

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2018/0105(COD) Procedure completed
Use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences  Repealing Decision 2000/642/JHA <a href="#">1999/0824(CNS)</a>  Subject 2.50.04.02 Electronic money and payments, cross-border credit transfers 7.30 Police, judicial and customs cooperation in general 7.30.05 Police cooperation 7.30.30 Action to combat crime 7.30.30.08 Capital outflow, money laundering	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Civil Liberties, Justice and Home Affairs	 <a href="#">RADEV Emil</a>  Shadow rapporteur  <a href="#">CHINNICI Caterina</a>  <a href="#">STEVENS Helga</a>  <a href="#">PETERSEN Morten</a>  <a href="#">JOLY Eva</a>  <a href="#">CORRAO Ignazio</a>	04/06/2018
	Committee for opinion	Rapporteur for opinion	Appointed
	 Foreign Affairs	The committee decided not to give an opinion.	
	 Economic and Monetary Affairs		31/05/2018
		 <a href="#">LUCKE Bernd</a>	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">3699</a>	14/06/2019
European Commission	Commission DG	Commissioner	
	<a href="#">Migration and Home Affairs</a>	AVRAMOPOULOS Dimitris	

## Key events

17/04/2018	Legislative proposal published	<a href="#">COM(2018)0213</a>	Summary
28/05/2018	Committee referral announced in Parliament, 1st reading		
03/12/2018	Vote in committee, 1st reading		
03/12/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
07/12/2018	Committee report tabled for plenary, 1st reading	<a href="#">A8-0442/2018</a>	Summary
10/12/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
12/12/2018	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
26/02/2019	Approval in committee of the text agreed at 1st reading interinstitutional negotiations		
17/04/2019	Results of vote in Parliament		
17/04/2019	Decision by Parliament, 1st reading	<a href="#">T8-0418/2019</a>	Summary
14/06/2019	Act adopted by Council after Parliament's 1st reading		
20/06/2019	Final act signed		
20/06/2019	End of procedure in Parliament		
11/07/2019	Final act published in Official Journal		

## Technical information

Procedure reference	2018/0105(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Repealing Decision 2000/642/JHA <a href="#">1999/0824(CNS)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 087-p2
Other legal basis	Rules of Procedure EP 159
Mandatory consultation of other institutions	<a href="#">European Economic and Social Committee</a> <a href="#">European Committee of the Regions</a>
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/8/12849

Documentation gateway					
Legislative proposal		<a href="#">COM(2018)0213</a>	17/04/2018	EC	Summary
Document attached to the procedure		<a href="#">SWD(2018)0114</a>	18/04/2018	EC	
Document attached to the procedure		<a href="#">SWD(2018)0115</a>	18/04/2018	EC	
Committee draft report		<a href="#">PE628.460</a>	28/09/2018	EP	
Amendments tabled in committee		<a href="#">PE629.602</a>	29/10/2018	EP	
Committee opinion	ECON	<a href="#">PE628.491</a>	28/11/2018	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A8-0442/2018</a>	07/12/2018	EP	Summary
Text adopted by Parliament, 1st reading/single reading		<a href="#">T8-0418/2019</a>	17/04/2019	EP	Summary
Draft final act		<a href="#">00064/2019/LEX</a>	20/06/2019	CSL	
Commission response to text adopted in plenary		<a href="#">SP(2019)440</a>	08/08/2019	EC	

Additional information	
Research document	<a href="#">Briefing</a>

Final act
<a href="#">Directive 2019/1153</a> <a href="#">OJ L 186 11.07.2019, p. 0122</a> Summary

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

**PURPOSE:** to strengthen the fight against terrorist financing by providing competent authorities with direct access to bank account information.

**PROPOSED ACT:** Directive of the European Parliament and of the Council.

**ROLE OF THE EUROPEAN PARLIAMENT:** the European Parliament decides in accordance with the ordinary legislative procedure on an equal footing with the Council.

**BACKGROUND:** in its [action plan](#) of February 2016 on strengthening the fight against terrorist financing, the Commission undertook to explore the possibility of a dedicated legal instrument to broaden the access to centralised bank account registries by Member States' authorities. 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.

The current mechanisms for accessing and exchanging financial information are slow compared to the fast pace at which funds can be transferred across Europe and globally. Too much time is required to obtain financial information, reducing the effectiveness of investigations and prosecutions.

