

# Use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences

2018/0105(COD) - 17/04/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 574 votes to 26 with 6 abstentions, a 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.

The position of the European Parliament adopted at first reading in the framework of the ordinary legislative procedure amends the Commission proposal as follows:

## ***Purpose***

The proposed Directive lays down:

- measures to facilitate access to and the use of financial information and bank account information by competent authorities for the prevention, detection, investigation or prosecution of serious criminal offences;
- measures to facilitate access to law enforcement information by Financial Intelligence Units ('FIUs') for the prevention and combating of money laundering, associate predicate offences and terrorist financing and
- measures to facilitate cooperation between FIUs.

## ***Access by competent authorities to bank account information***

The designated competent national authorities will 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 searches shall be considered to be direct and immediate, inter alia, 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 is able to interfere with the requested data or the information to be provided.

Staff of the designated competent authorities shall maintain high professional standards of confidentiality and data protection, and be of high integrity and appropriately skilled.

## ***Monitoring access and searches***

The authorities operating the centralised bank account registries shall ensure that logs are kept each time designated competent authorities access and search bank account information. The logs shall include, inter alia, the following: (i) the unique identifier of the results; (ii) the unique user identifier of the official who

made the query or performed the search and, where applicable, of the official who ordered the query or search and, as far as possible, the unique user identifier of the recipient of the results of the query or search.

Authorities operating centralised bank account registries must take appropriate measures so that staff is aware of applicable Union and national law, including the applicable data protection rules. Such measures shall include specialised training programmes.

### ***Requests for information by competent authorities to an FIU***

Subject to national procedural safeguards, each Member State shall ensure that its national FIU is able to reply, in a timely manner, to reasoned requests for financial information or financial analysis by designated competent authorities.

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

### ***Exchange of information between FIUs of different Member States***

The amended directive provides for the following:

- in exceptional and urgent cases, FIUs will be entitled to exchange financial information or financial analysis that may be relevant for the processing or analysis of information related to terrorism or organised crime associated with terrorism. FIUs must endeavour to exchange such information promptly;
- competent authorities will be able to exchange financial information or financial analysis obtained from the FIU of their Member State, upon request and on a case-by-case basis, with a designated competent authority in another Member State. Each Member State shall ensure that its designated competent authorities use the financial information only for the purpose for which it was sought or provided, and that any dissemination of financial information obtained by its designated competent authorities from the FIU of that Member State to any other authority, agency or department or any use of that information for purposes other than those originally approved is made subject to the prior consent of the FIU providing the information.

### ***Exchange of information between Europol and FIUs***

Each Member State shall ensure that its FIU is entitled to reply to duly justified requests made by Europol through the Europol national unit or, if allowed by that Member State, by direct contacts between the FIU and Europol. Such requests shall be made on a case-by-case basis within the limits of the responsibilities of Europol and for the performance of its tasks.

### ***Processing of sensitive personal data***

The processing of personal data revealing a person's racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership or of data concerning a natural person's health, sex life or sexual orientation shall only be allowed subject to appropriate safeguards for the rights and freedoms of the data subject, in accordance with the applicable data protection rules.

The Directive shall not preclude Member States from maintaining or concluding bilateral or multilateral agreements or arrangements between themselves on the exchange of information between competent authorities, insofar as such agreements or arrangements are compatible with Union law.