships with politically exposed persons (PEPs) resident in a foreign country. The Decree also specifies specific procedures that must be followed in cases of enhanced due diligence. In addition to those rules, the Decalogo (Bank of Italy guidance) suggests other areas of high risk, such as country of residence (for non co-operative countries and jurisdictions). However, private banking, and legal persons and arrangements that have nominee shareholders or shares in bearer form are not specifically addressed, either in the Decree or in the guidance.

35. Italy has followed-up on the required recommended action. The MER directed Italy to require enhanced due diligence in high risk situations, and this requirement has been implemented as a general rule. The Decree does not specifically designate the examples mentioned in the MER as high risk situations, although these cases would be covered by the general rule. In practice, it is an effective way to address these other examples of high risk situations is uncertain. On the other hand, the Decree lists three other situations that are of high risk. Italy has complied with this requirement.

Recommendation 5, sixth deficiency:

The possibility to transfer anonymously passbooks with a balance up to EUR 12 500 poses a significant challenge for financial institutions to conduct ongoing due diligence throughout the life of the business relationship with the "customer".

36. The MER expressed concern that the legislation allows credit institutions and post office to issue bearer passbook accounts provided that the balance is EUR 12 500 or less, as passbooks could be transferred anonymously without limitation. Under the new regime, the Decree prohibits the anonymous transfer of bearer passbooks. The threshold of EUR 12 500 was initially lowered to EUR 5 000 by the Decree in November 2007, but then raised again to EUR 12 500 by a separate Decree (Law n.112) in June 2008. The threshold of EUR 12 500 equals the general threshold for cash payments and transferable cheques in Italy. Furthermore, the Decree explicitly prohibits the opening in any form of accounts or saving books anonymously or in fictitious names as well as the use in any form in Italy of such products opened in a foreign country.

37. In the case of the transfer of bearer passbooks not exceeding the amount of EUR 12 500, the transferor is obliged to notify the financial institution (bank or Bancoposta) of the transfer and to inform the financial institution of the date of the transfer and identification data of the transferee. This is the information that forms the basis on which financial institutions have to perform CDD. Additionally, financial institutions perform CDD whenever sums are withdrawn or deposited by the new passbook holder. This is a change from the situation at the time of the MER, when identification was not systematically carried out. In addition, passbook holders are not allowed to transfer a passbook without notifying the financial institution. Although the transfer would not be void, the sanction for this is a fine of 10 to 20% of the balance of the passbook. In case of breach of the requirement to notify the financial institution of the transfer of a passbook, the financial institution is required to inform the Ministry of Economic and Finance (MEF). The MEF is the competent authority for imposing the fine on the (last) person that did not notify the financial institution of a transfer. This is a new requirement, its implementation is monitored and no sanctions have been applied so far.

38. Italy has taken measures to prohibit the anonymous transfer of bearer passbooks. It is yet unclear whether the system that has been put in place will be effective. However, with the current system in place, it is not possible to withdraw or deposit funds without identification by a bank, which is an improvement from the old system. Transfer of passbooks without notifying the financial institution is now discouraged with the establishment of fines. This would not exclude the existence of a secondary market for bearer passbooks (trading in bearer passbooks as a mean of payment). However, the MER noted that there were no indications of the existence of such a market, even under the old regime.

Recommendation 5, seventh deficiency:

Effective implementation of CDD requirements is undermined by shortcomings in supervisory efforts and resources and in sanctions regime (see "The supervisory and oversight system").

39. The MER expressed concern that supervisory shortcomings, also in relation to the sanction regime, have a negative impact on the effectiveness of Recommendation 5. In response, the Decree now defines the responsibility of each of the authorities that are responsible for supervision and sanctioning: the Ministry for Economy and Finance (responsible for the overall AML/CFT policies), financial supervisory authorities, the Financial and Economic Police, the Ministry of Justice, the FIU, the Anti-mafia Investigation Directorate (DIA) and the Special Foreign Exchange Unit of the Finance Police. See below for a full description of the changes to the supervisory regime (Recommendation 23).

40. With the entry into force of the Decree, the role and responsibility of supervisory authorities has been clarified. Each sector has a dedicated supervisor, while previously the FIU had the overall supervisory responsibility for AML/CFT. Based also on the information provided on Recommendation 23 (see below), Italy is considered to have addressed this deficiency.

Recommendation 5, eighth deficiency:

It should be made clear in the law that the identification for AML purposes should be based on a reliable document.

41. This shortcoming has been addressed by the Decree, which now very clearly states that customer identification has to be conducted on the basis of a valid ID document. To assist further, the authorities have provided a list of documents that could be considered reliable (article 3 of the technical annex to the Decree and Presidential Decree 445/2000).

Recommendation 5, overall conclusion:

42. The deficiencies relating to Recommendation 5 have been resolved at a sufficient level. As with any paper based desk review, some questions remain, especially regarding future effectiveness. This is especially the case for the new sanctioning requirements for bearer passbooks. However, Italy has taken measures to address the deficiency relating to bearer passbooks, as was required by the MER. With respect to the fourth deficiency (relating to exemption for CDD), the automatic equivalence status for EU/EEA countries remains a gap, as was identified in other FATF mutual evaluation reports of other EU countries. The overall level of compliance with Recommendation 5 is assessed to be essentially equivalent to largely compliant.

