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A8-0442/ 001-072

AMENDMENTS 001-072

by the Committee on Civil Liberties, Justice and Home Affairs

Report

Emil Radev

A8-0442/2018

Rules facilitating the use of financial and other information

Proposal for a directive (COM(2018)0213 – C8-0152/2018 – 2018/0105(COD))

Amendment 1

Proposal for a directive

Title

Text proposed by the Commission

Amendment

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

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 *serious* criminal offences
and repealing Council Decision
2000/642/JHA

Amendment 2

Proposal for a directive

Recital 2

Text proposed by the Commission

Amendment

(2) In order to enhance security in the
Member States and across the Union, it is
necessary to improve access to information
by Financial Intelligence Units and public
authorities responsible for the prevention,

(2) In order to enhance security, *improve
prosecution of financial crimes, combat
money laundering and prevent tax
evasion* in the Member *States and* across
the Union, it is necessary to improve

detection, investigation or prosecution of serious forms of crimes, to enhance their ability to conduct financial investigations and to improve cooperation between them.

access to information by Financial Intelligence Units and public authorities responsible for the prevention, detection, investigation or prosecution of serious forms of crimes, to enhance their ability to conduct financial investigations and to improve cooperation between them.

Amendment 3

Proposal for a directive

Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Member States are obliged to cooperate sincerely, loyally and expeditiously pursuant to Article 4(3) of the Treaty on European Union.

Amendment 4

Proposal for a directive

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) Financial fraud and money laundering affect European tax payers. Combating those crimes, therefore, remains a priority for the Union.

Amendment 5

Proposal for a directive

Recital 6

Text proposed by the Commission

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

(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.

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.

Amendment 6

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 **are** 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. Member States **are also required to delimit the powers of such authorities**.

Amendment 7

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

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 should not be covered under *the present* Directive.

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 *this* Directive.

Amendment 8

Proposal for a directive Recital 10

Text proposed by the Commission

(10) The perpetrators of criminal offences, in particular criminal groups and terrorists, *often* operate across different Member States and their assets, including bank accounts, are often located in other Member States. Given the cross-border dimension of serious crimes, including terrorism, and of the related financial activities, it is often necessary for competent authorities carrying out investigations to access information on bank accounts held in other Member States.

Amendment

(10) The perpetrators of criminal offences, *such as financial fraud and money laundering, are often* criminal groups and terrorists *organisations that* operate across different Member States and their assets, including bank accounts, are often located in other Member States. Given the cross-border dimension of serious crimes, including terrorism, and of the related financial activities, it is often necessary for competent authorities carrying out *criminal* investigations to access information on bank accounts held in other Member States.

Amendment 9

Proposal for a directive Recital 11

Text proposed by the Commission

(11) The information acquired by competent authorities from the national centralised bank account registries can be exchanged with competent authorities located in a different Member State, in accordance with Council Framework Decision 2006/960/JHA¹⁴ and Directive 2014/41/EU¹⁵ of the European Parliament and the Council.

Amendment

(11) The information acquired by competent authorities from the national centralised bank account registries can be exchanged with competent authorities located in a different Member State, in accordance with Council Framework Decision 2006/960/JHA¹⁴ and Directive 2014/41/EU *of the European Parliament and the Council*¹⁵, *in compliance with the applicable data protection rules.*

¹⁴ Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, OJ L 386 of 29.12.2006, p. 89.

¹⁵ Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters, OJ L 130 of 1.5.2014, p. 1.

¹⁴ Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, OJ L 386 of 29.12.2006, p. 89.

¹⁵ Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters, OJ L 130 of 1.5.2014, p. 1.

Amendment 10

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. 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.

Amendment

(12) Directive (EU) 2015/849 has substantially enhanced the Union legal framework that governs the activity and cooperation of Financial Intelligence Units, ***including the possibility of establishing a coordination and support mechanism***. The powers of Financial Intelligence Units, ***the legal status of which varies across Member States from administrative or law enforcement to hybrid ones***, 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.

