



2018/0105(COD)

28.9.2018

*****I**

DRAFT REPORT

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))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Emil Radev

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**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))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0213),
 - having regard to Article 294(2) and Article 87(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0152/2018),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Economic and Monetary Affairs (A8-0000/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) Immediate and direct access to the information held in centralised bank account registries is often indispensable for the success of a criminal investigation or for the timely identification, tracing and

Amendment

(6) Immediate and direct access to the information held in centralised bank account registries is often indispensable for the success of a criminal investigation or for the timely identification, tracing and

freezing of the related assets in view of their confiscation. Direct access is the most immediate type of access to the information held in centralised bank account registries. This Directive should therefore lay down rules granting direct access to information held in centralised bank account registries to designated Member States' authorities **and other bodies** competent for the prevention, detection, investigation or prosecution of criminal offences.

freezing of the related assets in view of their confiscation. Direct access is the most immediate type of access to the information held in centralised bank account registries. This Directive should therefore lay down rules granting direct access to information held in centralised bank account registries to designated Member States' authorities competent for the prevention, detection, investigation or prosecution of criminal offences.

Or. en

Amendment 2

Proposal for a directive Recital 7

Text proposed by the Commission

(7) Given that in each Member States there are numerous authorities or bodies which are competent for the prevention, detection, investigation or prosecution of criminal offences, and in order to ensure a proportionate access to financial and other information under the present Directive, Member States should be required to designate which authorities should be empowered to have access to the centralised bank account registries and request information from Financial Intelligence Units for the purposes of this Directive.

Amendment

(7) Given that in each Member States there are numerous authorities or bodies which are competent for the prevention, detection, investigation or prosecution of criminal offences, and in order to ensure a proportionate access to financial and other information under the present Directive, Member States should be required to designate which authorities should be empowered to have access to the centralised bank account registries and **which should be able to** request information from Financial Intelligence Units for the purposes of this Directive.

Or. en

Amendment 3

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.

Or. en

Amendment 4

**Proposal for a directive
Recital 9 a (new)**

Text proposed by the Commission

(9a) ***Administrative investigations, other than those conducted by the Financial Intelligence Units in the context of preventing, detecting and effectively combating money laundering and terrorist financing, should not be covered under this Directive.***

Amendment

(9a) ***Administrative investigations, other than those conducted by the Financial Intelligence Units in the context of preventing, detecting and effectively combating money laundering and terrorist financing, should not be covered under this Directive.***

Or. en

Amendment 5

**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

Amendment

(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. 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.

include the right to access the financial, administrative and law enforcement information that they require to **prevent, detect and** 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 6

Proposal for a directive

Recital 13

Text proposed by the Commission

(13) In order to enhance legal certainty and operational effectiveness, this Directive should lay down rules to strengthen the Financial Intelligence Units' ability to share information with **their** designated competent authorities for all serious criminal offences.

Amendment

(13) In order to enhance legal certainty and operational effectiveness, this Directive should lay down rules to strengthen the Financial Intelligence Units' ability to share information **or analysis** with **the** designated competent authorities **in their Member State** for all serious criminal offences. **More precisely, Financial Intelligence Units should be enabled to share information or analysis with the designated competent authorities for the purposes of the prevention, detection, investigation or prosecution of money laundering, the associated predicate offences and terrorist financing, and, where it is necessary on a case-by-case basis, of serious criminal offences.**

At the same time, the operational independence and autonomy of Financial Intelligence Units should not be jeopardised and the decision to provide the requested information or analysis should remain with the FIU.

Or. en

Amendment 7

Proposal for a directive Recital 14

Text proposed by the Commission

(14) This Directive should also set out a clearly defined legal framework to enable Financial Intelligence Units to request relevant data stored by designated competent authorities in order to enable them to prevent and combat money laundering, the associated predicate offences and terrorist financing effectively.

Amendment

(14) This Directive should also set out a clearly defined legal framework to enable Financial Intelligence Units to request relevant data stored by designated competent authorities in ***their Member State in*** order to enable them to prevent, ***detect*** and combat money laundering, the associated predicate offences and terrorist financing effectively.

