

## **Order EHA/2619/2006 of 28 July, developing specific money laundering prevention obligations for obliged subjects performing currency exchange activities or foreign wire transfer management**

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Foreign wire transfers and currency exchange activities have been repeatedly identified by various international entities and institutions as vulnerable areas in relation with money laundering and the financing of terrorism. Consequently, the Regulation of Law 19/1993 of 28 December, on specific measures for the prevention of money laundering, approved by Royal Decree 925/1995 of 9 June, after the reform implemented by Royal Decree, 54/2005 of 21 January, expressly defines them in article 3.5 as “sensitive” business areas and activities, which calls for the application of additional measures of identification and customer knowledge to control the risk of money laundering.

On the other hand, foreign transfer management activities have become one of the fastest growing and commercially appealing businesses, mainly due to the remarkable fact that the main base of potential customers, foreign residents in Spain, has quadrupled in the past eight years. As a result, other entities have progressively joined the establishments traditionally engaged in these operations, expanding obliged subjects that engage in such activity and thus demanding equal treatment by legislation on the prevention of money laundering to avoid direct or indirect distortions or unjustified advantages for any of the types of subjects, unless specific characteristics advise certain specifications. A similar requirement of “regulatory neutrality“ can be affirmed regarding the establishment of conditions for the application of money laundering prevention legislation to the different obliged subjects that with greater or lesser volume of activity, engage in the purchasing or selling of foreign currency or travel cheques.

At this point it is important to highlight the significance of these operations for both recipient countries of the operations and sectors of the national economy such as tourism. Consequently the present order developing Regulation of Law 19/1993 of 28 December,

aims to reasonably combine the needs of money laundering prevention with the convenience of maintaining the regulatory requirements imposed on this business at a reasonable level.

Article 1 sets the scope of the Order that extends to all those under obligation in the prevention of money laundering that engage in the activity of currency exchange or foreign transfer operations regarding operations that are not subject to direct debit or credit to a customer's account. However, it should be noted that the Order does not entirely regulate the legal regime of money laundering prevention applicable to these activities, merely developing certain obligations of prevention in those areas where certain clarifications are necessary or convenient, while regarding that in the others, the requirements contained in the Regulation of Law 19/1993 of 28 December, are sufficiently precise.

Article 2 establishes certain identification specifications, to the extent that currency exchange or transfer management are conducted without debit or credit to the client's account. Also, the provisions of article 3.7 of Law 19/1993 of 28 December regulate the execution of transfers abroad ordered by clients that are not physically present by telephonic, electronic or telematic means.

Article 3 regulates record keeping, establishing specific criteria in relation with the different types of documentation legally required.

Finally, article 4 can be described as the most significant of the present Order, as it aims to provide obliged subjects with precise principles regarding internal control measures. Article 3.7 of Law 19 /1993 of 28 December defines as one of the obliged subjects' essential duties that of "establishing appropriate internal control and communication procedures and bodies in order to forestall and prevent operations related with money laundering". The use of the generic legal concept "appropriate" when defining the internal control procedures and bodies appears as inevitable in the field of money laundering prevention legislation due to the wide scope and heterogeneity of obliged entities: from this perspective it is clear that it is impossible to legislatively establish internal control measures that are "appropriate" simultaneously for a large international bank [obligated under article 2.1 (a) of the Regulation] and for a jeweller or an antiquarian [article 2.2, paragraphs (e) and (f)]. In this context it is highly convenient that through lower-ranking provisions addressed to specific categories of obliged subjects, principles should be provided that reduce the "uncertainty margin" in the design and implementation of the internal control measures. This is precisely the purpose of article 4 of the Order aiming to standardise the concept of adequacy or appropriateness through two techniques. In the first place (article 4.2), establishing the content and minimum scope of the internal control measures, although recognising a wide margin for the internal organisation of the obliged subject. Secondly, (Article 4.3), specifying the concept of adequacy by reference to the results that the internal control measures must obtain.