Amendment 11

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 required 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, this Directive should not affect the operational independence and autonomy of the Financial Intelligence Units as established in Directive (EU) 2015/849, including the ability to take autonomous decisions to analyse, request and disseminate information. Any refusal to comply with a request for information from a competent authority in its Member State should be appropriately explained.*

Amendment 12

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

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 order to enable them to prevent and combat money laundering, the associated predicate offences and terrorist financing effectively.

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.

Amendment 13

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 money laundering, the associated predicate offences *or* terrorist financing, *and, in exceptional and urgent cases where this is sufficiently justified, of serious criminal offences. Such sharing of information should be undeterred.*

Amendment 14

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

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 direct interest to those other Financial 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. 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.

of money laundering and terrorist financing of direct interest to those other Financial 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. ***It is essential that FIUs be provided with feedback from competent authorities as regards the use made of the financial information and financial analysis provided and the outcome of the investigation or prosecution relating to such information. Member States should put in place appropriate mechanisms to allow for such exchanges of information and follow-ups.*** 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.

Amendment 15

Proposal for a directive Recital 17

Text proposed by the Commission

(17) Time limits for exchanges of information between Financial Intelligence Units are necessary to ensure quick, effective and consistent cooperation. Sharing information necessary to solve cross-border cases and investigations should be carried out with the same celerity and priority as for a similar domestic case. Time limits should be provided to ensure effective sharing of information within reasonable time or to meet procedural constraints. Shorter time limits should be provided in duly justified cases, where the requests relate to specific serious criminal offences, such as terrorist offences and offences related to a terrorist group or

Amendment

(17) Time limits for exchanges of information between Financial Intelligence Units are necessary to ensure quick, effective and consistent cooperation. Sharing information necessary to solve cross-border cases and investigations should be carried out with the same celerity and priority as for a similar domestic case. Time limits should be provided to ensure effective sharing of information within reasonable time or to meet procedural constraints, ***as well as to harmonise practices in the exchange of information between FIUs across the Union.*** Shorter time limits should be provided in duly justified cases, where the requests relate to

activities as laid down in Union law.

specific serious criminal offences, such as terrorist offences and offences related to a terrorist group or activities as laid down in Union law.

Amendment 16

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. This Directive should not bring any changes to currently agreed methods of data collection. ***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. Member States could 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 derogate from the applicable data protection rules.***

Amendment 17

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

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 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.

provides support to Member States' cross-border investigations into the money laundering activities of transnational criminal organisations. ***In that context, Europol should notify the Member States of any information and connections between criminal offences concerning those Member States.*** 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 *is entitled 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 *is entitled to reply* 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 FIU. In order to ensure quick and effective cooperation, time limits for replies by the FIUs to requests by Europol should be set.***

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.

Amendment 18

Proposal for a directive Recital 21 a (new)

Text proposed by the Commission

Amendment

(21 a) To strengthen the cooperation between Financial Intelligence Units, the European Commission should carry out an impact assessment in the near future to evaluate the possibility and appropriateness of establishing a coordination and support mechanism, such as an EU FIU.

Amendment 19

Proposal for a directive Recital 22

Text proposed by the Commission

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.

(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 **by persons specifically authorised and** to the extent that it is strictly necessary, relevant **and proportionate for the prevention, detection, investigation or prosecution of a specific crime and in compliance with the applicable data protection rules.**

Amendment 20

Proposal for a directive Recital 23

Text proposed by the Commission

Amendment

(23) This Directive respects the

(23) This Directive respects the

fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and by the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life (Article 7) **and** the right to the protection of personal data (Article 8), by international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member States' constitutions in their respective fields of application.

fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and by the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life (Article 7), the right to the protection of personal data (Article 8), **the right to an effective remedy and to a fair trial (Article 47), the presumption of innocence and right of defence (Article 48), the principles of legality and proportionality of criminal offences and penalties (Article 49)**, by international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member States' constitutions in their respective fields of application. **This Directive respects and observes also the freedom to conduct a business and the prohibition of discrimination.**

Amendment 21

Proposal for a directive

Recital 25

Text proposed by the Commission

(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.

Amendment

(25) **Any** personal data obtained under this Directive should only be processed **in accordance with Directive (EU) 2016/680 and Regulation (EU) 2016/679** by competent authorities where it is necessary and proportionate for the purposes of prevention, detection, investigation or prosecution of serious crime.