Recommendation 13, first deficiency:

The reporting of suspicious transactions related to terrorism financing is not explicitly required in the law

43. At the time of the MER, the reporting of suspicious transactions related to terrorist financing was not explicitly required in the law. This has been addressed by the Italian authorities in the Decree (article 41, paragraph 1). The Decree requires financial institutions and other persons subject to AML/CFT obligations to submit an STR when they know, suspect or have reason to suspect that the transaction is related to money laundering or terrorist financing. Terrorist financing is defined in the Decree (article 2, paragraph 2), with a reference to Legislative Decree 109 of 22 June 2007 (article 1, letter a). This article defines terrorist financing, in addition to, and with an explicit reference to, the five articles that criminalise terrorism in the Criminal Code (articles 270-bis to 270-sexies).

44. The authorities have also provided figures of STR related to terrorist financing. The figures indicate that the FIU has received 3 668 terrorist financing related STRs - on average 458 STRs per year. The detailed figures are: 545 (2001), 912 (2002), 321 (2003), 294 (2004), 478 (2005), 483 (2006), 342 (2007), 293 (2008, until 30 November 2008).

45. Italy has addressed this deficiency by extending the reporting obligation to transactions related to terrorist financing.

Recommendation 13, second deficiency:

The reporting requirement for money laundering is not effectively being implemented by bureaux de change, the postal bank, stockbrokers, investment companies, trust companies and insurance companies

46. The MER indicated that the number of STRs submitted from bureaux de change, the postal bank, stockbrokers, investment companies, trust companies and insurance companies was "abnormally low", and stressed the importance of additional efforts to improve effective implementation in these sectors.

47. Italy indicated that, as a first step, the Decree identified the role of each authority responsible for supervising the AML/CFT measures for each of these sectors. This should have an encouraging effect for the reporting of STRs from these sectors. Since the deficiency concerns an effectiveness issue, Italy also provided some figures to show the increase of STRs.

48. The number of STRs from Post Offices has increased. From 1997 to 2004, the FIU received an average of 115 STRs per year from Post Offices. This has increased to 402 (2005), 634 (2006), 1084 (2007) and 1430 (2008) STRs.

49. The insurance sector has also submitted more STRs. The average from 1997 to 2004 was 138 STRs per year. The current figures are: 172 STRs for 2005, 162 STRs for 2006, 255 STRs for 2007 and 178 STRs for 2008.

50. The number of STRs from trust companies has increased as well from 6 STRs per year (the average from 1998 to 2004) to 19 per year (2005 to 2008). The annual average number of STRs from investment companies and stockbrokers during the last four years (2005 to 2008) are more or less on the same level as the average from 1997 to 2004: i.e., 15 to 20 STRs per year from investment companies, and 6 to 7 STRs per year from stockbrokers. Italy reports, however, an increase in the quality of the STRs received from these sectors.

51. As for STRs from bureaux de change, the FIU reports receiving 114 STRs related to exchange of currency from non-banks (from 1998 to 2008). This category includes money remitters (authorised to exchange money) and bureau de change. At present, there are 491 bureaux de change registered with the Bank of Italy.

52. While a desk review does not allow for a comprehensive review of effectiveness, the figures provided for Post Offices and the insurance sector seem to indicate that the STR requirement for these two sectors is now being implemented more effectively than at the time of the on-site visit. However, the number of STRs from stockbrokers, investment companies, and trust companies still seems too small, even if the quality of the STRs has improved. The limited number of STRs from bureaux de change is a concern. Overall, while recognizing what has already been accomplished, it is difficult to conclude that this deficiency has been fully addressed.

Recommendation 13, overall conclusion:

53. Italy has addressed the deficiency regarding the reporting of terrorist financing STRs. There are some concerns in relation to the continuing lack of effectiveness in a few sectors. However, other sectors have improved their reporting and most sectors currently report on a sufficient level. Overall, therefore, Italy is considered to have addressed the deficiencies and reached a satisfactory level of compliance, comparable to a largely compliant rating.

Special Recommendation IV

The reporting of suspicious transactions on funds suspected to be linked to or related to or to be used for the terrorism, terrorist acts or by terrorist organizations or those who finance terrorism is not explicitly required in the law.

54. This deficiency is identical to the first deficiency for Recommendation 13 (no requirement in law to report TF related STRs). Italy is considered to have addressed this deficiency by extending the reporting obligation to transactions related to terrorist financing.

Recommendation IV, overall conclusion:

55. Italy has addressed the deficiency regarding the reporting of terrorist financing STRs. As this was the only deficiency, Italy has reached a satisfactory level of compliance, comparable to a compliant rating.

V. Review of the measures taken in relation to the Key Recommendations

Recommendation 23

Inadequate supervision/on-site inspection cycles too long with respect to securities and insurance sectors, as well as financial intermediaries registered under Article 106 of the Banking Law. Few inspections (i.e. only one) with respect to Bancoposta. Gaps in supervision with respect to downstream distributions in the insurance sector.

56. The MER identified a lack of effective supervision of the securities and insurance sectors, of financial intermediaries (which includes money remitters and bureaux de change) and of Bancaposta (the Postal Savings Bank) as the only shortcoming with respect to Recommendation 23. This single deficiency was, however, considered grave enough to merit a PC rating.

57. As a result, Italy has taken measures in different areas. The most important changes are summarised below.

Legal changes

58. The Decree includes updated supervisory provisions that are the basis for some institutional changes in the supervisory framework. The power to conduct AML/CFT supervision has been confirmed in article 7 of the Decree. The Decree also provides for the authority to conduct AML/CFT inspections (article 53). This article does not just empower the supervisors to conduct inspections; the supervisors are also made responsible for verifying compliance. Overall, while in the past the FIU was the (main) responsible authority for all AML/CFT related supervision, currently, each sector (FIs and DNFBPs) has a dedicated supervisory authority. Usually, this is the supervisor that was already responsible for supervising other issues in a sector (e.g. the Bank of Italy for credit institutions).