This Order is issued pursuant to the regulatory empowerment contained in the first final provision of Royal Decree 925/1995 of 9 June, whereby the Minister of Economy and Finance, subject to prior compliance with the relevant legal formalities, may issue all

provisions necessary for the development of the Regulation of Law 19/1993 of 28 December.

Based on the foregoing, I stipulate the following:

#### **Article 1. Scope.**

1. This Order develops the obligations of customer identification, record keeping and establishment of internal control and communication procedures and bodies for the subjects referred to in article 2 of Law 19/1993, of 28 December, on certain measures to prevent money laundering, engaged in currency exchange activities or foreign wire transfer management.

2. The entities referred to in the preceding section shall be subject to the provisions of this Order with respect to transactions that are not subject to debit or credit to the customer's account in the entity, regardless of whether they are conducted in their business establishments or premises or through agents or other natural or legal persons acting as their mediators or intermediaries. For this purpose, the term 'network' includes both business establishments or premises of the obliged subject and those of its agents, mediators or intermediaries.

#### **Article 2. Customer identification.**

1. At the time of any transaction, obliged subjects shall demand their clients to present the identification documents referred to in paragraphs 2 and 3 of Article 3 of the Regulation of Law 19/1993 of 28 December.

2. Obligated subjects shall, in any case, apply additional measures of identification and knowledge of the client involved in operations where the amount, either singly or accumulated over each calendar quarter, exceeds EUR 3,000 for foreign wire transfers or EUR 6,000 for currency exchange.

3. Obligated subjects may execute foreign transfers ordered by customers not physically present via telephone, electronic or telematic means provided the following requirements are verified:

- a) The identity of the customer is evidenced by providing an identification password,
- b) The provision of funds must be deposited by the customer in a current account in the name of the obliged subject opened in Spain, and
- c) The operation must be documented in accordance with article 3.3 of this Order, acting the identification password as the customer's signature.

Obtaining a password to operate via telephone, electronic or telematic means will require the customer's prior personal identification as stipulated in sections 1 and 2 of this article. The internal control body of the obliged subject will study the password request, which

must be submitted using a specific form signed by the client, and will analyse the applicant's risk profile based on the provided data and documents and will issue a written decision on its approval. Obligated subjects will guard with the utmost care its customers' identification codes, mandatorily and inexcusably requesting the password from the principal as a prerequisite to authorise the execution of each individual operation. Obligated subjects shall check each year the validity of all the data required for password issuance, updating the data in the event of modification. This yearly check shall require the customer's physical presence and its effective implementation should be recorded.

4. For the purposes of this Order "customer" refers to the principal in the transfers issued, the beneficiary in the transfers received, and the bearer of the money or travellers cheques in exchange operations.

### **Article 3. Record keeping.**

1. Obligated subjects shall store the following documents for six years:

a) Copies of the documents required for identification of clients, including, where appropriate, those related to their professional or business activity.

b) Original copy of the forms or ballots, valid evidence appropriately certifying the completion of all operations performed in their network.

Obligated subjects shall also preserve during six years the records of all transactions of their network on a computer support for which the obligor will be responsible. This support should make it possible to provide data to the Executive Service of the Commission of Prevention of Money Laundering and Monetary Offences or other legally enabled bodies.

The storage period of six years shall also be applicable to the documents referred to in article 2.3 of the Order.

2. The copies of the customers' identification documents may be stored by means of hardware or by using optical, magnetic or electronic media that ensure their integrity, the correct reading of data, the impossibility of manipulation and proper conservation and location.

3. The forms or ballots, which in any case shall be signed by the customer and an employee or agent of the obliged subject, shall contain at least the following information.

a) Customer's name and surname. In the case of legal persons, they shall state their corporate name and the name and surname of the representative, proxy or authorised person acting on their behalf.

b) Type and number of identification document displayed. NIF (Tax Identification number) or NIE (Foreign National Identification number) in accordance with current applicable provisions.

c) Customer's address in Spain. In the case referred to in article 2.2 of this Order, the obliged subject shall request the client to submit documentation regarding the client's permanent or temporary residence in Spain when the identification document shows an address abroad.

d) Operation amount and currency, with its equivalent in Euros when necessary.

e) Name and surname or corporate name of the recipient of transfers sent and the payer of transfers received.

f) Country of destination for transfers issued and country of origin for transfers received.

g) Type of operation: transfer sent, transfer received, currency exchange or travel cheques.

h) Reason of the operation.