Amendment 22

Proposal for a directive

Recital 26

Text proposed by the Commission

Amendment

(26) Furthermore, in order to respect the right to the protection of personal data and the right to privacy and limit the impact of the access to the information contained in centralised bank account registries and data retrieval systems, it is essential to provide for conditions limiting the access. In particular, Member States should ensure that appropriate data protection policies and measures apply to the access to personal data from competent authorities for the purposes of this Directive. Only authorised *persons* should have access to information containing personal data which can be obtained from the centralised bank account registries or through authentication processes.

(26) Furthermore, in order to respect the right to the protection of personal data and the right to privacy and limit the impact of the access to the information contained in centralised bank account registries and data retrieval systems, it is essential to provide for conditions limiting the access. In particular, Member States should ensure that appropriate data protection policies and measures apply to the access to personal data from competent authorities for the purposes of this Directive. Only authorised *staff* should have access to information containing personal data which can be obtained from the centralised bank account registries or through authentication processes. *Staff granted access to such sensitive data should receive training on security practices with regards to the exchange and handling of the data.*

Amendment 23

Proposal for a directive Recital 28

Text proposed by the Commission

(28) The Commission should report on the implementation of this Directive **three** years after its date of transposition, and every three years thereafter. In accordance with paragraphs 22 and 23 of the Interinstitutional Agreement on Better Law-Making¹⁹ the Commission should also carry out an evaluation of this Directive on the basis of information collected through specific monitoring arrangements in order to assess the actual effects of the Directive and the need for any further action.

¹⁹ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016; OJ L 123, 12.5.2016, p. 1–14.

Amendment

(28) The Commission should report on the implementation of this Directive **two** years after its date of transposition, and every three years thereafter. In accordance with paragraphs 22 and 23 of the Interinstitutional Agreement on Better Law-Making¹⁹ the Commission should also carry out an evaluation of this Directive on the basis of information collected through specific monitoring arrangements in order to assess the actual effects of the Directive and the need for any further action.

¹⁹ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016; OJ L 123, 12.5.2016, p. 1–14.

Amendment 24

Proposal for a directive Recital 29

Text proposed by the Commission

(29) This Directive aims at ensuring that rules are adopted to provide Union citizens with a higher level of security by preventing and combating crime, pursuant to Article 67 of the Treaty on the Functioning of the European Union. Due to their transnational nature, **the terrorist and criminal threats** affect the Union as a whole and require a Union wide response. Criminals may exploit, and will benefit from, the lack of an efficient use of bank account information and financial information in a Member State, which can have consequences in another Member State. Since the objective of this Directive cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

Amendment 25

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

Amendment

(29) This Directive aims at ensuring that rules are adopted to provide Union citizens with a higher level of security by preventing and combating crime, pursuant to Article 67 of the Treaty on the Functioning of the European Union. Due to their transnational nature, **cross border organised crimes** affect the Union as a whole and require a Union wide response. Criminals may exploit, and will benefit from, the lack of an efficient use of bank account information and financial information in a Member State, which can have consequences in another Member State. Since the objective of this Directive cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

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, **where this information is necessary, on a case-by-**

Units.

case basis, and to facilitate the cooperation between Financial Intelligence Units.

Amendment 26

Proposal for a directive

Article 1 – paragraph 2 – point a

Text proposed by the Commission

(a) the provisions of Directive (EU) 2015/849 of the European Parliament and of the Council and the related provisions in the national law of Member States, including the organisational status conferred to Financial Intelligence Units under national law;

Amendment

(a) the provisions of Directive (EU) 2015/849 of the European Parliament and of the Council and the related provisions in the national law of Member States, including the organisational status conferred to Financial Intelligence Units under national law ***and the competences of national authorities responsible for application of legislation concerning prevention of the use of the financial system for the purpose of money laundering and terrorist financing.***

Amendment 27

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, ***such as data on financial assets, movements of funds, financial business relationship,*** 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 28

Proposal for a directive

Article 2 – paragraph 1 – point f

Text proposed by the Commission

(f) 'law enforcement information' means any type of information or data which is held by competent authorities to prevent, detect, investigate or prosecute criminal offences or any type of information or data which is held by public authorities or by private entities for those purposes and which is available to competent authorities without the taking of coercive measures under national law;