Changes in supervision by the Bank of Italy (for entities that are also prudentially supervised)

59. In 2008, the Bank of Italy's on-site control procedures were revised to include the legal changes set by the Decree. Based on this, AML/CFT controls are conducted in the framework of general on-site inspections or through sectoral inspections. The Bank of Italy also started conducting targeted AML inspections in May 2008 (high risk bank branches) to assess the impact of the new Decree on supervised intermediaries. More such targeted on-site AML inspections have been undertaken during the second part of 2008.

60. The Bank of Italy conducted 193 general on-site inspections in 2006, and 177 general on-site inspections in 2007. These inspections included checks on AML compliance of the supervised entities (banks, investment firms, collective funds and non-banking financial intermediaries). With the new Decree entering into force, the Bank of Italy launched 154 revised general on-site inspections and additionally 16 AML specific on-site inspections. The Bank also conducted 149 on-site inspections on banks' branches. The Bank also inspected Bancoposta, which was required to adjust to the new legal framework.

Changes in supervision by the Guardia di Finanza

61. The Guardia di Finanza (Financial Police) increased the number of inspections of financial intermediaries, bureaux de change, money remitters, and loan and financial brokers. For 2008, the Guardia de Finanza inspected 20 financial intermediaries (some inspections are still pending).

62. Between 2005 and 2007, the Guardia di Finanza inspected more than 3 235 money transfer businesses. For 2008, de Guardia planned to perform 320 inspections, but 475 had already been

undertaken by November 2008. The Guardia submitted detailed statistics to support the figures. For example, of the 475 inspections so far, 46 inspections have revealed administrative breaches and 188 inspections have revealed criminal violations. The inspectors reported 372 persons to other law enforcement agencies. The Guardia also submitted figures on specific CFT violations by money transfer entities. Between 2005 and 2008, the Guardia performed an annual average of about 750 control actions. This led to an average of 550 entities being reported to other law enforcement agencies, and 10 persons being arrested.

Changes in supervision for the securities sector

63. Securities firms and companies managing central depositories, settlement services and guarantee systems are now required to annually update Consob (the supervisory body) on their internal organisation, controls and safeguards with respect to AML and CFT measures. No information was provided on the length of inspection cycles.

Changes in supervision for the insurance sector

64. ISVAP, the supervisory body for the insurance sector, has updated some of its regulations, mostly adding requirements relating to internal control procedures. Supervised entities also had to self-assess their compliance with the new rules and fully implement them by 1 January 2009.

65. ISVAP also increased the number of supervisory inspections. In 2007, 19 inspections were conducted – a 72% increase compared to 2006. This increase was related, in particular, to insurance intermediaries (+57%). In 2008, 19 life insurance inspections were conducted, of which 14 were targeted insurance intermediaries (agents and brokers). Italy also reports that with the entry into force of the Decree, all non-life insurance has been excluded from the AML/CFT system, which means that ISVAP can better target its AML/CFT resources. In yet another effort to respond to the deficiency in the MER, ISVAP has started sanctioning AML/CFT breaches. Of the 19 inspections in 2007, five led to formal notifications of infringements and sanctioning procedures. In 2008, of the 19 inspections carried out, three have led to infringement and sanctioning procedures so far.

Recommendation 23, overall conclusion:

66. While the deficiency that was identified mostly concerned effectiveness, Italy has gone beyond enhancing the effectiveness of the supervisory regime, and put in place an updated supervisory institutional framework. This should have a positive effect on effectiveness in the long term. In the short term, Italy reports some improvements, mostly related to the number of inspections. The reported results for the insurance sector, and especially for the securities sector, are so far less impressive. However, there are certain limitations when assessing the effectiveness of large sections of a supervisory regime. One of those limitations is that a paper based desk review can never fully confirm (the lack of) effectiveness. The measures put in place suggest that the authorities are serious about putting in place an effective system before the next FATF mutual evaluation takes place. On this basis, it is suggested that Italy has so far undertaken sufficient action to address the shortcomings related to Recommendation 23 and that Italy reached a satisfactory level of compliance, comparable to a largely compliant rating.

Recommendation 35

Palermo Convention not yet ratified

67. Italy ratified the Palermo Convention on 2 August 2006, by article 1 of Law 146/2006 of 16 March 2006. The ratification law includes the necessary amendments to implement the Palermo

Convention (articles 3 – 15). With the ratification of the Palermo Convention, this shortcoming has been addressed.

Recommendation 35, overall conclusion:

68. Italy has addressed the deficiency regarding the Palermo Convention. As this was the only deficiency, Italy has reached a satisfactory level of compliance, comparable to a compliant rating.

VI. Review of the measures taken in relation to other Recommendations rated NC or PC

Recommendation 2

No penal, administrative or civil liability of legal persons; penalties (in particular for fines and for legal persons) should be more proportionate and dissuasive.

