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From: General Secretariat of the Council

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To: Delegations

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Subject: Council conclusions on enhancing financial investigations to fight serious
and organised crime

Delegations will find attached the abovementioned Council Conclusions, as approved by the Council on 17 June 2020.

COUNCIL CONCLUSIONS

on enhancing financial investigations to fight serious and organised crime

THE COUNCIL OF THE EUROPEAN UNION,

RECALLING the EU Strategic Agenda 2019-2024¹ and Council Conclusions of 12 February 2016 on the fight against the financing of terrorism², Council Conclusions and Action Plan on the way forward with regard to financial investigation of 9 June 2016³, Council Conclusions on the Communication from the Commission on further measures to enhance transparency and the fight against tax evasion and avoidance of 11 October 2016⁴,

HAVING REGARD to the mid-term review⁵ of the Renewed EU Internal Security Strategy (ISS) which mentions the need to further improve *"the fight against financial crime, money laundering and facilitating asset recovery, by supporting effective practical cooperation between Member States, and encouraging partnership working between Member States and the private sector"*,

RECALLING the Council Conclusions on strategic priorities on anti-money laundering and countering the financing of terrorism⁶, which build upon the recent series of Commission reports on the matter⁷,

NOTING the Communication from the Commission on an Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing of 7 May 2020⁸,

MAKING REFERENCE to the discussion which took place in COSI on 21 February 2020 and provided guidance for the present set of Council Conclusions,

¹ EU Strategic Agenda 2019-2024 (EUCO 9/19), on improving cooperation and information-sharing to fight terrorism and cross-border crime

² 6068/16

³ 10125/16

⁴ 13139/16

⁵ 13319/17

⁶ 14823/19

⁷ 11514/19 (+ADD1), 11516/19, 11517/19, 11518/19, 11519/19

⁸ 7870/20

STRESSING that financial investigations are of utmost importance for the European Union in preventing and combatting organised crime and terrorism,

TAKING INTO ACCOUNT that the European Union has significantly strengthened its legal framework for countering money-laundering and financing of terrorism, and for access of law enforcement authorities to financial information.⁹ This legal framework needs to be properly implemented in order to keep up with the increasing integration of financial flows in the internal market, developing trends, raising volume and sophistication of frauds, technological advancements and the ingenuity of criminals trying to exploit any deficiencies and gaps in the system,

RECOGNISING the importance of the “follow the money approach” to tackle financial aspects of organised crime and to identify new leads when investigating organised crime and NOTING that such an approach requires coordinated measures in a wide array of interrelated areas, including asset recovery, the use of virtual assets (or crypto-assets) and fiat currencies, cooperation and coordination between different Financial Intelligence Units (FIUs), as well as their cooperation with law enforcement, tax and customs authorities at national level, or the role of Europol and its cooperation with the private sector,

⁹ The so-called 5th AMLD (2015/849, as amended by 2018/843), Directive on combatting money laundering by criminal law (2018/1673) and Directive on the use of financial information (1153/2019).

RECALLING that according to Article 32a of the Anti-money laundering Directive¹⁰ (AMLD) Member States should put in place national centralised bank account registers by 10 September 2020 that provide for a direct access of FIUs to these registries , and that the Directive on the use of financial information¹¹ obliges Member States to provide a direct access to the national centralised bank account registries to the Asset Recovery Offices and other authorities competent for the prevention, detection, investigation or prosecution of criminal offences that have been designated by the respective Member States,

NOTING that a conservative estimation considers that the proceeds of organised crimes within the European Union (EU) have reached EUR 110 billion a year¹² and that despite all efforts, the rate of confiscation of criminal assets in the EU could be as low as only 1.1%¹³,

TAKING INTO ACCOUNT the Report of the Commission on the interconnection of national bank account registries¹⁴ that led to the conclusion that interconnection of bank account registries is technically feasible and would be a valuable tool in cross-border cooperation between competent authorities, in particular between FIUs, law enforcement authorities and Asset Recovery Offices.

¹⁰ 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, as amended by Directive 2018/843.

¹¹ 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, OJ L186 of 11.7.2019.

¹² Commission Staff Working Document: Analysis of non-conviction based confiscation measures in the European Union, SWD (2019) 1050 final, circulated as 8627/19.

¹³ Quoted from Europol, Does Crime still pay? Criminal Asset Recovery in the EU, Survey of Statistical information 2010-2014, 2016, p. 4.

