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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Draft 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 (first reading) - Adoption of the legislative act - Statements

Statement by Italy

Italy shares the goal of the draft Directive as regards the use of financial information, not only for the purposes of preventing money laundering and the financing of terrorism, but also in relation to other serious crimes.

Despite the fact that the final text has taken on board some of our comments and refers, in the recitals, to the need to take into account the nature, tasks and prerogatives established under national law during the implementation stages of the act, Italy repeats its concerns regarding the provision of specific obligations for the Member States.

Throughout the negotiations Italy has expressed its preference for a greater degree of flexibility in the implementation of the Directive's provisions.

Statement by Germany

Germany broadly supports the aim of the draft Directive to improve access to information by Financial Intelligence Units (FIUs) and public authorities responsible for detection, investigation or prosecution, to intensify cooperation between the respective competent bodies and, more generally, to strengthen financial investigation. However, Germany has significant reservations about individual provisions in the compromise text, in particular the definition of 'law enforcement information' in Article 2(6) and the provisions in Articles 9 and 10 and recital 22, which were not part of the Council's mandate for the negotiation in the trilogue, as agreed on 21 November 2018. The present compromise text has, in our view, introduced significant changes for the worse compared to the mandate given to the Council, and partly also compared to the proposal from the Commission.

A particular concern for Germany is that there must be no possibility for individual bodies to circumvent the requirements with respect to data collection. This, however, is now a risk, as the definition of 'law enforcement information' in Article 2(6)(ii) includes data and information that the requested authority would first need to collect. However, the wording of the draft Directive is such that no importance is attached to whether the requesting authority would itself be allowed to collect such data directly.

Article 9 contains a provision concerning the Union-wide exchange of information between FIUs which is not consistent with the Anti-Money Laundering Directive [Directive (EU) 2015/849], and in particular Articles 32 and 53 thereof. The Council Legal Service had already expressed concerns regarding contradictions between Article 9 and the Anti-Money Laundering Directive in a written opinion on the Commission proposal (opinion dated 12 October 2018, ST 13100/18). The current rule in Article 9 does not address those contradictions. It establishes specific requirements for an exchange of information between the FIUs which goes beyond the scope of their tasks as defined in Union law and therefore interferes with the freedom of the Member States to organise their respective national FIUs in accordance with their own legal system. Moreover, the rule sets out some specific requirements regarding the exchange of information in relation to terrorism or organised crime, despite the fact that Union law, be it through the Anti-Money Laundering Directive or through this draft Directive, does not give any clear definition of these notions, provide any justification for giving the FIUs competence to combat such crimes, or make any distinction between this exchange of information and other instruments involved in police and judicial information exchange.

Article 10 provides for the exchange of data between the competent authorities of different Member States, which are, according to Article 3(2), designated by the respective Member State. In doing so, Article 3(2) grants the Member States broad discretion with regard to the designation of these authorities, which may even be designated at a decentralised regional level and may have very diverse tasks, whilst requiring the Member States to provide notification of their authorities within four months following the expiry of the transition period. In contrast, Article 10 requires the Member States to make provision, already before the end of the transposition period, for a Union-wide exchange between these yet to be designated authorities. The Member States would thus have to implement, in a legally binding way, an exchange of information in the sensitive area of financial information, but in the process leave important decisions to the (future) exercise of discretion by other Member States.

By referring specifically to an 'EU FIU' as an example of a 'coordination and support mechanism', recital 22 departs from the assessment task that is described in Article 65 Anti-Money- Laundering Directive and that has not yet been performed.

Moreover, the specific data protection provisions contained in the compromise text do not seem systematically coherent, since Directive (EU) 2016/679 is to be applicable as well as Directive (EU) 2016/680.

The above-mentioned shortcomings make it much more difficult for Member States to ensure a complete, correct and legally certain transposition of the Directive's requirements. Germany therefore enters reservations and cannot give its agreement to the current compromise text of the draft Directive.