69. The Decree introduced pecuniary and administrative sanctions for legal persons involved in ML offences. The sanctions range from EUR 50 000 to EUR 1 200 000 (for crimes related articles 648, 648-bis and 648-ter of the Penal Code). If the maximum sentence for the predicate offence exceeds five years, the fine may be between EUR 100 000 and EUR 1 500 000. The amount of the fine is always determined by a judicial authority, taking into account the particular circumstances of the case. Under the Decree, even in cases where the perpetrator of the ML offence is not identified or is no longer prosecuted, the legal person can be subject to the sanction independently (article 49 and article 63, paragraph 3 Decree) (article 10 of Law 146/2006, article 6 Law 689/1981). Italy has addressed this deficiency with the introduction of a new sanction regime applicable to legal persons.

Recommendation 6

Absence of specific requirements for the identification of PEPs and senior management approval for establishing a business relationship with PEPs.

70. The Decree (article 28 paragraph 5) requires entities to: *(i)* establish appropriate risk-based procedures to determine whether the customer is a politically exposed person; *(ii)* obtain senior management approval for establishing business relationship with such customers; *(iii)* take adequate measures to establish the source of wealth and funds involved in the business relationship or transaction; and *(iv)* conduct enhanced ongoing monitoring of the business relationship. These provisions sufficiently meet the identified deficiency.

Recommendation 7

Absence of specific requirements regarding procedures for the opening and operation of cross-border correspondent banking relationships, notably with respect to gathering information on the respondent, assessing its AML/CFT controls, obtaining senior management approval before establishing new correspondent relationships, documenting respective responsibilities, and with respect to payable-through accounts, ensuring that the respondent has verified the identity of and performs ongoing due diligence of sub-account holders and is able to provide customer identification upon request of the correspondent.

71. The deficiencies identified in the MER cover all elements of Recommendation 7, and in response, Italy has included all requirements related to Recommendation 7 into article 24, paragraph 4 of the Decree. It requires credit institutions to: *(i)* gather sufficient information on a respondent institution to fully understand the nature of the respondent's business and determine from publicly available information the reputation of the institution and quality of supervision; *(ii)* assess the respondent institution's AML/CFT controls; *(iii)* obtain approval from senior management before

establishing new correspondent banking relationships; *(iv)* document the respective responsibilities of each institution; and *(v)* with respect to payable-through accounts, be satisfied that the respondent credit institution: a) has verified the identity of and performed ongoing due diligence on the customers having direct access to accounts of the correspondent; and b) is able to provide the correspondent institution upon request with relevant CDD data.

72. The language of the provision to implement Recommendation 7 is almost identical to the language of the Recommendation itself. Italy has, in addition, indicated that this language is in force and does not require any secondary implementing regulation to be issued. The deficiency is considered to be addressed.

Recommendation 9, both deficiencies

Absence of a specific requirement that financial institutions should satisfy themselves that copies of identification data and other relevant information relating to CDD requirements will be made available from the third party upon request without delay.

73. The MER noted insufficient requirements with respect to ensuring that a third party that is located abroad complies with methodology criteria 5.4 and 5.5 and is regulated and supervised in accordance with FATF Recommendations 23, 24, and 29.

74. Article 34 of the AML/CFT Legislative Decree prescribes that copies of identification data and other information relevant to CDD requirements will be made available from the third party upon request and without delay.

75. The same article allows Italian designated entities to rely on foreign third parties provided that the legislation applicable to the third parties imposes requirements equivalent to those laid down in article 34.

76. Not all entities can be considered a "foreign third party". This is restricted to institutions from EU-equivalent countries (see summary on Paragraph 5 in Section IV of this report) (article 32 Decree). In addition, these entities require a mandatory professional registration, recognised by law, and they need to fulfil CDD and record keeping obligations equal to those laid down in the 3rd EU AML/CFT Directive. All this means that Italy is considered to have addressed the shortcomings.

Recommendation 12, 16 and 24 (DNFBPs)

(Recommendation 12) ***Although the legislative basis is in place, the implementing regulations are not in force. This accounts for major shortcomings, especially since there is no implementation of the identification requirements by the sectors. The identification requirements should be based on the FATF Recommendation and include specific measures for PEPs and ongoing due diligence.***

(Recommendation 16) ***Although the law is in place, there is no implementation regulation yet, and there is no compliance with the essential criteria.***

(Recommendation 24) ***Casinos and other DNFBPs are not monitored for AML***

77. Italy had first addressed the deficiencies related to Recommendation 12, 16 and 24 in 2006 through domestic Regulations 141 and 143. With the enactment of the Decree, all DNFBPs identified by the FATF have been designated (articles 12, 13 and 14). In addition, articles 15, 16 and 17 list identification, record-keeping and reporting obligations to be observed by DNFBPs, which are in line or even identical with the requirements for financial institutions described elsewhere in this report.

78. Specific reporting obligations for DNFBPs are contained in articles 41, 43 and 44 of the Decree. This includes a list of reporting red flag indicators (article 41 of the Decree). These indicators are based on FIU instructions (from 2006), that had been issued on the basis of domestic Regulations 141and 143. The red-flags are currently updated by the Ministries of Justice and of Home Affairs.

79. Italy indicated that the FIU has received over 600 STRs from DNFBPs since 2006. This includes: 387 STRs from notaries, 78 STRs from public accountants, 54 STRs from professional accountants or commercial assessors, 29 STRs from real estate agents, 13 STRs from external audit firms, 17 STRs from lawyers, 5 STRs from labour advisers, 9 STRs from auditors, 4 STRs from casinos (only 2008), 2 STRs from valuable crafts producers (only 2006), 3 STRs from other valuable producers, 1 STR from antiquity dealers (only 2007) and 2 STRs from data processing centres (only 2007). No reports have been received from Trust and Company Service Providers (TCSPs), but TCSPs are usually also covered by other DNFBPs, such as lawyers or accountants.