¹⁴ 11518/19

POINTING OUT that the cooperation and the flow of information could be further enhanced at national and European levels:

- Between FIUs of different Member States,
- Between FIUs and private sector entities required to report suspicious transactions (STRs) to competent FIUs,
- Between different law enforcement authorities,
- Between tax authorities and law enforcement authorities,
- Between FIUs and law enforcement, tax and customs authorities at national level,
- Between financial institutions and law enforcement authorities.

POINTING OUT that some powers of Financial Intelligence Units are not harmonised across the European Union, which might impact the FIUs' ability to access and share relevant financial, administrative and law enforcement information (especially those held by obliged entities and/or law enforcement authorities),

RECOGNIZING the diverse nature of key stakeholders involved in the fight against money laundering and terrorism financing and STRESSING the need for law enforcement authorities, customs authorities, tax authorities, Asset Recovery Offices and Financial Intelligence Units to effectively access financial information and to enhance cooperation in national and cross-border investigations,

STRESSING the importance of exchange of financial information between Financial Intelligence Units and law enforcement authorities, that will be enhanced by the Directive on the use of financial information¹⁵,

¹⁵ 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, OJ L186 of 11.7.2019.

ACKNOWLEDGING the importance of the transmission of qualitative information by the private sector entities in suspicious transaction reports (STRs) to FIUs (which provide them with relevant feedback) and the possibility for law enforcement authorities to ask for information to the private sector in the framework of their criminal investigations,

AND THEREFORE RECOGNIZING the importance of the establishment of public-private partnerships between authorities competent to fight money laundering and terrorist financing and private entities obliged to report suspicious transactions, in order to improve their quality and accuracy while promoting a risk-based approach, rather than a compliance-based reporting,

NOTING that the Decision of the European Data Protection Supervisor (EDPS) imposed a ban on Europol's personal data processing activities (based on concerns regarding individuals not considered as suspects) for the purposes of the technical administration of the FIU.net, while suspending the ban for a period of one year in order to allow Europol to ensure a smooth transition of the technical administration of FIU.net to another entity¹⁶,

UNDERLINING the Council Conclusions on Europol's cooperation with private parties¹⁷ and CONSIDERING that private parties play an increasing role in preventing and countering cyber-enabled crimes, as they are often in possession of significant amounts of personal data possibly relevant for law enforcement authorities,

RECOGNIZING the work of Europol in supporting cooperation among law enforcement authorities in the Union in the field of frauds against public and private finances, money laundering, asset recovery, corruption and counterfeiting and also supporting the investigations of the European Public Prosecutor Office (EPPO) as foreseen by the EPPO Regulation¹⁸,

¹⁶ EDPS Decision of 19 December 2019 relating to the technical administration of FIU.net by Europol

¹⁷ 14745/19

¹⁸ Council Regulation 2017/1939/EU on the establishment of the European Public Prosecutor's Office ('the EPPO').

RECOGNIZING the importance of Europol Financial and Economic Crime Centre (EFECC),

RECOGNIZING the importance of EMPACT and the significance of EU Crime Priority “Criminal Finance - Money Laundering and Asset Recovery” as a self-standing priority as well as a horizontal priority across all Operational Action Plans within the EU policy cycle,

TAKING INTO ACCOUNT that virtual assets play an increasing role in money laundering,

EMPHASISING the need to effectively implement and further build on the 5th AML Directive, which deals with virtual currencies and lists providers engaged in exchange services between virtual currencies and fiat currencies, as well as custodian wallet providers as obliged entities,

NOTING the analytical work done by the Commission¹⁹ and Europol²⁰ which shows that cash payments are used by criminals for money laundering and terrorist financing, making it necessary to study questions of reducing cash payments at EU level.

THE COUNCIL

CALLS ON THE MEMBER STATES:

- to devote particular attention to the transposition of Directive (EU) 2019/1153 in order to maximize the benefit of the centralised bank accounts registries that have to be established by 10 September 2020.
- to ensure that financial investigations, as a horizontal, cross cutting priority in EMPACT, forms part of all kinds of criminal investigations regarding organised crime, especially in drugs and firearms trafficking, organised property crime, environmental crime, migrant smuggling, trafficking in human beings, trafficking in cultural goods, including antiquities and works of art, and all other types of organised crime, and to mention that priority in all Operational Action Plans within the EMPACT platform.

¹⁹ 11514/19 ADD 1

²⁰ Europol: “Why is cash still the king? A strategic report on the use of cash by criminal groups as a facilitator for money laundering“ (2015.)