Amendment

(f) 'law enforcement information' means any type of information or data which ***already*** is held by competent authorities to prevent, detect, investigate or prosecute criminal offences or any type of information or data which is held by public authorities or by private entities for those purposes and which is available to competent authorities without the taking of coercive measures under national law; ***such information includes inter alia criminal records, information on investigations or on ongoing prosecutions, information on the freezing or seizure of assets or on other investigative or provisional measures and information on convictions, on confiscations and on mutual legal assistance activities;***

Amendment 29

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:

Amendment 30

Proposal for a directive

Article 2 – paragraph 1 – point k

Text proposed by the Commission

(k) 'financial analysis' means the operational and strategic analysis carried out by the Financial Intelligence Units for the performance of their tasks pursuant to

Amendment

(k) 'financial analysis' means the ***results of*** operational and strategic analysis carried out by the Financial Intelligence Units for the performance of their tasks pursuant to

Amendment 31

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 include **at least** the Europol National Units and the Asset Recovery Offices.

Amendment 32

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 33

Proposal for a directive Article 3 – paragraph 3

Text proposed by the Commission

3. Each Member State shall notify the Commission its designated competent

Amendment

3. Each Member State shall notify the Commission its designated competent

authorities in accordance with paragraphs (1) and (2) by [**6 months** from transposition date] at the latest, and shall notify the Commission of any amendment thereto. The Commission shall publish the notifications and any amendment thereto in the Official Journal of the European Union.

authorities in accordance with paragraphs (1) and (2) by [**4 months** from transposition date] at the latest, and shall notify the Commission of any amendment thereto. The Commission shall publish the notifications and any amendment thereto in the Official Journal of the European Union.

Amendment 34

Proposal for a directive

Article 4 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the competent authorities designated pursuant to Article 3(1) shall have the power to access and search, directly and immediately, bank account information when necessary for the performance of their tasks for the purposes of preventing, detecting, investigating or prosecuting a serious criminal offence or supporting a criminal investigation concerning a serious criminal offence, including the identification, tracing and freezing of the assets related to such investigation.

Amendment

1. Member States shall ensure that the competent authorities designated pursuant to Article 3(1) shall have the power to access and search, directly and immediately, bank account information when necessary for the performance of their tasks for the purposes of preventing, detecting, investigating or prosecuting a serious criminal offence or supporting a criminal investigation concerning a serious criminal offence, including the identification, tracing and freezing of the assets related to such investigation. ***Access and search is also deemed direct and immediate where the national authorities operating the central bank account registries transmit the bank account information expeditiously by an automated mechanism to competent authorities, provided that no intermediary institution interferes with the requested data or the information to be provided.***

Amendment 35

Proposal for a directive

Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States providing access to bank account information through central electronic data retrieval systems

shall ensure that the authority operating the retrieval systems reports search results in an immediate and unfiltered way to competent authorities.

Amendment 36

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.

Amendment 37

Proposal for a directive Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall ensure that the staff of the national designated competent authorities maintains high professional standards of confidentiality and data protection.

Amendment 38

Proposal for a directive Article 5 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that the access and search by competent authorities is supported by technical and organisational measures ensuring the security of the data.

Amendment

2. Member States shall ensure that the access and search by competent authorities is supported by technical and organisational measures ensuring the security of the data ***to the highest technological standard available.***

Amendment 39

Proposal for a directive Article 6 – paragraph 1 – point d

Text proposed by the Commission

(d) the results *of the query or search*;

Amendment

(d) *the unique identifiers of* the results;

Amendment 40

Proposal for a directive Article 6 – paragraph 1 – point f

Text proposed by the Commission

(f) the identifiers of the official who carried out the query or search and of the official who ordered the query or search.

Amendment

(f) the identifiers of the official who carried out the query or search and of the official who ordered the query or search, *and as far as possible, the identity of the recipient of the results of the query or search.*

Amendment 41

Proposal for a directive Article 6 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall ensure that centralised bank account registers take appropriate measures so that employees are aware of the provisions in force, including the relevant data protection requirements. Such measures shall include special training programmes.

