



2018/0105(COD)

2.10.2018

DRAFT OPINION

of the Committee on Economic and Monetary Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a directive of the European Parliament and of the Council laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences and repealing Council Decision 2000/642/JHA (COM(2018)0213 – C8-0152/2018 – 2018/0105(COD))

Rapporteur for opinion: Sander Loones

PA_Legam

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive

Recital 9

Text proposed by the Commission

(9) To the extent that tax authorities and anti-corruption agencies are competent for the prevention, detection, investigation or prosecution of criminal offences under national law, they should also be considered authorities that can be designated for the purposes of this Directive. Administrative investigations should not be covered under the present Directive.

Amendment

(9) To the extent that tax authorities and anti-corruption agencies are competent for the prevention, detection, investigation or prosecution of criminal offences under national law, they should also be considered authorities that can be designated for the purposes of this Directive. Administrative investigations, ***other than those conducted by the Financial Intelligence Units in the context of preventing, detecting and effectively combatting money laundering and terrorism financing***, should not be covered under the present Directive.

Or. en

Amendment 2

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) Directive (EU) 2015/849 has substantially enhanced the Union legal framework that governs the activity and cooperation of Financial Intelligence Units. The powers of Financial Intelligence Units include the right to access the financial, administrative and law enforcement information that they require to combat money laundering, the associated predicate offences and terrorist financing.

Amendment

(12) Directive (EU) 2015/849 has substantially enhanced the Union legal framework that governs the activity and cooperation of Financial Intelligence Units, ***the legal status of which varies across Member States from administrative to law enforcement to hybrid ones***. The powers of Financial Intelligence Units include the right to access the financial, administrative and law enforcement information that they

Nevertheless, Union law does not lay down all specific tools and mechanisms that Financial Intelligence Units must have at their disposal in order to access such information and accomplish their tasks. Since Member States remain entirely responsible for the setting up and deciding the organisational nature of Financial Intelligence Units, different Financial Intelligence Units have varying degrees of access to regulatory databases which leads to an insufficient exchange of information between law enforcement or prosecution services and Financial Intelligence Units.

require to combat money laundering, the associated predicate offences and terrorist financing. Nevertheless, Union law does not lay down all specific tools and mechanisms that Financial Intelligence Units must have at their disposal in order to access such information and accomplish their tasks. Since Member States remain entirely responsible for the setting up and deciding the organisational nature of Financial Intelligence Units, different Financial Intelligence Units have varying degrees of access to regulatory databases which leads to an insufficient exchange of information between law enforcement or prosecution services and Financial Intelligence Units.

Or. en

Amendment 3

Proposal for a directive Recital 12 a (new)

Text proposed by the Commission

Amendment

(12 a) The provisions of this Directive do not affect the operational independence and autonomy of the Financial Intelligence Units under Directive (EU) 2015/849 and should be in line with this Directive, meaning that the Financial Intelligence Units shall continue to have the authority and capacity to carry out its functions freely, including the ability to take autonomous decisions to analyse, request and disseminate specific information.

Or. en

Amendment 4

Proposal for a directive Recital 18

Text proposed by the Commission

(18) The *use of secure facilities for the exchange of information, in particular the decentralised computer network FIU.net* (the ‘FIU.net’), which is managed by Europol since 1 January 2016, or its successor and the techniques offered by FIU.net, should be used for exchanges of information between Financial Intelligence Units.

Amendment

(18) The secure *and* decentralised *electronic communications* network FIU.net (the ‘FIU.net’), which is managed by Europol since 1 January 2016, or its successor and the techniques offered by FIU.net, should be used for exchanges of information between Financial Intelligence Units.

Or. en

Amendment 5

Proposal for a directive Recital 19

Text proposed by the Commission

(19) Given the sensitivity of financial data that should be analysed by Financial Intelligence Units and the necessary data protection safeguards, this Directive should specifically set out the type and scope of information that can be exchanged between Financial Intelligence Units and with designated competent authorities. This Directive should not bring any changes to currently agreed methods of data collection.