Or. en

Amendment 8

Proposal for a directive Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) This Directive should not provide for the possibility of direct cross-border cooperation between designated competent authorities and Financial Intelligence Units of another Member State.

Or. en

Amendment 9

Proposal for a directive Recital 15

Text proposed by the Commission

(15) Sharing information between Financial Intelligence Units **and with competent authorities** should **only** be permitted **where it is necessary on a case-by-case basis, either** for the prevention, detection, investigation or prosecution of **serious criminal offences or for** money laundering, the associated predicate offences **and** terrorist financing.

Amendment

(15) Sharing information between Financial Intelligence Units should be permitted for the **purposes of the** prevention, detection, investigation or prosecution of **either** money laundering, the associated predicate offences **or** terrorist financing, **and, in exceptional and urgent cases, of serious criminal offences. Such sharing of information should be undeterred.**

Or. en

Amendment 10

Proposal for a directive Recital 16

Text proposed by the Commission

(16) In order to prevent and combat money laundering, the associated predicate offences and terrorist financing more effectively and to reinforce its role in providing financial information and analysis, a Financial Intelligence Unit should be empowered to exchange information **or analysis** already in its possession or which can be obtained from obliged entities at the request of another Financial Intelligence Unit or of a competent authority in its Member State. This exchange should not hamper a Financial Intelligence Unit's active role in disseminating its analysis to other Financial Intelligence Units where that analysis reveals facts, conduct or suspicion of money laundering and terrorist financing of direct interest to those other Financial Intelligence Units. Financial analysis

Amendment

(16) In order to prevent, **detect** and combat money laundering, the associated predicate offences and terrorist financing more effectively and to reinforce its role in providing financial information and analysis, a Financial Intelligence Unit should be empowered to exchange information already in its possession or which can be obtained from obliged entities **or analysis already in its possession** at the request of another Financial Intelligence Unit or of a competent authority in its Member State. This exchange should not hamper a Financial Intelligence Unit's active role in disseminating its analysis to other Financial Intelligence Units where that analysis reveals facts, conduct or suspicion of money laundering and terrorist financing of direct interest to those other Financial

covers operational analysis which focuses on individual cases and specific targets or on appropriate selected information, depending on the type and volume of the disclosures received and the expected use of the information after dissemination as well as strategic analysis addressing money laundering and terrorist financing trends and patterns. However, this Directive should be without prejudice to the organisational status and role conferred to Financial Intelligence Units under the national law of Member States.

Intelligence Units. Financial analysis covers operational analysis which focuses on individual cases and specific targets or on appropriate selected information, depending on the type and volume of the disclosures received and the expected use of the information after dissemination as well as strategic analysis addressing money laundering and terrorist financing trends and patterns. ***The Financial Intelligence Units should receive feedback on the use of the information and analysis provided.*** However, this Directive should be without prejudice to the organisational status and role conferred to Financial Intelligence Units under the national law of Member States.

Or. en

Amendment 11

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

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. 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 ***enable*** their Financial Intelligence Unit ***to reply*** 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.

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. ***The operational independence and autonomy of Financial Intelligence Units should not be jeopardised and the decision whether to provide the requested information or analysis should remain with the Financial Intelligence Unit. In order to ensure quick and effective cooperation, it is necessary that this Directive establishes time limits for replies by the Financial Intelligence Units to requests by Europol.***

⁷ 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.

⁷ 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.

Or. en

Amendment 12

Proposal for a directive Recital 22

Text proposed by the Commission

(22) To achieve the appropriate balance between efficiency and a high level of data protection, Member States should be required to ensure that the processing of sensitive financial information that could reveal a person's race or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, health, sexual life or sexual orientation should be

Amendment

(22) To achieve the appropriate balance between efficiency and a high level of data protection, Member States should be required to ensure that the processing of sensitive financial information that could reveal a person's race or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, health, sexual life or sexual orientation should be

allowed only to the extent that it is strictly necessary **and** relevant **to a specific** investigation.

allowed **by persons specifically authorised** **and** only to the extent that it is strictly necessary, relevant **and proportionate for the prevention, detection,** investigation **or prosecution of a specific case.**