80. As for monitoring and supervision, Italy has designated supervisory or monitoring bodies for each of the DNFBPs. Casino's are covered in article 24, paragraph 6. External auditors are covered through article 7 (as is the case with financial institutions). The remaining DNFBPs are covered in articles 8 and 9 (paragraph 9), 20 and 53. The (detailed) provisions include obligations for supervisory authorities and the FIU to engage in effective domestic co-operation. Finally, DNFBPs that fail to comply with any of the requirements are subject to criminal and administrative sanctions.

81. In summary, while the Italian AML/CFT system did not include any of the DNFBPs in practice during the assessment, in the meantime, Italy has enacted and implemented a comprehensive range of measures to correct these deficiencies. The inclusion of CDD, record keeping, STR and monitoring requirements in the Decree is an important step forward. Considering the short time since the enactment of the domestic Regulations and the Decree, it is early to assess the effectiveness of the new system. The relative low number of STRs filed by some DNFBPs is an indicator of this. However, the AML/CFT framework for DNFBPs is not much different from the system for financial institutions and that system has been considered (largely) compliant (in the MER or in this follow-up report). It is difficult to ascertain through a paper-based off-site review that all provisions in the Decree relating to Recommendation 12, 16 and 24 are effectively implemented. However, the law is in place, and Italy can already report some first results that suggest growing effectiveness.

Recommendation 17

(i) Sanction regime is not fully effective, proportionate and dissuasive. Legal entities are not separately subject to all the sanctions for failure to comply with the AML/CFT requirements. The number of sanctions applied every year for infringement of key FATF Recommendations is quite low in proportion of the number of entities subject to these requirements; (ii) The sanction regime for DNFBPs has not been implemented.

82. At the time of MER, the sanction regime was considered ineffective and not comprehensive.

83. The Decree includes provisions for criminal and administrative sanctions for breaches of the AML/CFT obligations stipulated in the Decree for all designated entities. Criminal sanctions range from fines to imprisonment, as specified in articles 55-59 of the Decree. The minimum range of criminal sanctions is from six months to three years and a fine between EUR 100 and EUR 50 000 (but can be higher for more serious crimes). Administrative sanctions (fines) are in some cases defined as a percentage of the value of the transaction (*i.e.* from one to 40 percent for the infringement of the obligation to report an STR), and in other cases an amount ranging between a minimum and maximum amount (*i.e.* failure to create the single electronic archive is punished with a fine ranging between EUR 50 000 and EUR 500 000). Administrative sanctions are available ranging from fines to other measures such as deletion from the register. Whereas before only responsible staff were

sanctioned, the Decree makes criminal sanctions available for both natural and legal persons, (articles 55–59, and 63, paragraph 3).

84. Italy has provided statistics to illustrate the effectiveness of the new regime. In 2007, 1 676 administrative proceedings were settled. The related administrative pecuniary sanctions amounted to about EUR 16.4 million. In addition, about 8 000 reports on infringements were transmitted to the Ministry of Economy and Finance in 2007, of which approximately 3 600 were settled out of court ("oblazione"), for a total of approximately EUR 9.4 million. Overall, since the enactment of the first AML legislation in 1991, approximately 27 800 administrative proceedings have been settled (an average of 1 544 per year), for a total of approximately EUR 98 million (an average of EUR 5.4 million per year). A comparison between the average amounts from 1991 to 2008 and the numbers for 2007 mentioned above, suggests that the sanctions regime has indeed become more stringent.

85. Overall, with the enactment of the Decree, the sanction regime for AML/CFT breaches has been updated. The range of sanctions has increased and seems to be in line with sanctions available elsewhere. The authorities also seem to make more use of the available sanctions. Whether the new regime is also dissuasive can only be assessed on the longer term.

Recommendation 18

Financial institutions not prohibited from entering into or continuing correspondent banking relationships with shell banks. Financial institutions not prohibited from establishing relations with respondent foreign financial institutions that permit their accounts to be used by shell banks.

86. The Decree now directly prohibits financial institutions from opening or continuing a correspondent banking relationship with a shell bank or with a bank known for permitting its accounts to be used by a shell bank. The Decree also prohibits financial institutions from establishing and maintaining relationships with shell banks as well as resident foreign financial institutions that permit their accounts to be used by shell banks (article 28, paragraph 6, Decree). To raise the effectiveness of these measures, infringements can be punished (as with any of the requirements in the Decree). The deficiencies regarding shell banks are, therefore, considered to be sufficiently addressed.

Recommendation 22

There are no specific provisions that require the application of AML/CFT principles to foreign branches of financial institutions other than of banks or to majority-owned foreign subsidiaries of Italian financial institutions. Also, absence of requirements for foreign establishments of Italian financial institutions to notify competent authorities that they are unable to implement AML/CFT principles, when this is prohibited by the law or regulations of the host country was identified in the MER.

87. This is, yet another, set of deficiencies that has been addressed by very specific requirements in the Decree. Article 11, paragraph 4, of the Decree requires foreign branches (but not subsidiaries) of Italian financial intermediaries to carry out CDD obligations in compliance with Italian Law or, at least, through measures equivalent to those laid out in the Italian legislation. The article also requires foreign branches (but not subsidiaries) of Italian financial intermediaries to notify the competent supervisory authority whereby the foreign legislation does not permit application of Italian law or equivalent measures. No such notifications have been received by the authorities so far. In addition, article 11 paragraph 6 requires Italian financial institutions to inform the competent supervisory authority of the AML/CFT obligations adopted by their foreign branches and subsidiaries. Supervisory authorities have received this information from financial institutions.