- to enhance cooperation and synergy in conducting financial investigations and exchanging financial information between FIUs, Asset Recovery Offices, Customs authorities, tax authorities and law enforcement authorities.
- to engage in a constructive discussion with the Commission regarding a future interconnection of national bank account registries in order to significantly accelerate the access to financial information and facilitate cross-border cooperation between competent authorities and their European counterparts.
- together with JHA agencies, to further promote joint investigation teams (JITs) in order to reveal and deter money laundering and to investigate organised crime.
- to support their actors involved in EMPACT priorities and the Operational Action Plan (OAP): Criminal Finance – “Money Laundering and Asset Recovery”, in particular in:
 - Sharing best practices and experiences,
 - Sharing relevant financial information,
 - Enhancing cooperation between law enforcement agencies, customs authorities, tax authorities, asset recovery offices and financial intelligence units,
 - Enhancing cooperation with third countries.
- to actively engage, on a voluntary basis and in coordination with the Commission, in developing a comprehensive Action Plan on financial investigations, as a follow up to the Action Plan adopted during the Netherlands Presidency in 2016²¹.
- together with the Commission and the JHA agencies, to enhance cooperation with third countries in conducting financial investigations.

²¹ 10125/16

CALLS ON THE COMMISSION:

- to consider strengthening the legal framework on the management of property frozen with a view of possible subsequent confiscation²², include the principle of pre-seizure planning, grant AROs additional powers, for example precautionary urgent temporary freezing powers in order to prevent the dissipation of assets,
- to consider complementing such a framework by a more harmonised, immediate and direct access of AROs to various public registers such as central land registers, central company registers, central vehicle registers or central maritime registers,
- to find, as soon as possible, a temporary arrangement for the technical administration of FIU.net, and to table a proposal for a long-term solution for FIU.net or its successor that will ensure effective cooperation between FIUs, as well as between the FIUs and Europol where relevant²³,
- to consider further enhancing the legal framework in order to interconnect national centralised mechanisms (central registers or central electronic systems for data recovery) of the Member States regarding bank accounts, which would accelerate the access to financial information while facilitating cross-border cooperation between competent authorities,
- to pursue, together with the Member States and the EU FIU Platform, its reflexion regarding a coordination and support mechanism that would encourage and facilitate the cross-border work of FIUs, including a potential link between that mechanism and FIU.net or its successor,

²² Confiscation Directive (2014/42), Art. 10(2), and recent Regulation 2018/1805 on the mutual recognition of freezing orders and confiscation orders.

²³ As foreseen e.g. in Article 12 of the Directive on the use of financial information (1153/2019).

- without prejudice to the prerogative of the Member States to choose a model for their FIU which best fits their legal and administrative system, to explore whether at least certain aspects of the work of FIUs could be further adapted in such a manner as to enable a more efficient exchange of information, as foreseen in the AMLD, Directive (EU) 2019/1153, and any other instruments,
- to take the present Council Conclusions and the Council conclusions on Europol's cooperation with Private Parties into account in the framework of its review of the implementation of Regulation (EU) 2016/794, when examining the practice of direct exchange of personal data with private parties,
- to evaluate the need for an enhanced legal framework for the establishment of relevant public-private partnerships,
- to re-engage in a discussion with the Member States regarding the need for a legislative limitation on cash payments at EU level, as foreseen in its communication of 7 May 2020 on an Action Plan on Money Laundering,
- to consider the need to further improve the legal framework for virtual assets introduced by the 5th AMLD²⁴, such as by covering also virtual currencies not exchangeable for fiat money and thus achieving better alignment with current FATF recommendations.

CALLS ON EUROPOL:

- to fully use the potential of the newly created European Financial and Economic Crime Centre, as a dedicated structure to support the cooperation among law enforcement authorities in their fight against frauds, money laundering, corruption and counterfeiting, while systematically promoting the recovery of criminal assets across the EU and beyond. The creation of EFECC and the tasks it has to fulfil should be appropriately reflected in the resources allocated to Europol.

²⁴ Directive (EU) 2015/849, as amended by Directive 2018/843.

- to start preparatory works for a conclusion of a working arrangement for cooperation with the European Public Prosecutor Office in order to support its activity in investigating and prosecuting crimes affecting the financial interests of the EU.

CALLS ON CEPOL

- to further develop and implement a comprehensive training portfolio for financial investigators in order to achieve a more coherent understanding of the subject on the cross border investigation tactics and techniques applied by law enforcement officers in the EU. This task has to be fulfilled in close cooperation with Europol and other relevant actors in this particular field of crime and should be enabled by the allocation of the necessary resources to CEPOL, supported by the Commission.
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