Or. en

Amendment 13

Proposal for a directive

Recital 24

Text proposed by the Commission

(24) It is essential to ensure that processing of personal data under this Directive fully respects the right to protection of personal data. Any such processing is subject to Directive (EU) 2016/680 of the European Parliament and of the Council and to Regulation (EU) 2016/679 of the European Parliament and of the Council¹⁸, in their respective scope of application. As far as the access of Asset Recovery Offices to centralised bank account registries and data retrieval systems is concerned, Directive (EU) 2016/680 applies while Article 5(2) of Council Decision 2007/845/JHA should not apply. As far as Europol is concerned, Regulation (EU) 2016/794 applies. Specific and additional safeguards and conditions for ensuring the protection of personal data should be laid down in this Directive in respect of **mechanisms to ensure** the processing of sensitive data **and** records of information requests.

⁹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive

Amendment

(24) It is essential to ensure that processing of personal data under this Directive fully respects the right to protection of personal data. Any such processing is subject to Directive (EU) 2016/680 of the European Parliament and of the Council and to Regulation (EU) 2016/679 of the European Parliament and of the Council¹⁸, in their respective scope of application. As far as the access of Asset Recovery Offices to centralised bank account registries and data retrieval systems is concerned, Directive (EU) 2016/680 applies while Article 5(2) of Council Decision 2007/845/JHA should not apply. As far as Europol is concerned, Regulation (EU) 2016/794 applies. Specific and additional safeguards and conditions for ensuring the protection of personal data should be laid down in this Directive in respect of the processing of sensitive data, **the maintenance of** records of information requests **and restrictions to data subjects rights.**

⁹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive

95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

Or. en

Amendment 14

Proposal for a directive Recital 25

Text proposed by the Commission

Amendment

(25) Personal data obtained under this Directive should only be processed by competent authorities where it is necessary and proportionate for the purposes of prevention, detection, investigation or prosecution of serious crime. **deleted**

Or. en

Amendment 15

Proposal for a directive Recital 27

Text proposed by the Commission

Amendment

(27) The transfer of financial data to third countries and international partners, for the purposes laid down in this Directive should only be allowed under the conditions laid down in Chapter V of Directive (EU) 2016/680 or Chapter V of Regulation (EU) 2016/679. **deleted**

Or. en

Amendment 16

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 17

**Proposal for a directive
Article 7 – paragraph 1**

Text proposed by the Commission

1. Subject to national procedural safeguards, each Member State shall ensure that its national Financial Intelligence Unit is **required** to reply to requests for financial information or financial analysis by **its** designated competent authorities referred to in Article 3(2), where that financial information or financial analysis is necessary, on a case-by-case basis, for the prevention, detection, investigation or prosecution of serious criminal offences.

Amendment

1. Subject to national procedural safeguards, each Member State shall ensure that its national Financial Intelligence Unit is **enabled** to reply to **motivated** requests for financial information or financial analysis by designated competent authorities referred to in Article 3(2) **in their respective Member State**, where that financial information or financial analysis is necessary, on a case-by-case basis, for the prevention, detection, investigation or prosecution of serious criminal offences.

Or. en

Amendment 18

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 19

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 20

**Proposal for a directive
Article 8 – paragraph 1**

Text proposed by the Commission

Subject to national procedural safeguards, each Member State shall ensure that its designated national competent authorities are required to reply to requests for law enforcement information by the national Financial Intelligence Unit, on a case-by-case basis, where the information is necessary for the prevention and combating of money laundering, associate predicate offences and terrorist financing.

Amendment

Subject to national procedural safeguards, each Member State shall ensure that its designated national competent authorities are required to reply to requests for law enforcement information by the national Financial Intelligence Unit, on a case-by-case basis, where the information is necessary for the prevention, **detection** and combating of money laundering, associate predicate offences and terrorist financing.

Or. en

Amendment 21

**Proposal for a directive
Article 9 – paragraph 1**

Text proposed by the Commission

1. Each Member State shall ensure that its Financial Intelligence Unit **is enabled to exchange** financial information or financial analysis with any Financial Intelligence Unit in the Union where that financial information or financial analysis is necessary for the prevention and combating of money laundering, associate predicate offences and terrorist financing.