The Union co-legislators agreed in December 2017 on a number of significant changes to the

[4<sup>th</sup> Anti Money Laundering Directive](#). They include the mandatory establishment of national centralised bank account registries or data retrieval systems in all Member States, to which Financial Intelligence Units (FIUs) and anti-money laundering authorities would have access. These Directives mostly deal with preventive efforts to address money laundering, and terrorist financing. They do not, however, set out the precise conditions under which Member States' competent authorities may use financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences. Most competent authorities currently do not have direct access to the information on the identity of bank account holders, held in the centralised bank account registries or data retrieval systems. They usually request the information either via blanket requests sent to all financial institutions in their Member State or, if they have been granted indirect access, via a request to an intermediary. Blanket requests carry the real risk of significant delays and also has implications for cross-border cooperation

**IMPACT ASSESSMENT:** the impact assessment assessed ways to expand access to financial information for competent authorities for the investigation of crimes and examined a number of options. The preferred option is the adoption of an EU legislative instrument which would give direct access to competent authorities for the purposes of criminal investigations.

**CONTENT:** this proposal provides for:

- direct access to the national centralised bank account registries or data retrieval systems to competent authorities, which include tax authorities, anti-corruption authorities and Asset Recovery Offices. These bodies will have direct access on a case-by-case basis to bank account information contained in national, centralised registries enabling the authorities to identify in which banks a suspect holds accounts. Data protection safeguards ensure that only limited information on the identity of the bank account holder would be made available;
- cooperation between Financial Intelligence Units (FIUs) and between FIUs and competent authorities. It defines the type of information (financial information, financial analysis, law enforcement information) that may be requested by competent authorities and FIUs respectively as well as the exhaustive list of criminal offences for which each authority can exchange information on a case-by-case basis.

Member States are required to designate all the competent authorities entitled to request information.

Europol will be provided with indirect access through Member States' National Units.

The decentralised computer network FIU.net, which is managed by Europol since 1 January 2016, will be used for exchanges of information between Financial Intelligence Units.

The proposed Directive is in line with the reformed data protection regime, stemming from Directive (EU) 2016/680 (the General Data Protection Directive).

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

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Emil RADEV (EPP, BG) 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 committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal.

Subject matter: the proposed Directive seeks to lay 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-case basis, and to facilitate the cooperation between Financial Intelligence Units.

Access and search by competent authorities to bank account information: Member States shall ensure that the competent authorities 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.

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.

Conditions for the access and search by competent authorities: the amended text stipulated that Member States shall ensure that the staff of the national designated competent authorities maintains high professional standards of confidentiality and data protection. The access and search by competent authorities shall be supported by technical and organisational measures ensuring the security of the data to the highest technological standard available.

Monitoring the access and search: Member States shall ensure that the authorities operating the centralised bank account registries keep a log of any access by competent authorities to bank account information. The logs shall include, in particular, the following elements: (i) the unique identifiers of the results; (ii) 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.

Requests for information by competent authorities to the Financial Intelligence Unit (FIU): subject to national procedural safeguards, each Member State shall ensure that its national FIU is required to reply, in a timely manner, to reasoned requests for financial information or financial analysis by its designated competent authorities.

Exchange of information between FIUs of different Member States: each Member State shall ensure that its Financial Intelligence Unit exchanges financial information or financial analysis free of charge with any FIU 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.

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.

Member States shall ensure that the information exchanged 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.

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

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 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.

Monitoring: 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.

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.

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

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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 persons 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.

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

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**PURPOSE:** to strengthen the fight against terrorist financing by providing competent authorities with direct access to bank account information.

**LEGISLATIVE ACT:** Directive (EU) 2019/1153 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.

**CONTENT:** the 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;
- 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.

#### Competent authorities

The Directive requires each Member State to designate the competent authorities empowered to access and search its national centralised bank account register. These competent authorities shall include at least the Asset Recovery Offices.

#### Access and consultation of information relating to bank accounts

Member States shall ensure that the competent national authorities designated 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.

#### Monitoring access and searches

Each access to and search of bank account information by the designated competent authorities shall be recorded in logs which shall include, inter alia, the date and time of the request or search, the name of the designated competent authority which consulted the register and the identifiers of the agent who carried out the search and the agent who ordered the search and, to the extent possible, the unique user identifier of the recipient of the results of the query or search.

#### Exchanges of information between competent authorities and FIUs and between FIUs

The Regulation ensures that FIUs are required to cooperate with the competent authorities and are able to respond in a timely manner to reasoned requests for financial information or financial analysis from the competent authorities.

The FIU shall not be required to respond to the request for information if there are objective reasons to assume that the disclosure of such information would have a negative impact on ongoing investigations or analyses. FIUs shall be required to explain any refusal to respond to a request for information.

The Directive also provides for the following:

- FIUs from different Member States shall be empowered to exchange information in exceptional and urgent cases related to terrorism or organised crime associated with terrorism;
- the designated competent authorities may exchange information or financial analyses obtained from the FIU of their Member State, upon request and on a case-by-case basis, with a designated competent authority of another Member State;
- the competent authorities and the FIU shall be empowered to respond (directly or through the Europol national unit) to duly justified requests from Europol for information relating to bank accounts and of a financial nature.

#### 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 persons 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.

ENTRY INTO FORCE: 31.7.2019.

TRANSPOSITION: no later than 1.8.2021.