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From:	General Secretariat of the Council
To:	JHA Counsellors Law Enforcement Working Party
N° prev. doc.:	14792/18; WK 15444/18; WK 189/19; WK 354/19; WK 766/19
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Subject:	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

Delegations will find attached further options regarding Articles 7 and 9 to be discussed at the JHA Counsellors' meeting on Monday 28 January 2019. The options are suggested by the Presidency on the basis of the discussion at COREPER on 25 January 2019.

Delegations are requested to select which option should be further elaborated in view of the next discussion at COREPER on 30 January 2019.

Option 1

This option would consist in aligning the wording of Article 7 with the one in Article 32 of the Anti-Money-Laundering Directive (AMLD), that is to state that the FIUs ***shall be able*** to respond, rather than required to respond.

However, the Presidency is convinced that such a solution could only be acceptable for the European parliament (EP) if Article 9 is preserved, however (further) limited. In this context, the Presidency is suggesting a new wording which only allows the use of this provision for terrorism, or in exceptional cases, also for other serious criminal offences.

As mentioned above, Member States should bear in mind that this option could probably only be acceptable as a package, that is both articles would remain in the draft Directive.

Article 7

(1) Subject to national procedural safeguards, each Member State shall ensure that its national Financial Intelligence Unit is ~~required~~ ***able*** to reply, **in a timely manner**, to **reasoned** requests for financial information or financial analysis by its designated competent authorities referred to in Article 3(2) in their respective Member State, where that financial information or financial analysis is necessary, on a case-by-case basis, ~~for~~ ***when such requests are motivated by concerns relating to*** the prevention, detection, investigation or prosecution of serious criminal offences.

(2) Any exchange under paragraph 1 is subject to the exemptions provided for under Article 32(5) of Directive (EU) 2015/849 and to any restrictions and conditions imposed by the requested Financial Intelligence Unit for the use of that information. Any use for purposes beyond those originally approved shall be made subject to the prior consent of that Financial Intelligence Unit. Any refusal to reply to a request under paragraph 1 shall be appropriately explained.

Article 9

(1) Member States shall ensure that their Financial Intelligence Units are entitled to exchange ~~any~~ information that may be relevant for the processing or analysis of information related to ***terrorism, or in exceptional and urgent cases***, to other serious criminal offences.

(2) Member States shall ensure that *in cases referred to in paragraph 1* ~~in exceptional and urgent cases, in particular in case of terrorism,~~ the Financial Intelligence Units endeavour to exchange such information promptly.

Option 2

This option would consist in deleting Article 9, as many Member States have requested during the meeting of COREPER on 25 January 2019.

That said, the Presidency is convinced that this could only be acceptable for the EP if the word "**required**" is maintained in Article 7. In order to make this solution more acceptable for the Member States, the Presidency proposes to clearly spell out the exemption set out in Article 32(5) AMLD, in order to clarify that the requirement to provide information is subject to very broad safeguards.

Article 7

*(1) Subject to national procedural safeguards, each Member State shall ensure that its national Financial Intelligence Unit is **required** to reply, **in a timely manner**, to **reasoned** requests for financial information or financial analysis by its designated competent authorities referred to in Article 3(2) **in their respective Member State**, where that financial information or financial analysis is necessary, on a case-by-case basis, for the prevention, detection, investigation or prosecution of serious criminal offences.*

(2) ~~Any exchange under paragraph 1 is subject to the exemptions provided for under Article 32(5) of Directive (EU) 2015/849 and to any restrictions and conditions imposed by the requested Financial Intelligence Unit for the use of that information. 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.~~

(3) Any use for purposes beyond those originally approved shall be made subject to the prior consent of that Financial Intelligence Unit. Any refusal to reply to a request under paragraph 1 shall be appropriately explained.

Article 9

deleted.