Amendment

1. Each Member State shall ensure that its Financial Intelligence Unit **exchanges** financial information or financial analysis **free of charge** with any Financial Intelligence Unit in the Union where that financial information or financial analysis is necessary for the prevention, **detection** and combating of money laundering, associate predicate offences and terrorist financing

Or. en

Amendment 22

**Proposal for a directive
Article 9 – paragraph 2**

Text proposed by the Commission

2. Member States shall ensure that where a Financial Intelligence Unit is

Amendment

2. Member States shall ensure that where a Financial Intelligence Unit is

requested pursuant to paragraph 1 to exchange financial information or financial analysis, it shall do so as soon as possible and in any case no later than **three** days after the receipt of the request. In exceptional, duly justified cases, this time limit may be extended by a maximum of 10 days.

requested pursuant to paragraph 1 to exchange financial information or financial analysis, it shall do so as soon as possible and in any case no later than **five** days after the receipt of the request. In exceptional, duly justified cases, this time limit may be extended by a maximum of 10 days.

Or. en

Amendment 23

Proposal for a directive Article 9 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that, in exceptional and urgent cases, and by way of derogation from paragraph 2, where a Financial Intelligence Unit is requested pursuant to paragraph 1 to exchange financial information or financial analysis already in its possession that relates to specific investigations concerning an act or conduct qualified as a serious criminal offence, a Financial Intelligence Unit shall provide that information or analysis no later than **24** hours after the receipt of the request.

Amendment

3. Member States shall ensure that, in exceptional and urgent cases, and by way of derogation from paragraph 2, where a Financial Intelligence Unit is requested pursuant to paragraph 1 to exchange financial information or financial analysis already in its possession that relates to specific investigations concerning an act or conduct qualified as a serious criminal offence, a Financial Intelligence Unit shall provide that information or analysis **free of charge** no later than **48** hours after the receipt of the request.

Or. en

Amendment 24

Proposal for a directive Article 10 – title

Text proposed by the Commission

Access by Europol to bank account information and exchange of information between Europol and Financial Intelligence Units

Amendment

Provision of bank account information to Europol

Amendment 25

Proposal for a directive Article 10 – paragraph 2

Text proposed by the Commission

Amendment

2. Each Member State shall ensure that its Financial Intelligence Unit replies to duly justified requests related to financial information and financial analysis made by Europol through the Europol National Unit within the limits of its responsibilities and for the performance of its tasks. *deleted*

Or. en

Amendment 26

Proposal for a directive Article 10 – paragraph 3

Text proposed by the Commission

Amendment

3. Exchange of information under paragraphs 1 and 2 shall take place electronically through SIENA and in accordance with Regulation (EU) 2016/794. The language used for the request and the exchange of information shall be that applicable to SIENA. *deleted*

Or. en

Amendment 27

Proposal for a directive Article 10 a (new)

Article 10 a

***Exchange of information between
Europol and Financial Intelligence Units***

- 1. Each Member State shall ensure that its Financial Intelligence Unit is enabled to reply to duly justified requests made by Europol through the Europol National Unit related to financial information and financial analysis already in its possession on a case-by-case basis within the limits of Europol's responsibilities and for the performance of its tasks.***
- 2. Where there are objective grounds for assuming that the provision of financial information or financial analysis would have a negative impact on ongoing investigations or analysis, or, in exceptional circumstances, where disclosure of the financial information would be clearly disproportionate to the legitimate interests of a natural or legal person or irrelevant with regard to the purpose for which it was requested, the Financial Intelligence Unit shall be under no obligation to comply with the request for information.***
- 3. Europol shall provide feedback to the Financial Intelligence Unit about the use made of the financial information or financial analysis provided in accordance with this Article and about the outcome of the investigations or inspections performed on the basis of that information or analysis.***