Recommendation 25

(i) systematic feedback is not provided in the form of statistics and typologies, for instance by means of a periodic newsletter or an annual report, (ii) no specific guidance to assist in identifying suspicious transactions possibly linked to terrorist financing, other than for money transfer businesses and NPOs, (iii) no guidelines have been issued for the DNFBPs, and (iv) positive feedback is not provided to financial institutions.

88. Although it is not immediately apparent when reading the Decree, there are a few articles in the Decree that could ensure that proper feedback is given. The general provision is laid down in article 5, paragraph 3, letter b, which indicates the duty to regularly provide feedback. The FIU is entrusted to develop and disseminate typology studies. Article 54, paragraph 3, prescribes specific feed-back by the FIU, Guardia di Finanza and other competent authorities to all reporting subjects on relevant AML/CFT typologies. This is supported by article 48, paragraph 3, which aims to ensure exchange of typologies between FIU, Guardia di Finanza and other competent authorities, which should ultimately benefit designated entities. The Bank of Italy has the additional power to issue red flag indicators on FT.

89. As for effectiveness, these provisions in the Decree have not yet been tested in practice.

Recommendation 34

Measures should be taken to ensure both transparency of foreign trusts handled in Italy and access to adequate, accurate and timely information on the beneficial ownership and control of these trusts.

90. In the recommendation and description section that is connected to this deficiency, the MER advised Italy to require financial intermediaries, when dealing with trust funds, to identify the settlor, the trustees or persons exercising effective control over the trust, and the ultimate beneficiaries. In fact, this deficiency mirrors the third deficiency of Recommendation 5. Italy has taken the necessary measures to address this element of the deficiency, as is explained earlier under Recommendation 5. The second element, which relates more closely to the specific criteria for Recommendation 34, deals with the implementation of the Hague Convention ratified by Italy. Italian legislation does not provide for the constitution of legal arrangements such as trusts. Therefore, pursuant to article 6 of the "*The Hague Convention of 1 July 1985 of the law applicable to trusts and their recognition*", trusts handled in Italy are mainly regulated by the law of the foreign jurisdiction chosen by the settlor.

91. Italy indicated that there is some uncertainty among Italian legal scholars as to how such as requirements for trusts could be implemented, as the majority is of the opinion that some elements of "the trust" are incompatible with the principles of Italian law. Depending on the contents of the trust, some aspects of such legal arrangements are regulated by the Italian legislation, for example regarding publicity and transparency of ownership of real estates and other properties on the Italian territory.

Special Recommendation VII

Absence of requirements to ensure that complete originator is included in outgoing wire transfer messages and that financial institutions adopt effective risk-based procedures to identify and handle incoming wire transfers that are not accompanied by account number and address information.

92. This deficiency has been fully addressed on the EU level through EC Regulation 1781/2006. See a full explanation the description of measures taken in relation to Recommendation 5 (first deficiency).

ANNEX

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LIST OF SUPPORTING MATERIAL RECEIVED FROM ITALY

1. Agreement between Member States on the recognition of third countries' equivalence (English).
2. Decreto MEF sui Paesi Terzi del 12 agosto 2008 (English).
3. Consob Regulation 16190 (implementation rules of Italian Legislative Decree 58/1998 on intermediaries) (English).
4. Consob Regulation 16191 (implementation rules of Italian Legislative Decree 58/1998 on markets, adopted by Consob Resolution n. 16191 of 29 October 2007, later amended by Resolution n. 16530 of 25 June 2008) (English).
5. Joint Regulation between Consob and the Bank of Italy on Post-trading. (English).
6. Directive 2004/39/EC MiFID (English).
7. Decreto legislativo 17 settembre 2007, n. 164 di attuazione della Direttiva MiFID 2004/39/CE (Italiano).
8. Legislative Decree 58/1998 (containing modifications deriving by the implementation of MiFID Directive) (English).
9. Regulation EC 1781/2006 on information on the payer accompanying transfers of funds (English).
10. ISVAP Regolamento n. 20 del 26 marzo 2008 (English).
11. Legge 146/2006 Ratifica della Convenzione di Palermo (Italiano).
12. Legislative Decree 109/2007 (English).
13. Legislative Decree 231/2007 (English).

LEGISLATIVE AML/CFT DECREE 231-2007

CONTENTS

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

published in *Gazzetta Ufficiale* no. 290 of 14 December 2007-
Ordinary Supplement no. 268/L

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 mujst 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 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 paragòraph 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 transmisstion 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[9]

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.

[9] The threshold of EUR 5 000 in this article was raised to EUR 12 500 (which was the previous threshold) by a separate decree (law n° 112) in June 2008. This Decree also deleted the last sentence of paragraph 10.

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.pA.

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 PROVSIONS

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 emprisonment of 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)

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.

VOLUNTARY COMMON UNDERSTANDING

COMMON UNDERSTANDING ON THE CRITERIA FOR THE RECOGNITION OF THIRD COUNTRIES EQUIVALENCE UNDER THE 3RD ANTI-MONEY LAUNDERING DIRECTIVE

The Member States of the European Union have decided to establish, on a voluntary basis, a common European list of equivalent third countries[10] for the purposes of the application of relevant provisions in Directive 2005/60/EC[11]**.** Member States have in this context underlined the importance of ensuring a level playing field **for credit and financial institutions** on the method to be applied for the identification of third countries imposing requirements equivalent to those of Directive 2005/60/EC.

