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NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	7838/22; 15079/22
Subject:	Bank account registers: harmonisation of statements' formats

Introduction

At its meeting on 6 December 2022, the Law Enforcement Working Party – Police (LEWP) discussed available options regarding the possible harmonisation of bank account statements provided to law enforcement authorities for the purposes of prevention, detection and investigation of serious criminal offences. That discussion was based on document 15079/22, prepared by the Czech Presidency.

The current Swedish Presidency then took the discussion forward on 10 January 2023 by amending not only Article 4 of Directive 2019/1153, as proposed by the Commission, but also its Articles 1 and 2 pertaining to the scope and definitions, and especially by inserting new Articles 6a and 6b which introduce the harmonisation of bank statements formats.

Delegations discussed the first revised version of the Presidency compromise on 16 February 2023 and requested certain further adjustments, which are reflected in this second revised version to be discussed in LEWP Police on 21 March 2023.

Main changes compared to the version discussed on 16 February 2023

a) Transaction records and inclusion of transactions with crypto-assets

The most significant change pertains to the exact scope of the information that will be subject to the harmonised format: based on persisting requests for more precision in this regard, the Presidency is proposing to replace, throughout the proposal, “bank statement information” by the notion of “transaction records”, which has the advantage of being a known concept used in both Article 40 of the AML Directive as currently in force and in Article 56 of the proposed AML Regulation which is under negotiation.

Moreover, this change also makes it possible to cover transactions involving crypto-assets, the importance of which keeps increasing in today’s economy and consequently also in criminal activities. The Presidency is therefore proposing a reference to crypto-assets service providers in Recital (6a) and Article 6a, and a corresponding reference to a crypto-asset wallet in Article 2(7a).

b) Article 1

A reference to FIUs has been added to the new text in this Article in order to cover situations where FIUs are not designated as competent authorities in a given member state, since they should also receive transaction records in the newly harmonised format. The definition of competent authorities has been spelled out in full in order to clarify that the same authorities are meant as the ones mentioned in the first (non-amended) part of the Article.

c) Article 2

Besides the main change relating to transaction records, a reference has been added to Regulation (EU) No 260/2012 establishing technical and business requirements for credit transfers and direct debits in euro in order to link the scope of the provision to the IBAN number as defined in existing legislation.

d) Article 3

The addition in the last phrase of Article 3 aims at ensuring consistency of the new measures with the existing provisions of Directive 2019/1153: it clarifies that also for the newly established “cross-border” searches through the single access point, *“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”*. This change is therefore not related to the harmonisation of transaction records, but rather to the initial proposal of the Commission to amend Directive 2019/1153 within the broader overhaul of AML legislation, as proposed in July 2021.

e) Article 6a

References to *financial analysis* and to the *identification, tracing and freezing of the assets* within the relevant investigation have been added in order to clarify that the scope covers all legitimate purposes for which transaction records may be requested (financial analysis received from FIUs may be processed by the designated competent authorities under Directive 2019/1153 as currently in force).

f) Article 6b

During the last LEWP meeting, concerns were raised as to the necessity to have an EU-wide harmonised format in a situation where certain member states already have harmonised formats in place at national level, or have significantly advanced in their preparation.

However, the Presidency is convinced that the mandate given to the Commission to establish that format through an implementing act is sufficiently broad and allows for all the national specificities to be taken into account during the preparation of that act, in which the member states will be closely involved.

The Presidency is also convinced that only an EU-wide format justifies this type of legislative action, in order to significantly improve cross-border law enforcement cooperation within the Union. After all, nothing prevents the member states from setting out unified formats at national level (as some already have or are in the process of), and only an EU-wide harmonised format therefore represents a true added value. At the same time, it is unlikely that member states will be able to agree on an EU-wide format without legislative action at EU level.

g) Other changes

In an effort to further align all relevant provisions, the text now consistently refers to “competent authorities” when reference is made to the authorities competent for the prevention, detection, investigation or prosecution of criminal offences.