Or. en

Amendment 28

**Proposal for a directive
Article 10 b (new)**

Text proposed by the Commission

Amendment

Article 10 b

Rules regarding the exchange of information with Europol

1. **Exchange of information under Articles 10 and 10a shall take place electronically through SIENA and in accordance with Regulation (EU) 2016/794. The language used for the request and the exchange of information shall be that applicable to SIENA.**
2. **The information shall be exchanged as soon as possible and in any case no later than five days after the receipt of the request. In exceptional, duly justified cases, that time limit may be extended by a maximum of ten days.**

Or. en

Amendment 29

**Proposal for a directive
Article 11 – paragraph 1**

Text proposed by the Commission

Amendment

1. The processing of personal data related to bank account information, financial information and financial analysis referred to in Article 10(1) and (2) shall be performed only by ***the persons within Europol who have been specifically designated and authorised to perform those tasks.***

1. The processing of personal data related to bank account information, financial information and financial analysis referred to in Article 10(1) and (2) shall be performed only by ***means of operational analysis projects, in respect of which the specific safeguards laid down in Article 18(3) of Regulation (EU) 2016/794 shall apply.***

Or. en

Amendment 30

Proposal for a directive Article 11 – paragraph 2

Text proposed by the Commission

2. Europol shall inform the data protection officer appointed in accordance with Article 41 of Regulation (EU) 2016/794 of each exchange of information pursuant to **Article 10** of this Directive.

Amendment

2. Europol shall inform the data protection officer appointed in accordance with Article 41 of Regulation (EU) 2016/794 of each exchange of information pursuant to **Articles 10 and 10a**.

Or. en

Amendment 31

Proposal for a directive Article 13 – title

Text proposed by the Commission

Processing of sensitive data

Amendment

Processing of sensitive **personal** data

Or. en

Amendment 32

Proposal for a directive Article 13 – paragraph 1

Text proposed by the Commission

1. The processing of **information** revealing a person's race or ethnic origin, political opinions, **religion** or philosophical beliefs, trade union membership, health, **sexual** life or sexual orientation **may** only be allowed **to the extent that it is strictly necessary and relevant in a specific case**

Amendment

1. The processing of **personal data** revealing a person's race or ethnic origin, political opinions, **religious** or philosophical beliefs, trade union membership, **data concerning** health, **or data concerning a natural person's sex** life or sexual orientation **shall** only be allowed **in accordance with Article 10 of Directive (EU) 2016/680**.

Or. en

Amendment 33

Proposal for a directive

Article 15 – paragraph 1 – introductory part

Text proposed by the Commission

Member States **shall** adopt legislative measures restricting, in whole or in part, the data subject's right of access to personal data relating to him or her processed under this Directive in **order to**:

Amendment

Member States **may** adopt legislative measures restricting, in whole or in part, the data subject's right of access to personal data relating to him or her processed under this Directive in **accordance with Article 15(1) of Directive (EU) 2016/680**.

Or. en

Amendment 34

Proposal for a directive

Article 15 – paragraph 1 – point a

Text proposed by the Commission

(a) enable the Financial Intelligence Unit or the competent national authority to fulfil its tasks properly for the purposes of this Directive;

Amendment

deleted

Or. en

Amendment 35

Proposal for a directive

Article 15 – paragraph 1 – point b

Text proposed by the Commission

(b) avoid obstructing official or legal inquiries, analyses, investigations or procedures for the purposes of this Directive and to ensure that the prevention, investigation and detection of money laundering, terrorist financing or other serious criminal offences is not

Amendment

deleted

jeopardised.

Or. en

Amendment 36

Proposal for a directive Article 16 – paragraph 1

Text proposed by the Commission

1. Member States shall review the effectiveness of their systems *to combat serious* criminal offences by maintaining comprehensive statistics.

Amendment

1. Member States shall review the effectiveness *and efficiency* of their systems *with regard to the use of financial and other information for the prevention, detection, investigation or prosecution of certain* criminal offences by maintaining comprehensive statistics.

Or. en

Amendment 37

Proposal for a directive Article 16 – paragraph 2 – subparagraph 2

Text proposed by the Commission

The monitoring programme shall set out the means by which *and the intervals at which* the data and other necessary evidence will be collected. It shall specify the action to be taken by the Commission and by the Member States in collecting and analysing the data and other evidence.

