EUROPEAN COMMISSION

*Brussels,4.12.2018*
*C (2018)7691 final*

*Dear President,*

*The Commission would like to thank the Senát for its Opinion on the proposal for a Directive 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) 213 final}.*

*This proposal represents an important step in implementing the Action Plan on strengthening the fight against terrorism financing of 2 February 2016 and forms part of a broader package of ambitious measures, adopted by the Commission on 17 April 2018. They aim to further curtail the space in which terrorists and criminals operate – denying them the means needed to plan, finance and carry out crimes.*

*The Commission is pleased that the Senát shares the view that the proposed measures can contribute to the uncovering and prosecution of serious crimes, especially terrorism financing. Given the pace at which criminals and terrorists deploy modern technology and their ability to transfer money between different bank accounts in a matter of hours, it is crucial to provide the competent authorities with adequate tools to combat serious crime and terrorism. The measures proposed by the Commission aim to ensure that the national authorities are able to expediently access and exchange financial and other relevant information and to improve the effectiveness of financial investigations. In order to ensure full respect for fundamental rights, in particular the right to privacy and the right to the protection of personal data, the measures are accompanied by strict conditions for access and processing of sensitive data.*

*Furthermore, the Commission welcomes the Senát's view that the provisions of the proposed Directive respect the independence of the Financial Intelligence Units. The legislative proposal refers to the same obligations that already exist in the 4$^{th}$ Anti-Money Laundering Directive, including the requirement set out in Article 32(3) thereof concerning the operational independence and autonomy of each Financial Intelligence Unit.*

*Mr Milan ŠTĚCH*
*President of the Senát*
*Valdštejnské naměstí 17/4*
*CZ – 118 01 PRAGUE*

*In response to the more technical comments in the Opinion, the Commission would like to provide a number of clarifications in the annex.*

*The Senát's Opinion has been made available to the Commission's representatives in the ongoing negotiations with the European Parliament and the Council and will inform these discussions. The Commission remains hopeful that an agreement will be reached before the end of the current term of the European Parliament.*

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Senát and looks forward to continuing the political dialogue in the future.*

*Yours sincerely,*

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| *Frans Timmermans*<br>*First Vice-President* | *Dimitris Avramopoulos*<br>*Member of the Commission* |

***Annex***

*The Commission has carefully considered each of the issues raised by the Senát in its Opinion and is pleased to offer the following clarifications.*

***Point 2: A direct access to a Member State's centralised bank account registry must be limited to authorities of this Member State (including its Europol National Unit). The provisions of the Directive must not be interpreted as restricting the Parliamentary oversight of the use of the centralised bank account registry.***

*The proposal for a Directive envisages direct access by competent authorities to a Member State's centralised bank account registries to take place at the national level. The proposal does not provide for cross-border access to the bank account registries.*

*None of the provisions of the proposed Directive intends to restrict the oversight of the national Parliaments over the use of the centralised bank account registries.*

***Point 3: The Senát finds that:***

- ***it is necessary to further clarify the terms 'financial information' and 'financial analysis' and harmonise the provisions of the proposed Directive with the 5th Anti-Money Laundering Directive.***

*The definition of 'financial information' in the proposed Directive was inspired by the definition of 'information' in the so-called 'Swedish initiative'[1]. Structure and logic are the same: the relevant set of information comprises, on the one hand, any information which is already held by the authority (in the proposed Directive by the national Financial Intelligence Unit, on the other hand any information which these authorities may obtain on the basis of their legal authority from other entities, without taking coercive measures under national law (e.g. without a judicial authorisation). Furthermore, the definition of 'financial information' in the proposed Directive makes it clear that only those types of information or data are covered which the Financial Intelligence Units have or may obtain in the context of their anti-money laundering and counter-terrorist financing (AML/CTF) activities. Therefore, unrelated information (e.g. that is obtained in the context of the administrative or supervisory function of the Unit) is not covered.*

*From the Commission's point of view the definition of 'financial analysis' is also clear, and is in coherence with the 5th Anti-Money Laundering Directive. The use of the past tense in the definition makes it clear that only those analyses are covered which the Financial Intelligence Units have already carried out by the time the request to them is made by the competent authorities.*