Amendment 42

Proposal for a directive Article 7 – paragraph 1

Text proposed by the Commission

1. Subject to national procedural

Amendment

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.

safeguards, each Member State shall ensure that its national Financial Intelligence Unit is required to reply, *in a timely manner, to reasoned* requests for financial information or financial analysis by its 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 *and may be obtained by the requesting competent authorities in accordance with the applicable law. Exemptions provided for under Article 32(5) of Directive (EU) 2015/849 shall apply to the exchange. Any refusal shall be appropriately explained.*

Amendment 43

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

Text proposed by the Commission

Amendment

2 a. Member States shall require designated competent authorities to provide feedback to the Financial Intelligence Unit about the use made of the information or 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.

Amendment 44

Proposal for a directive Article 8 – paragraph 1

Text proposed by the Commission

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-

Subject to national procedural safeguards *and in accordance with the rules on the access to information by the Financial Intelligence Units as set out in Article 32(4) of Directive (EU) 2015/849*, each Member State shall ensure that its

case basis, where the information is necessary for the prevention and combating of money laundering, associate predicate offences and terrorist financing.

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.

Amendment 45

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 **in accordance with Article 53(1) of Directive (EU) 2015/849.**

Amendment 46

Proposal for a directive Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. A Financial Investigation Unit may refuse to exchange information only in exceptional circumstances where the exchange could be contrary to fundamental principles of its national law. Those exceptions shall be specified in a way which prevents misuse of, and undue limitations on, the free exchange of information for analytical purposes. Any refusal shall be appropriately explained.

Amendment 47

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 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.

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. ***The same time limits apply for sending an appropriate explanation in case of refusals based on paragraph (1a).***

Amendment 48

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 24 hours after the receipt of the request.

Amendment 49

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

Text proposed by the Commission

Amendment

4a. 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.

Amendment 50

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

Text proposed by the Commission

Amendment

4b. Member States shall ensure that the prior consent requested from the Financial Intelligence Unit under paragraph 4a is granted promptly and to the largest extent possible. The Financial Intelligence Unit from which consent is requested shall not refuse to grant consent unless it would clearly fall beyond the scope of application of this Directive, could lead to impairment of a criminal investigation, would be clearly disproportionate in light of the legitimate interests of a natural or legal person or of 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.

Amendment 51

Proposal for a directive Article 9 a (new)

Text proposed by the Commission

Amendment

Article 9a

Transfer of financial data to third

countries

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

Amendment 52

Proposal for a directive Article 9 b (new)

Text proposed by the Commission

Amendment

Article 9b

Exchange of information between competent authorities in different Member States

1. Subject to national procedural safeguards, each Member State shall ensure that its competent authorities designated under Article 3 (1) are enabled to exchange information obtained from the access to the national centralised bank account registries set up by the Member States in accordance with Article 32a of Directive (EU) 2015/849, upon request, and on a case-by-case basis, where that bank account information is necessary for the prevention and combating of money laundering, associate predicate offences and terrorist financing.

2. Subject to national procedural safeguards, each Member State shall ensure that its competent authorities designated under Article 3 (2) are enabled to exchange financial information or financial analysis requested from the Financial Intelligence Unit from that Member State, upon request and on a case-by-case basis from a designated competent authority in another Member State, where that financial information or financial analysis is necessary for the prevention and combating of money

laundering, associate predicate offences and terrorist financing.

3. Member States shall ensure that a request issued pursuant to this Article and its response are transmitted using dedicated secure electronic communications ensuring a high level of data security. That network shall be capable of producing a written record under conditions that allow the authenticity of the request and its response to be ascertained.

Amendment 53

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 54

Proposal for a directive Article 10 – paragraph 1

Text proposed by the Commission

1. Each Member State shall ensure that its Europol National Unit *replies* to duly justified requests related to bank account information made by the Agency for Law Enforcement Cooperation established by Regulation (EU) 2016/794 of the European Parliament and of the Council ('Europol') on a case-by-case basis within the limits of its responsibilities and for the performance of its tasks.

