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Money laundering (CJEU, judgment C-212/11, Jyske Bank Gibraltar Ltd)

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Is a credit institution, established in one Member State of the European Union and operating in another Member State of the European Union, as provided for in Title III of Directive 2000/12/EC (credit institutions) under the rules on the freedom to provide services, obligated under national legislation of that host Member State to disclose information required for the purpose of combating money laundering directly to the FIU of that host Member State?



In a preliminary ruling (25 April 2013, C-212/11, *Jyske Bank Gibraltar Ltd*), the Court of Justice of the EU rules that neither article 22(2) of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, nor article 56 of the Treaty on the Functioning of the European Union (TFEU) preclude such legislation.

Jyske Bank Gibraltar Ltd (hereinafter: *Jyske*), a branch of the Danish bank NS *Jyske Bank*, is established in Gibraltar. It operates in Spain under the rules on the freedom to provide services. The Spanish FIU suspected that *Jyske* was being used for money laundering operations and has asked *Jyske* to provide information relating, in particular, to the identity of its customers. *Jyske* refused, referring to the banking secrecy rules of Gibraltar. The Consejo de Ministros then decided that *Jyske* had failed to fulfil its disclosure obligations under Spanish law and ordered for reprimands and financial penalties (totalling € 1.700.000,00). *Jyske* appealed against that decision, claiming that under Directive 2005/60/EC it is only subject to an obligation to disclose information to the authorities of Gibraltar.

Article 22(2) of Directive 2005/60/EC provides, in short, that institutions or persons covered by that Directive shall forward information relating to money laundering and terrorist financing to the FIU of the Member State in whose territory they are situated, whereas under Spanish legislation a credit institution carrying out activities under the rules on the freedom to provide services is required to forward such information directly to the Spanish FIU. So, in practice such credit institution has a double obligation in providing two FIU's from two different countries with the same information.

The Court of Justice of the EU (CJEU) examines whether such legislation is precluded by article 22(2) of Directive 2005/60/EC or by the prohibition to restrict the freedom to provide services, as provided for by article 56 TFEU.

As to article 22(2) of Directive 2005/60/EC the CJEU considers that the Spanish legislation pursues an aim similar to that of this Directive, i.e. the prevention of the use of the financial system for the purposes of money laundering and terrorist financing. In so far the Spanish legislation seeks to strengthen, in compliance with European Union law, the effectiveness of the fight against money laundering and terrorist financing, it is not precluded by article 22(2) of Directive 2005/60/EC.

As to article 56 TFEU the CJEU considers that legislation requiring credit institutions operating in a host Member State to provide information directly to the FIU of that host Member State as well, constitutes in principle a restriction on the freedom to provide services, in so far as it gives rise to difficulties and additional costs for activities carried out in the host Member State. Nevertheless, the restrictive effect is justified because it meets an overriding requirement relating to the public interest, which public interest is not already safeguarded by the rules of the Member State in which the credit institution is established.