References to financial institutions have been supplemented by references to credit institutions in order to complete the scope in line with the existing AML legislation where these two types of institutions constitute the two main categories of obliged entities (cf. Article 2(1) of the current AML Directive).

Changes compared to the previous version of this document appear in **bold underline**. Previous changes compared to the Commission proposal are set out in ~~striketrough~~ and underline).

Consultations with the private sector

On 6 February 2023, the Presidency held a meeting with the representatives of the European Banking Federation (EBF) to discuss the impact of the envisaged provisions on the private sector. The EBF is composed of national banking associations of EU member states, which together represent more than 4 000 banks. During the meeting, the Presidency outlined the main provisions discussed in the LEWP which are likely to have the biggest impact on the banking sector, namely the proposed harmonisation of transaction records’ format. While the EBF noted that the consultations within the EBF was still ongoing, it gave a positive preliminary assessment as to the possibility for the private entities it represents to implement the harmonisation, especially if the resulting implementing act is based on existing standards and messaging formats that have also been mentioned during LEWP meetings. The Presidency took note of these comments and invited the EBF to revert back to it with further input as appropriate.

Proceedings in the EP and way forward

The European Parliament has informed the Presidency that Mr. Emil Radev (EPP, BG) has been appointed as rapporteur for this matter. The decision of the LIBE Committee to enter into interinstitutional negotiations was confirmed by the plenary on 13 February 2023.

During the discussion in LEWP-Police on 21 March 2023, the Presidency intends to stabilize the text at Working Party level, except for some last technical adaptations that might emerge as necessary, so that it could be forwarded to Coreper for the endorsement of the Council's mandate for interinstitutional negotiations.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive (EU) 2019/1153 of the European Parliament and of the Council, as regards access of competent authorities to centralised bank account registries through the single access point

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 87(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Facilitating access to financial information is necessary to prevent, detect, investigate or prosecute serious crime, including terrorism. In particular, swift access to financial information is essential for carrying out effective criminal investigations and for successfully tracing and subsequently confiscating instrumentalities and proceeds of crime.

¹ OJ C , , p. .

² OJ C , , p. .

- (2) Directive (EU) 2019/1153 of the European Parliament and of the Council³ enables authorities competent for the prevention, detection, investigation or prosecution of criminal offences designated by Member States to access and search, subject to certain safeguards and limitations, bank account information. Directive (EU) 2019/1153 defines bank account information as certain information contained in the centralised automated mechanisms that Member States set up pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council⁴, referred to in Directive (EU) 2019/1153 as centralised bank account registries.
- (3) The authorities designated under Directive (EU) 2019/1153 include at least the Asset Recovery Offices and can also include tax authorities and anti-corruption agencies to the extent that they are competent for the prevention, detection, investigation or prosecution of criminal offences under national law. Pursuant to that Directive, the competent authorities are empowered to directly access and search only the centralised bank account registries of the Member State that designated those authorities.
- (4) Directive (EU) YYYY/XX of the European Parliament and of the Council,⁵ , which replaces Directive 2015/849 of the European Parliament and of the Council⁶, and retains the key features of the system established by that Directive, provides, in addition, that the centralised automated mechanisms are interconnected via the bank account registers (BAR) single access point, to be developed and operated by the Commission. However, under Directive (EU) YYYY/XX only FIUs continue to have direct access to the centralised automated mechanisms, including through the BAR single access point.
- (5) Considering the cross-border nature of organised crime and money laundering as well as the importance of relevant financial information for the purposes of combating criminal activities, including by swiftly tracing, freezing and confiscating illegally obtained assets where possible and appropriate, authorities competent for the prevention, detection, investigation or prosecution of criminal offences designated in accordance with Directive (EU) 2019/1153 should be able to directly access and search the centralised bank account registries of other Member States through the BAR single access point put in place pursuant to Directive (EU) YYYY/XX.

³ Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 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 (OJ L186 of 11.7.2019, p. 122).

⁴ 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, amending Regulation (EU) 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

⁵ [Reference to new Anti-Money Laundering Directive, once adopted.]

⁶ 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, amending Regulation (EU) 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

- (6) The safeguards and limitations already established by Directive (EU) 2019/1153 should also apply in respect of the possibilities to access and search bank account information, through the BAR single access point, established by the present Directive. These safeguards and limitations include those concerning the limitation to the authorities that have the power to access and search bank account information, the purposes for which the access and search may be conducted, the types of information that are accessible and searchable, requirements applicable to the staff of the designated competent authorities, the security of the data and the logging of access and searches.
- (6a) Bank statements containing **records of financial transactions and transfers (transaction records)** information on banking operations carried out through a bank account provide crucial evidence for criminal investigations. However, financial investigations are hampered by the fact that the financial sector provide authorities **competent for the prevention, detection, investigation or prosecution of criminal offences (“competent authorities”)** with **bank statement transaction records** in different formats, which are not immediately ready for analysis. Considering the cross-border nature of most investigations into serious criminal offences, the disparity of formats and difficulties of processing **bank statement transaction records** hamper the exchange of information among **competent authorities competent for the prevention, detection, investigation or prosecution of criminal offences** between Member States and the development of cross-border financial investigations. In order to improve the capacity of **law enforcement competent** authorities to carry out financial investigations, this Directive sets out measures to ensure that financial **and credit** institutions across the Union, **including crypto-asset service providers**, provide **transaction records** in a format that is easy to process and analyse by **law enforcement competent** authorities.
- (6b) The conditions and procedures under which **competent** authorities **competent for preventing, detecting, investigating or prosecuting criminal offences** can request **bank statement information transaction records** from financial **and credit** institutions are governed by procedural rules established in national law. The harmonisation of the technical modalities for the provision of **bank statement information transaction records** by the financial sector upon request from **competent authorities competent for the prevention, detection, investigation or prosecution of criminal offences** should not affect the national procedural rules and safeguards under which **these** authorities can request such information.
- (6c) "In order to ensure uniform conditions for the provision of **bank account information transaction records** by financial **and credit** institutions to **law enforcement competent** authorities, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁷.

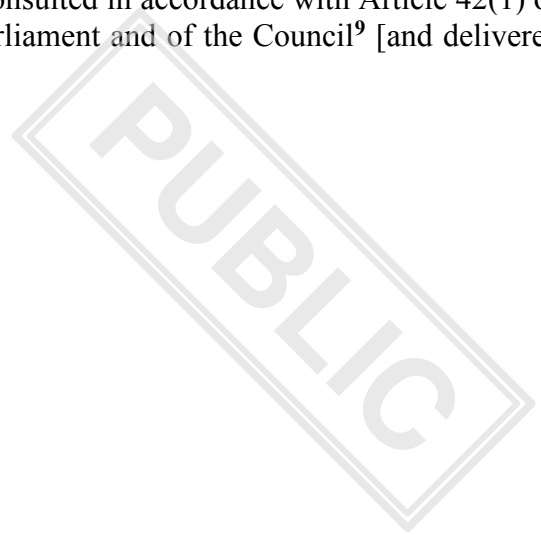
⁷ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L55, 28.2.2011, p. 13).

- (7) Any processing of personal data by the competent authorities in connection with the access and search possibilities established by this Directive is subject to Directive (EU) 2016/680 of the European Parliament and of the Council⁸. Therefore, 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 one's private and family life and the right to the protection of personal data.
- (8) Given that the objective of this Directive, namely to empower designated authorities competent for the prevention, detection, investigation or prosecution of criminal offences to access and search the centralised bank account registries of other Member States through the BAR single access point established by Directive (EU) YYYY/XX , cannot be sufficiently achieved by Member States, but can 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.
- (9) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of this Directive.]
- [or]
- [In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application.]
- (10) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (11) Directive (EU) 2019/1153 should therefore be amended accordingly.