Amendment

(19) Given the sensitivity of financial data that should be analysed by Financial Intelligence Units and the necessary data protection safeguards, this Directive should specifically set out the type and scope of information that can be exchanged between Financial Intelligence Units and with designated competent authorities. ***However, Member States should be able to decide to broaden the scope of financial information and bank account information that can be exchanged between the Financial Intelligence Units and designated competent authorities. They may also facilitate access by competent authorities to financial information and bank account information for the prevention, detection, investigation or prosecution of criminal offences other than serious criminal offences.*** This Directive should not bring

any changes to currently agreed methods of data collection.

Or. en

Amendment 6

Proposal for a directive Recital 20

Text proposed by the Commission

(20) Under its specific competences and tasks as laid down in Article 4 of Regulation (EU) 2016/794 of the European Parliament and of the Council¹⁶, Europol provides support to Member States' cross-border investigations into the money laundering activities of transnational criminal organisations. According to Regulation (EU) 2016/794, the Europol National Units are the liaison bodies between Europol and the Member States' authorities competent to investigate criminal offences. To provide Europol with the information necessary to carry out its tasks, Member States should provide that their Financial Intelligence Unit replies to requests for financial information and financial analysis made by Europol through the respective Europol National Unit. Member States should also provide that their Europol National Unit replies to requests for information on bank accounts by Europol. Requests made by Europol have to be duly justified. They have to be made on a case-by case basis, within the limits of Europol's responsibilities and for the performance of its tasks.

¹⁶ Regulation (EU) 2016/794 of the European Parliament and of the Council of

Amendment

(20) Under its specific competences and tasks as laid down in Article 4 of Regulation (EU) 2016/794 of the European Parliament and of the Council¹⁶, Europol provides support to Member States' cross-border investigations into the money laundering activities of transnational criminal organisations. ***In that context, Europol is obliged to notify the Member States of any information and connections between criminal offences concerning them.*** According to Regulation (EU) 2016/794, the Europol National Units are the liaison bodies between Europol and the Member States' authorities competent to investigate criminal offences. To provide Europol with the information necessary to carry out its tasks, Member States should provide that their Financial Intelligence Unit replies to requests for financial information and financial analysis made by Europol through the respective Europol National Unit. Member States should also provide that their Europol National Unit replies to requests for information on bank accounts by Europol. Requests made by Europol have to be duly justified. They have to be made on a case-by case basis, within the limits of Europol's responsibilities and for the performance of its tasks.

¹⁶ Regulation (EU) 2016/794 of the European Parliament and of the Council of

11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016, p. 53.

11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016, p. 53.

Or. en

Amendment 7

Proposal for a directive Article 1 – paragraph 1

Text proposed by the Commission

1. This Directive lays down measures to facilitate access **by competent authorities** to financial information and bank account information for the prevention, detection, investigation or prosecution of serious criminal offences. It also provides for measures to facilitate access by Financial Intelligence Units to law enforcement information and to facilitate the cooperation between Financial Intelligence Units.

Amendment

1. This Directive lays down measures to facilitate access to **and use of** financial information and bank account information **by competent authorities** for the prevention, detection, investigation or prosecution of serious criminal offences. It also provides for measures to facilitate access by Financial Intelligence Units to law enforcement information and to facilitate the cooperation between Financial Intelligence Units.

Or. en

Amendment 8

Proposal for a directive Article 1 – paragraph 2 – point b

Text proposed by the Commission

(b) **the powers of competent authorities** to exchange information between **them or** to obtain information from obliged entities under Union law or the national law of Member States.

Amendment

(b) **the existing channels** to exchange information between **competent authorities or their powers** to obtain information from obliged entities under Union law or the national law of Member States.

Or. en

Amendment 9

Proposal for a directive

Article 2 – paragraph 1 – point e

Text proposed by the Commission

(e) 'financial information' means any type of information or data which is held by Financial Intelligence Units to prevent, detect and effectively combat money laundering and terrorist financing, ***or any type of information or data which is held by public authorities or by obliged entities for those purposes and which is available to Financial Intelligence Units without the taking of coercive measures under national law;***

Amendment

(e) 'financial information' means any type of information or data which is held by Financial Intelligence Units to prevent, detect and effectively combat money laundering and terrorist financing;

Or. en

Amendment 10

Proposal for a directive

Article 2 – paragraph 1 – point g – introductory part

Text proposed by the Commission

(g) 'bank account information' means the following information contained in the centralised bank account registries:

Amendment

(g) 'bank account information' means the following information ***on bank and payments accounts and safe deposit boxes*** contained in the centralised bank account registries:

