



Council of the European Union
General Secretariat

**Interinstitutional files:
2018/0105(COD)**

Brussels, 13 July 2018

WK 8535/2018 INIT

LIMITE

ENFOPOL

JAI

EF

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

MEETING DOCUMENT

From:	Presidency
To:	Delegations
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 in annex information from the Presidency 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, as set out in 11014/18.

In order to facilitate the discussions at the LEWP meeting on 23 July 2018, the Presidency would like to outline the main reasons leading to the changes made in the initial proposal of the Commission.

Article 1

The change in the first paragraph reflects an inconsistency observed between the title of the proposal and the definition of its subject matter. Besides access to financial information and bank account information, the Presidency therefore also introduces the concept of use of such information.

Article 2

Definitions of financial information and law enforcement information have been adapted in order to reflect the main concerns of the Member States:

- each definition has been split in two distinct parts to clearly indicate that it may concern two types of information - information which is already available to the respective authorities, or information that may be obtained by those authorities from other entities without using coercive measures.
- For more clarity, the word "already" has been added to the first option in each case.

Article 4

In paragraph 1, the word "national" has been added in order to clearly indicate that in each case, access is only possible for the authorities of the Member State where the bank account information is held (no diagonal access).

In paragraph two, the proposed change to replace "according to this Directive" by "on the basis of this Directive" should clarify that the Directive does not prohibit the relevant access and search of additional information, but should not constitute a legal basis for it. Consequently, providing for such access and search will be a matter of Member States' legislation, as requested during the meeting on 8 June and in some of the subsequent written comments.

Article 6

In paragraph 1 point f), the last part of the sentence is deleted in order to reflect the reality of Member States in which queries can be performed by authorised officials without a specific order of another official.

The Presidency is convinced that the provision in the initial Commission proposal would cause implementation problems for such Member States, as they would have to either redesign the procedures and safeguards they have in place, or systematically record identifiers of a hierarchical superior, although the latter might not be informed or have ordered a given query.

In practical terms, if there are reasons to believe that a query was not justified, an inquiry will be able to assess whether or not the official has respected the relevant national rules of procedure. Within the scope of their duties, police officers consult a variety of very sensitive databases on a daily basis, and are subject to very stringent rules in doing so.

Article 7

As suggested by some of the delegations, the text will now require that national Financial Intelligence Units reply to requests for financial information or financial analysis without undue delay.

Based on a large number of requests by the Member States, the Presidency also suggests to specifically indicate that exemptions provided for under Article 32(5) AMLD shall apply, although the Commission has explained that according to its interpretation, these exemptions apply by virtue of Article 2(1) point a). This should also help addressing the concerns of the majority of the Member States as regards the autonomy of FIUs.

Article 8

The requirement to provide replies without undue delay is also introduced with respect to requests of information by a Financial Intelligence Unit to competent authorities.

Article 9

A significant number of Member States deemed the time limits provided for under paragraph 2 too short, and requested their alignment with rules agreed within the Egmont group. The Presidency takes this view into account, but suggests to provide for a more ambitious compromise solution reflecting the fact that cooperation at EU level should allow for more stringent rules than the ones agreed worldwide.

Consequently, the Presidency suggests to extend the initial time limit from 3 to 5 days, with the possibility to extend the overall time limit up to 14 days. This is also in line with the Swedish Initiative.

On the top of "exceptional and duly justified cases" mentioned in the Commission proposal, such extensions should now be systematically possible when information has to be obtained from obliged entities.

Article 10

Similarly to Article 7, paragraph 2 specifically indicates that exemptions provided for under Article 32(5) AMLD shall apply.

Moreover, in a new paragraph 2a, the Presidency reflects numerous requests of the Member States to introduce the concept of reciprocity for the exchange of information between Europol and the FIUs. Reference to this new paragraph 2a is then also made in paragraph 3 of Article 10.