Amendment

The monitoring programme shall set out the means by which the data and other necessary evidence will be collected. It shall specify the action to be taken by the Commission and by the Member States in collecting and analysing the data and other evidence.

Or. en

Amendment 38

Proposal for a directive Article 19 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by XXY [26 months after the date of entry into force of Directive (EU) (...)/2018: OJ please insert number of Directive amending Directive (EU) 2015/849] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

Amendment

Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by ***no later than...*** [24 months after the date of entry into force of Directive (EU) (...)/2018⁺]. They shall forthwith communicate to the Commission the text of those provisions.

⁺ OJ: please insert number of Directive amending Directive (EU) 2015/849]

Or. en

EXPLANATORY STATEMENT

Background

Criminal groups, including terrorists, operate across different Member States and their assets, including bank accounts, are usually located across the EU or even beyond it. They make use of modern technology that allows them to transfer money between several bank accounts and between different currencies in a matter of hours.

A timely exchange of information is essential for criminal investigations on serious crimes. Lack of financial information may result in missed opportunities to investigate serious crimes, disrupt criminal activities, stop terrorist plots, and detect and freeze proceeds of crime. Lack of information on all accounts belonging to a suspect may lead to partial freezing of assets only, which may alert the suspect, who is then able to remove the undetected funds from the other accounts the suspect might hold. Many investigations come to a dead end due to the failure to secure timely, accurate and comprehensive access to the relevant financial data. The existing mechanisms for accessing and exchanging financial information need to be upgraded to respond to the fast pace at which funds can be transferred across Europe and globally. As a result, the number of successful criminal investigations will increase, which in turn will lead to an increase in the number of convictions and asset confiscations. This will contribute to disrupting criminal activities and increasing the security in the Member States and across the Union.

Commission proposal

To respond to the above-described challenges, the European Commission proposes direct access to the national centralised bank account registries or data retrieval systems to competent authorities. The competent authorities to which access is provided for also include tax authorities, anti-corruption authorities in their capacity to conduct criminal investigations under national law, the Asset Recovery Offices which are responsible for the tracing and identification of criminal assets in view of their possible freezing and confiscation. The Commission proposes also that Europol is provided with indirect access through Member States' National Units.

The proposal also facilitates cooperation between FIUs, between FIUs and competent authorities, and between FIUs and Europol through the Europol National Units. It defines what type of information (financial information, financial analysis, law enforcement information) can be requested by competent authorities and FIUs respectively as well as an exhaustive list of criminal offences for which each authority can exchange information always on a case-by-case basis, which means for a specific case under investigation. It provides for deadlines within which FIUs should exchange the information and requires the use of a secure channel of communication to further improve and speed up the information exchange. Finally, it requires Member States to designate all the competent authorities entitled to request information. It ensures a broader and more effective but at the same time proportionate exchange of information.

Position of the rapporteur

The rapporteur welcomes the proposal of the European Commission, as the timely exchange

of information is one of the priorities of the European Parliament in the fight against money laundering, related predicate offences, terrorism, and all forms of serious criminal offences in general. To this end, he welcomes the provisions on providing access to the national bank account registers or data retrieval systems to competent authorities in relation to the effective fight against serious criminal offences, as these texts build upon the Fifth Anti-Money Laundering Directive.

The rapporteur agrees that the exchange of information between Financial Intelligence Units and competent authorities in the fight against serious criminal offences has to be strengthened. At the same time, he is mindful of the different structures and forms of FIUs in the different Member States, and especially of the need to preserve the FIUs' operational independence and autonomy. Therefore, he proposes that FIUs have the ability to respond to requests for financial information or analysis from the competent authorities or the Europol National Units, while taking into consideration whether the sharing of such information or analysis can have a negative impact on ongoing investigations or analysis or whether the disclosure of the information would be disproportionate to the legitimate interests of a natural or legal person or irrelevant with regard to the purpose for which it has been requested.

The deadlines for exchange of information have been slightly prolonged in order to ensure that FIUs have enough operational time for response.

Last but not least, the rapporteur aligns the data protection regime with existing legislation and removes texts that result in the creation of new regimes.