4. If the client is unable or refuses to provide the required documentation, the obliged subject shall not execute the operation and the operation shall be registered as "not completed" along with the data obtained. These operations shall be included in the monthly operations report to the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences.

#### **Article 4. Internal control measures.**

1. Obligated subjects shall establish adequate internal control and communication procedures and bodies to detect, and prevent any operations related to money laundering.

Internal control measures referred to in this Order shall be applied evenly throughout the obliged subject's network.

2. The internal control measures that are established by the obliged subjects shall be in writing and at least state the following:

a) The obliged subject's customer acceptance policy with a precise description of customers with a potentially higher than average risk and the measures to be taken to mitigate it.

b) A formal identification procedure of customers, including the periodic update of the information required pursuant to article 2.2 of this Order. The update shall be in any case mandatory when an important change is verified in the customer activity that might affect their profile risk.

c) A list of operations which may be particularly related to money laundering, for which purpose, the obliged subjects shall consider the Risk Operations Catalogue approved by the Commission for the Prevention of Money Laundering and Monetary Offences.

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d) A detailed description of internal flows of information, with precise instructions to staff and agents of the obliged subject on how to proceed in case of unusual or suspicious transactions.

e) A method for detecting suspicious or unusual transactions, with a description of the tools or IT applications available and of the criteria or parameters for data capture.

f) A structured procedure for examining suspicious or unusual transactions, which shall precisely specify the stages of analysis and the sources of information to be used, formalising the examination outcome in writing.

g) A detailed description of the internal control body procedures, including its composition, competences and periodicity.

h) The identity of the representative responsible for communicating operations to the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences, and for providing the information required in the exercise of its powers.

i) The measures to ensure knowledge of the internal regulations by employees and agents of the obliged subject, including periodic dissemination and conducting training activities in accordance with an annual plan.

j) The measures to be adopted to verify compliance with internal regulations by employees and agents of the obliged subject.

k) Measures taken to ensure that the obliged subject's correspondents have adequate procedures for the prevention of money laundering. In any case, regarding any transfer in which obliged subjects are involved, the data of the correspondents or the entity paying abroad shall be registered.

l) The periodic updating of the internal control measures, based on developments within the sector and the analysis of the obliged subjects' own operations.

m) Where appropriate, the procedure for granting an identification code to operate via the telephone, electronic or telematic means, including the analysis of the customer's profile of risk.

3. Internal control procedures will be considered appropriate when they at least allow the obliged subject to:

a) Effectively centralise, manage, control and store the documentation and customer information and the operations performed from their network.

b) Incorporate on a daily basis all transactions of their network in order to detect potential structuring and connected operations.

- c) Determine, prior to the execution of the operation, if the knowledge and verification of the professional or business activity of the customer is necessary.
- d) Identify changes in the customers' operational behaviour or inconsistencies with their risk profile.
- e) Automatically prevent transaction execution when the mandatory client or operation information is not complete.
- f) Automatically prevent the execution of transactions by persons or entities subject to a prohibition to operate.
- g) Automatically select risk operations for analysis based on default criteria or parameters.
- h) Maintain direct communication between the internal control body and the network.
- i) Quickly, safely and efficiently respond to the Executive Service of the Commission for Money Laundering Prevention and Monetary Offences concerning information requests.
- j) Submit a monthly operations report to the Executive Service of the Commission for Money Laundering Prevention and Monetary Offences, or the semi-annual negative communication.

4. Obligated subjects shall apply medium-level security measures, pursuant to the Regulation on security measures for automated files containing personal data, approved by Royal Decree 994/1999 of 11 June.

**Single final provision. Entry into force.**

This Order shall enter into force six months after its publication in the Official Gazette.

Madrid, 28 July, 2006.-The Second Vice President and Minister of Economy and Finance, Pedro Solbes Mira.