Or. en

Amendment 11

Proposal for a directive

Article 2 – paragraph 1 – point k

Text proposed by the Commission

(k) 'financial analysis' means the

Amendment

(k) 'financial analysis' means the

operational and strategic analysis carried out by the Financial Intelligence Units for the performance of their tasks pursuant to Directive (EU) 2015/849;

results of operational and strategic analysis carried out by the Financial Intelligence Units for the performance of their tasks pursuant to Directive (EU) 2015/849;

Or. en

Amendment 12

Proposal for a directive Article 3 – paragraph 1

Text proposed by the Commission

1. Each Member State shall designate among its authorities competent for the prevention, detection, investigation or prosecution of criminal offences the competent authorities empowered to access and search the national centralised bank account registries set up by the Member States in accordance with Article 32a of Directive (EU) 2015/849. They shall include the Europol National Units and the Asset Recovery Offices.

Amendment

1. Each Member State shall designate among its authorities competent for the prevention, detection, investigation or prosecution of criminal offences the competent authorities empowered to access and search the national centralised bank account registries set up by the Member States in accordance with Article 32a of Directive (EU) 2015/849. They shall **at least** include the Europol National Units and the Asset Recovery Offices.

Or. en

Amendment 13

Proposal for a directive Article 3 – paragraph 2

Text proposed by the Commission

2. Each Member State shall designate among its authorities competent for the prevention, detection, investigation or prosecution of criminal offences the competent authorities empowered to request and receive financial information or financial analysis from the Financial Intelligence Unit. They shall include the Europol National Units.

Amendment

2. Each Member State shall designate among its authorities competent for the prevention, detection, investigation or prosecution of criminal offences the competent authorities empowered to request and receive financial information or financial analysis from the Financial Intelligence Unit. They shall **at least** include the Europol National Units.

Amendment 14

Proposal for a directive Article 4 – paragraph 2

Text proposed by the Commission

2. The additional information that Member States may deem essential and include in the centralised bank account registries in accordance with Article 32a(4) of Directive 2018/XX/EU shall not be accessible and searchable by competent authorities *according to* this Directive.

Amendment

2. The additional information that Member States may deem essential and include in the centralised bank account registries in accordance with Article 32a(4) of Directive 2018/XX/EU shall not be accessible and searchable by competent authorities *on the basis of* this Directive.

Or. en

Amendment 15

Proposal for a directive Article 7 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Where there are objective grounds for assuming that the provision of such information would clearly have a negative impact on ongoing investigations or analyses, or, in exceptional circumstances, where disclosure of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or clearly irrelevant with regard to the purposes for which it has been requested, the Financial Intelligence Unit shall be under no obligation to comply with the request for information.

Or. en

Amendment 16

Proposal for a directive Article 7 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2 b. Member States shall require competent authorities to provide feedback to the Financial Intelligence Unit on the use made of the information provided in accordance with this Article, and on the outcome of the investigations or inspections performed on the basis of that information.

Or. en

Amendment 17

Proposal for a directive Article 9 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. Member States shall ensure that the information exchanged pursuant to this Article is used only for the purpose for which it was sought or provided, and that any dissemination of that information by the receiving Financial Intelligence Unit to any other authority, agency or department, or any use of this information for purposes other than those originally approved, is made subject to the prior consent of the Financial Intelligence Unit providing the information.

Or. en

Amendment 18

Proposal for a directive Article 9 – paragraph 4 b (new)

4 b. *Member States shall ensure that the Financial Intelligence Unit's prior consent requested under paragraph 4 a is granted promptly and to the largest extent possible. The requested Financial Intelligence Unit shall not refuse to grant such consent unless it would clearly fall beyond the scope of application of the provisions of this Directive, could lead to impairment of a criminal investigation, would be clearly disproportionate to the legitimate interests of a natural or legal person or the Member State of the requested Financial Intelligence Unit, or would otherwise clearly not be in accordance with fundamental principles of national law of that Member State. Any such refusal to grant consent shall be appropriately explained.*

Or. en

Amendment 19

Proposal for a directive Article 14 – paragraph 1 – point c

Text proposed by the Commission

(c) the requests made pursuant to this Directive and their executing measures.

Amendment

(c) ***the subject matter of*** the requests made pursuant to this Directive and their executing measures.

Or. en