Consequently, Member States have agreed on the following criteria for recognition of equivalence[12], on modalities for the revision and publication of the list, as well as on the procedural arrangements in this context.

FATF COUNTRIES

Under a presumption of equivalence, all FATF members are included in the list of equivalent countries.

The equivalence status cannot be up held, according to the procedure established in paragraph 4, if:

(a) An FATF member is non compliant with one or more of the following Financial Action Task Force (FATF) Recommendations 1, 4, 5, 10, 13, 17, 23, 29, 30 and 40 and Special Recommendations II and IV. The compliance is verified on the basis of an evaluation report, published in full, adopted by the FATF, the International Monetary Fund or the World Bank, according to the revised 2003 FATF Recommendations and Methodology;

(b) The country or jurisdiction is assigned a "partially compliant" rating in respect of the Recommendations outlined in (a), the country or jurisdiction is made subject to a follow-up procedure in the FATF and, as an outcome, it is decided

10 "Equivalent third countries" means non EU and non EEA countries or jurisdictions which impose requirements equivalent as those laid down in the 3rd Anti-Money Laundering Directive.

11 Directive 2005/60/EC does not grant the Commission a mandate to establish a binding (positive) list of equivalent third countries.

12 The criteria have been agreed mainly in relation to article 11(1), concerning countries with equivalent requirements for credit and financial institutions. The same criteria could also be applied to article 16 and article 28, as far as credit and financial institutions are concerned. These criteria do not address non financial institutions and persons.

that the country or jurisdiction has not taken satisfactory steps to deal with the identified deficiencies;

The inclusion/exclusion of a FATF country resulting from the application of the above mentioned criteria could however be challenged by a Member States' assessment, based on the information available on the AML/CFT situation in the interested country or jurisdiction. In this respect, factors such as the existence of threats of money laundering or terrorist financing, concerns on the level of compliance with AML/CFT standards and on the effectiveness of the measures in place should be taken into account.

OTHER COUNTRIES OR JURISDICTIONS

Countries or jurisdictions which are not members of the FATF can be included in the list of equivalent countries if:

(a) Those countries or jurisdictions fully or largely comply with Financial Action Task Force (FATF) Recommendations 1, 4, 5, 10, 13, 17, 23, 29, 30 and 40 and Special Recommendations II and IV. This compliance is assessed on the basis of an evaluation report, published in full, adopted by an FATF-Style Regional Body (FSRB), the International Monetary Fund or the World Bank, according to the revised 2003 FATF Recommendations and Methodology;

(b) The country or jurisdiction is assigned a "partially compliant" rating in respect of the Recommendations outlined in (a), the country or jurisdiction is made subject to a follow-up procedure in an FSRB and, as an outcome, it is decided that the country or jurisdiction has taken satisfactory steps to deal with the identified deficiencies;

The inclusion/exclusion of a country or a jurisdiction resulting from the application of the above mentioned criteria could however be challenged by a Member States' assessment, based on the information available on the AML/CFT situation in the interested country or jurisdiction. In this respect, factors such as the existence of threats of money laundering or terrorist financing, concerns on the level of compliance with AML/CFT standards and on the effectiveness of the measures in place should be taken into account

REVISION OF THE LIST

The equivalence status cannot be upheld if:

(a) a country or jurisdiction at any given time does not fulfil the conditions specified in paragraphs 1 and 2, or

(b) an evaluation report is not published in full or is withdrawn after its publication, regardless of the ratings expressed in the report itself.

The equivalence status can be regained only upon compliance with the respective criteria for recognition of equivalence.

PROCEDURE

Any decision on the equivalence will be based on the consensus of Member States.

The review of the list will be based on relevant evaluation reports issued and information available to the Commission or to Member States.

Member States will consider as a priority issue the equivalence status of countries which are members of Moneyval, a body of the Council of Europe.

Countries or jurisdictions which are neither a member of the FATF nor of Moneyval should only be considered for inclusion in the list upon the express request of a Member State.

Withdrawal from the list will take place immediately, if the conditions indicated in paragraphs 1 and 2 are not met. Member States can propose that the equivalence status is maintained or reinstated, on the basis of the elements or information available.

Member States can put forward proposals for the revision of the list on a 6 months basis.

Any decision on equivalence should reflect the fact that obtaining the "equivalent" status is a privilege (since it implies a derogation of the general rule set up in the Directive), which is only granted after careful examination. Member States should examine the merit of each proposal on the basis, amongst others, of the above mentioned FATF Recommendations.

PUBLICATION OF THE LIST

It is suggested that Member States make the list of equivalent countries public at national level.

MINISTRY OF ECONOMY AND FINANCE DECREE ON THIRD COUNTRIES EQUIVALENCE

MINISTRY OF ECONOMY AND FINANCE

Ministerial Decree 12 August 2008

Recognition of non EU and non EEA countries and other jurisdictions which impose requirements equivalent to those laid down in 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, and which provide for surveillance of the observance of these requirements.