*As to the convergence with the 5th Anti Money Laundering Directive, the Commission's proposal complements and builds on the preventive side of that Directive and reinforces*

[1] Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities

*the legal framework from the angle of police cooperation. The harmonious relationship between the two instruments is ensured by the general clause in Article 1(2)(a) of the proposal, which states that this Directive is without prejudice to the Anti Money Laundering Directive, including the organisational status conferred to Financial Intelligence Units under national law.*

- ***records of information requests regarding the centralised bank account registry must be available for possible prosecution of criminal offences consisting in unauthorised use of data from the registry. Consequently, the period for which those records are kept must be prolonged accordingly.***

*The proposal contains conditions which aim to prevent any unauthorised use of data from the registries (Article 5). The conditions provide that only designated and specifically authorised persons within each competent authority are allowed to access the bank account registries on a case-by-case basis and that the Member States must ensure that the necessary technical and organisational measures ensuring the security of the data are put in place.*

*Article 6 of the proposal obliges the Member States to ensure that the authorities operating the centralised bank account registries or data retrieval systems keep logs of any access by competent authorities to bank account information. The logs have to be regularly checked by the data protection officers of the centralised bank account registries and by the competent supervisory authorities established in accordance with Article 41 of Directive 2016/680*[2] *(the Data Protection Police Directive) precisely in order to ensure that no unauthorised use of data from the registries remains undetected and unaccounted for. It is important to emphasise that all provisions in the EU Data Protection legislation apply.*

*The Commission is of the view that the 5-year retention period for the logs, as provided for in Article 6(3), is sufficient for the purposes of monitoring the access and search by competent authorities.*

- ***the strict time limits for the exchange of financial analyses and information will be unrealistic for complicated cases.***

*Article 9 of the proposed Directive complements the cooperation obligation imposed on Financial Intelligence Units of the Member States in the Anti-Money Laundering Directive, by harmonizing the time limits for the exchange of financial information and analysis between each other. Articles 52 to 57 of the 5th Anti Money Laundering Directive do not contain any provision on the timing of the activities to be carried out in the context of the cooperation.*

[2] Directive (EU) 2016/680 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

*Regulating these time limits in a harmonised manner at European level aims to improve the efficiency of cooperation. In fact, harmonisation of the time limits is a pragmatic element of the international cooperation between Financial Intelligence Units. This aspect has also been addressed in a global context already: the world-wide forum of Financial Intelligence Units, the Egmont Group, recommended in its operational guidance for cross-border exchange of information that incoming requests should be replied to 'as deemed appropriate and timely, consistent with the urgency of the request, or within one month if possible'.*

*When defining the appropriate deadline in the proposed Directive, the Commission took into account the current practice deriving from the replies given by the EU Financial Intelligence Units in course of the mapping exercise in 2016, carried out in the context of the FIU Platform.*

*The proposed system of time limits has an inherent flexibility for taking into account exceptional circumstances hampering the prompt response: according to Article 9(2), last sentence, 'in duly justified cases, this time limit may be extended by a maximum of 10 days'.*

- ***the time limit for transposition of the Directive should be prolonged to 24 months from the adoption of the Directive, also in view of the costs that may be caused by the Directive as a result of an increased workload of the FIUs.***

*When proposing the transposition deadline for this Directive, the Commission took into account the transposition periods set for the Member States in the 5th Anti-Money Laundering Directive[3]. This latest amendment of that Directive obliges Member States to set up the centralised bank account registries in their territories by 10 September 2020, i.e. 26 months following the date of entry into force of that Directive (see Article 32a and 67(1), third subparagraph). By aligning the transposition period of the current Directive with the deadline of the establishment of the centralised bank account registers, the Commission wanted to ensure that access will be granted to these national registers both for the Financial Intelligence Units under the 5th Anti Money Laundering Directive and for the competent (law enforcement) authorities under this Directive as of the same day.*

[3] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended by Directive (EU) 2018/843.