⁸ 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 (OJ L 119, 4.5.2016, p. 89)

- (12) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council⁹ [and delivered an opinion on XX 2021],

HAVE ADOPTED THIS DIRECTIVE:



⁹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Article 1

Article 1 of Directive (EU) 2019/1153 is amended as follows:

1. Paragraph 1 is amended as follows:

1. This 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. It also lays down 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. Furthermore, it lays down technical measures to facilitate the access to and use of bank statement information transaction records by FIUs and competent law enforcement authorities for the prevention, detection, investigation or prosecution of serious criminal offences.

1. In paragraph 2, the following point is added:

(e) procedures under national law under which authorities responsible for the prevention, detection, investigation or prosecution of serious criminal offences can require financial **and credit** institutions to provide bank statement information transaction records, including the time-limits for transmitting such information for the gathering of evidence within criminal proceedings.

Article 2

In article 2 of Directive (EU) 2019/1153, the following point is added:

(7a) 'bank statement [information] transaction records' means the details of a specified bank or payment account and of banking operations which have been carried out during a defined period through a specified bank or payment related to that account, **a bank account identified by IBAN, as defined by Regulation (EU) No 260/2012 of the European Parliament and of the Council, or a crypto-asset wallet,** and which are to be made available upon request to law enforcement competent authorities or FIUs according to the applicable legal framework national law.

Article 34

In Article 4 of Directive (EU) 2019/1153, the following paragraph is inserted:

“1a. Member States shall ensure that the competent national authorities designated pursuant to Article 3(1) have the power to access and search, directly and immediately, bank account information in other Member States available through the bank account registers (BAR) single access point put in place pursuant to Article XX of Directive (EU) YYYY/XX [*the new Anti-Money Laundering Directive*] 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. **The second sentence of paragraph 1 of this Article applies mutatis mutandis**”.

The title of CHAPTER II of Directive (EU) 2019/1153 is amended as follows:

**ACCESS BY COMPETENT AUTHORITIES TO BANK ACCOUNT INFORMATION,
AND THE FORMAT OF BANK STATEMENT INFORMATION TRANSACTION
RECORDS**

The following Articles 6a and 6b are inserted after article 6 of Directive (EU) 2019/1153:

"Article 6a

Bank statement information Transaction records

1b. To facilitate cross border cooperation, Member States shall ensure that, where a search pursuant to paragraph 1 or 1a leads to the identification of a bank or payment account relevant for a criminal investigation and where law enforcement authorities request, in accordance with national legislation, bank statement information pertaining to that account, institutions responsible for the relevant account provide such information without undue delay in electronic format.

Member States shall ensure that financial and credit institutions, including crypto-asset service providers, comply with the technical specifications established in accordance with article 6b when replying, in accordance with national legislation, to requests for bank account transaction records information issued by competent authorities or FIUs within a criminal investigation or preparation of financial analysis, including the identification, tracing and freezing of the assets related to such investigation and following a search pursuant to Article 4.

Article 6b

[description of the implementing acts]

Where necessary, the Commission is empowered to adopt, by means of implementing acts, technical specifications **and means** in order to establish ~~regarding~~ the electronic **structured** format to be used for providing ~~bank statements information~~ **transaction records**, and the data fields to be provided therein.

When adopting the implementing act, the Commission will consider the development of relevant financial services messaging standards.

Those implementing acts shall be adopted in accordance with the (advisory) (examination) procedure referred to in Article X."

The following Article X¹⁰ is inserted:

"Article X

Committee procedure

The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011."

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [XXYY] *[transposition period to be aligned with the application date set by the new Anti-Money Laundering Directive for the application of the provisions for interconnecting the centralised automated mechanism]* at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

¹⁰ Exact place in the proposal to be determined later.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President