Amendment

1. Each Member State shall ensure that its Europol National Unit *is entitled to reply* to duly justified requests related to bank account information made by the Agency for Law Enforcement Cooperation established by Regulation (EU) 2016/794 of the European Parliament and of the Council ('Europol') on a case-by-case basis within the limits of its responsibilities and for the performance of its tasks. *Article 7 (7) of Regulation (EU) 2016/794 shall apply.*

Amendment 55

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

Amendment 56

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

Amendment 57

Proposal for a directive

Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10 a

Exchange of information between Europol and Financial Intelligence Units

1. Each Member State shall ensure that its Financial Intelligence Unit is entitled to reply to duly justified requests made by Europol through the Europol National Unit that are related to financial information and financial analysis on a case-by-case basis within the limits of the responsibilities of Europol and for the performance of its tasks.

2. Exemptions provided for under Article 32(5) of Directive (EU) 2015/849 shall apply to the exchange. Any refusal shall

be appropriately explained.

3. Europol shall provide feedback to the FIU through the Europol National Unit about the use made of the information or analysis provided in accordance with this Article and about the outcome of the investigations or inspections performed on the basis of this information or analysis in line with Regulation (EU) 2016/794.

Amendment 58
Proposal for a directive
Article 10 b (new)

Text proposed by the Commission

Amendment

Article 10 b

Detailed arrangements for the exchange of information

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, this time limit may be extended by a maximum of ten days.

Amendment 59

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***

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***

designated and authorised to perform those tasks.

specific safeguards laid down in Article 18 (3) of Regulation (EU) 2016/794 shall apply.

Amendment 60

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** of this Directive.

Amendment 61

Proposal for a directive Article 13 – title

Text proposed by the Commission

Processing of sensitive data

Amendment

Processing of sensitive **personal** data

Amendment 62

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.**

Amendment 63

Proposal for a directive

Article 13 – paragraph 2

Text proposed by the Commission

2. Only persons specifically authorised may access and process the data referred to in paragraph 1 under the instruction of the data protection officer

Amendment

2. Only persons specifically authorised **and trained** may access and process the data referred to in paragraph 1 under the instruction of the data protection officer

Amendment 64

Proposal for a directive

Article 14 – paragraph 1 – point a

Text proposed by the Commission

(a) the name and contact details of the organisation and personnel member requesting the information;

Amendment

(a) the name and contact details of the organisation and personnel member requesting the information; **and, as far as possible, the identity of the recipient of the results of the query or search.**

Amendment 65

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.

Amendment 66

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.**

(a) **enable the Financial Intelligence**

Unit or the competent national authority to fulfil its tasks properly for the purposes of this Directive;

(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 jeopardised.

Amendment 67

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* serious criminal offences by maintaining comprehensive statistics.

Amendment 68

Proposal for a directive Article 18 – paragraph 1

Text proposed by the Commission

1. By [OJ please insert date: *three* years after the date of transposition of this Directive] at the latest, and every three years thereafter, the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and to the Council. The report shall be made public.

Amendment

1. By [OJ please insert date: *two* years after the date of transposition of this Directive] at the latest, and every three years thereafter, the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and to the Council. The report shall be made public.

Amendment 69

Proposal for a directive Article 18 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. The Commission shall assess the obstacles and opportunities to enhance cooperation between FIUs in the Union including the possibility and appropriateness of establishing a coordination and support mechanism, such as an EU FIU.

Amendment 70

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 XXYX [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]

Amendment 71

Proposal for a directive Article 19 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. By [OJ please insert date: three years after the date of transposition of this Directive] at the latest, the Commission shall draw up a report assessing the necessity of specific measures to ensure

diagonal cooperation, i.e. cooperation between Financial Intelligence Units in one Member States with competent authorities in another Member State. The report shall be submitted to the European Parliament and to the Council and be accompanied by a legislative proposal, if considered necessary.

Amendment 72

Proposal for a directive

Article 19 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. By [OJ please insert date: three years after the date of transposition of this Directive] at the latest, the Commission shall draw up a report assessing the necessity of specific measures to ensure uniformity in the organisational status and role conferred on Financial Intelligence Units under the national law of Member States, to ensure efficient cooperation and exchange of information. The report shall be submitted to the European Parliament and to the Council and be accompanied by a legislative proposal, if considered necessary.