THE MINISTRY OF ECONOMY AND FINANCE

- 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 Directive 2006/70/EC of 1 August 2006, laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of "politically exposed person" and of the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis;
- Having regard to Legislative Decree n. 231 of 21 November 2007, implementing 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 and, in particular, article 25 para 2 and article 25, para 1 letter c) of the same Legislative Decree;
- Having regard to Title II, Chapter I, Section IV of Legislative Decree n. 231 of 21 November 2007 implementing Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, and to Directive 2006/70/EC laying down implementing measures;
- Having regard to the Common Understanding among EU Member States on the criteria for the recognition of third countries equivalence achieved in the margin of the meeting of 18 April 2008 of the Committee on the prevention of Money Laundering and Terrorist Financing provided for in Article 41, para 1 of Directive 2005/60/EC;
- Having regard to the intention expressed by Member States to make public the lists respectively adopted of non EU and non EEA equivalent third countries, and to the contribution of the European Commission in allowing to Member States to jointly discuss about issues on equivalence, highlighted during the meeting of the Committee on the prevention of Money Laundering and Terrorist Financing of 11-12 June 2008;

- Having regard to information available at international level, information resulting from evaluation reports of domestic AML/CFT systems adopted by the Financial Action Task Force (FATF), by the FATF-style Regional Bodies, by the International Monetary Fund or by the World Bank according to FATF Recommendations and Methodology revised in 2003, and having regard to further updated information provided by Countries involved;
- Considering that the common list does not apply to EU Members and to those of the European Economic Area (Iceland, Liechtenstein and Norway), which benefit from an automatic equivalence recognition, based on the obligation, to them imposed, to implement measures contained in Directive 2005/60/EC;
- Considering that the Commission has not yet adopted any decision in accordance to Article 40, para 4 of the above-mentioned Directive 2005/60/EC, where it is provided that the European Commission - when noticing that a non EU country does not fulfil the conditions stated at Article 11, para 1 o 2, at Article 28, para 3, 4 or 5, or the measures defined on the basis of para 1, letter b) of Article 40 or of Article 16, para 1, letter b) of the same Directive, or that the legislation of this non EU country does not permit the application of the measures required as provided at Article 31, para 1, comma 1 of the Directive - adopts a decision in order to verify such situation, in accordance with the procedure of Article 41, para 2 of the Directive itself;
- Considering that Article 33 of the above-mentioned Legislative Decree n. 231 of 21 November 2007 provides that, when the Commission adopts a decision on the basis of Article 40, para 4, of Directive 2005/60/EC, institutions and persons covered by the Legislative Decree itself cannot apply to third parties of the non EU country subject of the decision in order to accomplish the requirements provided in Article 18, para 1, letters a), b) and c) of the same Legislative Decree;
- Considering that Article 25, para 1, of the Legislative Decree n. 231 of 21 November 2007 provides that credit and financial institutions placed in equivalent non EU countries will be subjected to simplified identification requirements and that Article 25, para 4, of the same Legislative Decree states that, also in this case institutions and persons covered by the Decree nevertheless collect information sufficient to ascertain if the customer can benefit from simplified measures;
- Considering that Article 11, para 4 of the same Legislative Decree n. 231 of 21 November 2007 provides that Italian branches of financial intermediaries seated in a foreign country as per Article 11, para 1, letter n) and para 2, letter d), shall apply customer due diligence and record-keeping measures also through ways and procedures equivalent to those established by the Legislative Decree, and shall inform the respective supervision authority, when the legislation of a foreign country does not allow to apply equivalent measures;
- Considering that Article 29 of the Legislative Decree n. 231 of 21 November 2007, in order to avoid repetitions of customer due diligence measures as per Article 18, allows institutions and persons covered by the Decree to rely on third parties to meet the requirements of customer due diligence;
- Considering that Article 32 of the Legislative Decree n. 231 of 21 November 2007 states that "third parties" are institutions and persons listed in Article 2 of Directive 2005/60/EC or equivalent institutions and persons seated in a non EU country, on condition that: 1) they are subjected to mandatory professional registration, recognized by law; 2) apply customer due diligence and record-keeping measures consistent or equivalent to those laid down in Directive 2005/60/EC; 3) are supervised in order to ensure the observance of requirements imposed by Chapter V, Section 2 of the Directive; or 4) are placed in a non EU country which imposes equivalent requirements to those provided for by the Legislative Decree n. 231;

- Having acquired the opinion of the Financial Security Committee in the meetings of 8 May and 10 June 2008;

Decrees

Article 1

The non EU and non EEA countries which are presently considered as countries imposing equivalent requirements to those laid down in 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 and which provide for the surveillance of the observance of these requirements are:

1. Argentina
2. Australia
3. Brazil
4. Canada
5. Japan
6. Hong Kong
7. Mexico
8. New Zealand
9. Russian Federation
10. Singapore
11. United States
12. South Africa
13. Switzerland

Article 2

The list as per article 1 includes also, for the same aims of said article, the following territories:

1. The Netherlands Antilles (Netherlands overseas territory)
2. Aruba (Netherlands overseas territory)
3. Mayotte (France overseas community)
4. New Caledonia (France overseas community with special status)
5. French Polynesia (France overseas community)
6. Saint-Pierre e Miquelon (France overseas community)
7. Wallis and Futuna (France overseas community)

Article 3

The list of non EU and non EEA countries or jurisdictions as per article 1 will be updated periodically, on the basis of information available at international level, of information resulting from evaluation reports of domestic AML/CFT systems, adopted by the Financial Action Task Force (FATF), by the FATF-style Regional Bodies, by the International Monetary Fund or by the World Bank, and of further updated information provided by the Countries involved.
This decree will be published on the Official Gazette of the Italian Republic.

Rome, 12 August 2008

The Minister: Tremonti