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Subject: 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

- Mandate for negotiations with the European Parliament

Delegations will find in the Annex the mandate on the abovementioned proposal approved by the Permanent Representative Committee on 29 March 2023.

2021/0244 (COD)

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.

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).

- (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.
- (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) 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 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 transaction records hamper the exchange of information among competent authorities between Member States and the development of cross-border financial investigations. In order to improve the capacity of 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 competent authorities.**

(6b) The conditions and procedures under which competent authorities can request 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 transaction records by the financial sector upon request from competent authorities 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 transaction records by financial and credit institutions to 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) 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.

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).**

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)

- (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.
- (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.
- (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 use of transaction records by FIUs and competent authorities for the prevention, detection, investigation or prosecution of serious criminal offences.

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

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

Article 2

In article 2 of Directive (EU) 2019/1153, the following point (7a) is inserted after point (7):

(7a) 'transaction records' means the details of operations which have been carried out during a defined period through a specified payment 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 competent authorities or FIUs according to the applicable legal framework.

Article 3

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 TRANSACTION RECORDS

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

"Article 6a

Transaction records

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 transaction records 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.

Article 6b

[description of the implementing acts]

The Commission is empowered to adopt, by means of implementing acts, technical specifications and means in order to establish the electronic structured format to be used for providing transaction records.

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 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 5

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.

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 6

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

¹⁰ Exact place in the proposal to be determined later.

Article 7

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
