

FMA Communication No. 2/2006 of 16 June 2006

Interpretation of the term "dealers in high-value goods" Supplement to FMA Communication No. 1/2005

Publication: FMA website

Re: Other Financial Service Providers: Dealers in high-value goods – Car dealers

Background

In the past, the FMA has interpreted the term "dealers in high-value goods" used in article 3, paragraph 1(n) of the Law on Professional Due Diligence in Financial Transactions (Due Diligence Act, DDA) to mean jewelers, goldsmiths, dealers in precious metals, dealers in precious stones, dealers in coins, dealers in antiques, art dealers, furriers, and arms dealers (see also FMA Communication 1/2005 of 17 May 2005). Two arms dealers disagreed with this interpretation and requested confirmation from the FMA that they were not dealers in high-value goods within the meaning of article 3, paragraph 1(n) DDA. In the alternative, they requested that an appealable decision be issued. The FMA considered the main request to be unfounded and granted the alternative request by issuing an order stating that the two arms dealers were dealers in high-value goods within the meaning of article 3, paragraph 1(n) DDA and therefore were subject to the personal scope of application of the Due Diligence Act, i.e., subject to due diligence obligations.

This order was appealed to the FMA Complaints Commission, which dismissed the appeal in its decisions of 15 September 2005, FMA-BK 2005/5 and FMA-BK 2005/6. The applicants appealed these decisions to the Administrative Court, which dismissed the appeal on the merits in its judgment of 9 March 2006, VGH 2005/92.

Judgment of the Administrative Court of 9 March 2006 – Reasoning

The reasoning of the judgment of the Administrative Court of 9 March 2006 can be summarized as follows:

"In the opinion of the Administrative Court, the use of the undefined legal term 'dealers in high-value goods' is sufficiently determinate and therefore permissible [...]. [...] The undefined legal term 'dealers in high-value goods' grants the executing authority (in this case: the FMA) a certain margin of discretion that it must substantiate by means of an interpretation. Inclusion of arms dealers under the term 'dealers in high-value goods' conforms to the rules of interpretation set out above [*note by the FMA: in the reasoning of the judgment*]."

Moreover, the Administrative Court also found that the undefined legal term "dealers in high-value goods" must also apply to car dealers, since cars are as a rule high-value goods that might certainly be used for money laundering, organized crime, and financing of terrorism, for instance where criminal assets are introduced into legal economic circulation via the car trade.

Judgment of the Administrative Court of 9 March 2006 – Consequences

The judgment of the Administrative Court of 9 March 2006 therefore entails on the one hand that the FMA properly includes arms dealers under the term "dealers in high-value goods" within the meaning of article 3, paragraph 1(n) DDA.

At the same time, the Administrative Court also found – though solid reasoning – that car dealers must also be included under the term "dealers in high-value goods".

Accordingly, car dealers must now also immediately notify the FMA upon taking up business.

If business is already being conducted, the notification must be submitted to the FMA by 18 September 2006 at the latest.

The notification should be submitted by using the form "Meldung über die Aufnahme oder Ausübung einer sorgfaltspflichtrelevanten Tätigkeit". The form can be downloaded in German from the website of the FMA (www.fma-li.li) under FMA-Servicepoint / Sorgfaltspflichten / Meldepflicht.

Please also see the explanations contained in FMA Communication No. 1/2005 of 17 May 2005.

Vaduz, 16 June 2006



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