

Council Decision of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information

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concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information
(2000/642/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 34(2)(c) thereof,

Having regard to the initiative of the Republic of Finland,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The action plan to combat organised crime was approved by the Amsterdam European Council on 16 to 17 June 1997(1). The action plan recommended, in particular in recommendation 26(e), that there should be an improvement in cooperation between contact points competent to receive suspicious transaction reports pursuant to Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering(2).

(2) All Member States have set up financial intelligence units (FIUs) to collect and analyse information received under the provisions of Directive 91/308/EEC with the aim of establishing links between suspicious financial transactions and underlying criminal activity in order to prevent and to combat money laundering.

(3) Improvement of the mechanisms for exchanging information between the FIUs is one of the objectives recognised by the Money Laundering Experts' Group set up within the Multidisciplinary Group on Organised Crime, along with an improvement in the exchange of information between FIUs and the investigating authorities in Member States and in the multidisciplinary organisation of FIUs, to incorporate knowledge of the financial, law enforcement and judicial sectors.

(4) The Council conclusions of March 1995 highlighted the fact that the strengthening of systems for combating money laundering depends on closer cooperation between the different authorities involved in fighting it.

(5) The second Commission report to the European Parliament and the Council on the implementation of Directive 91/308/EEC identifies the difficulties which still appear to prevent the communication and exchange of information between certain units having a different legal status.

(6) It is necessary that close cooperation take place between the relevant authorities of the Member States involved in the fight against money laundering and that provision be made for direct communication between those authorities.

(7) Arrangements have already been successfully adopted by Member States in relation to this matter based mainly on the principles laid down in the model

memorandum of understanding proposed by the informal worldwide network of FIUs referred to as "the Egmont Group".

(8) Member States must organise the FIUs in such a way as to ensure that information and documents are submitted within a reasonable space of time.

(9) This Decision does not affect any Convention or arrangement regarding mutual assistance in criminal matters between judicial authorities,

HAS ADOPTED THIS DECISION:

Article 1

1. Member States shall ensure that FIUs, set up or designated to receive disclosures of financial information for the purpose of combating money laundering shall cooperate to assemble, analyse and investigate relevant information within the FIU on any fact which might be an indication of money laundering in accordance with their national powers.

2. For the purposes of paragraph 1, Member States shall ensure that FIUs exchange, spontaneously or on request and either in accordance with this Decision or in accordance with existing or future memoranda of understanding, any available information that may be relevant to the processing or analysis of information or to investigation by the FIU regarding financial transactions related to money laundering and the natural or legal persons involved.

3. Where a Member State has designated a police authority as its FIU, it may supply information held by that FIU to be exchanged pursuant to this Decision to an authority of the receiving Member State designated for that purpose and being competent in the areas mentioned in paragraph 1.

Article 2

1. Member States shall ensure that, for the purposes of this Decision, FIUs shall be a single unit for each Member State and shall correspond to the following definition: "A central, national unit which, in order to combat money laundering, is responsible for receiving (and to the extent permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information which concern suspected proceeds of crime or are required by national legislation or regulation".

2. In the context of paragraph 1, a Member State may establish a central unit for the purpose of receiving or transmitting information to or from decentralised agencies.

3. Member States shall indicate the unit which is an FIU within the meaning of this Article. They shall notify this information to the General Secretariat of the Council in writing. This notification does not affect the current relations concerning cooperation between the FIUs.

Article 3

Member States shall ensure that the performance of the functions of the FIUs under this Decision shall not be affected by their internal status, regardless of whether they are administrative, law enforcement or judicial authorities.

Article 4

1. Each request made under this Decision shall be accompanied by a brief statement of the relevant facts known to the requesting FIU. The FIU shall specify in the request how the information sought will be used.
2. When a request is made in accordance with this Decision, the requested FIU shall provide all relevant information, including available financial information and requested law enforcement data, sought in the request, without the need for a formal letter of request under applicable conventions or agreements between Member States.
3. An FIU may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Member State or, in exceptional circumstances, where divulgence of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Member State concerned or would otherwise not be in accordance with fundamental principles of national law. Any such refusal shall be appropriately explained to the FIU requesting the information.

Article 5

1. Information or documents obtained under this Decision are intended to be used for the purposes laid down in Article 1(1).
2. When transmitting information or documents pursuant to this Decision, the transmitting FIU may impose restrictions and conditions on the use of information for purposes other than those stipulated in paragraph 1. The receiving FIU shall comply with any such restrictions and conditions.
3. Where a Member State wishes to use transmitted information or documents for criminal investigations or prosecutions for the purposes laid down in Article 1(1), the transmitting Member State may not refuse its consent to such use unless it does so on the basis of restrictions under its national law or conditions referred to in Article 4(3). Any refusal to grant consent shall be appropriately explained.
4. FIUs shall undertake all necessary measures, including security measures, to ensure that information submitted under this Decision is not accessible by any other authorities, agencies or departments.
5. The information submitted will be protected, in conformity with the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data and taking account of Recommendation No R(87)15 of 15 September 1987 of the Council of Europe Regulating the Use of Personal Data in the Police Sector, by at least the same rules of confidentiality and protection of personal data as those that apply under the national legislation applicable to the requesting FIU.

Article 6

1. FIUs may, within the limits of the applicable national law and without a request to that effect, exchange relevant information.
2. Article 5 shall apply in relation to information forwarded under this Article.

Article 7

Member States shall provide for, and agree on, appropriate and protected channels of communication between FIUs.

Article 8

This Decision shall be implemented without prejudice to the Member States' obligations towards Europol, as they have been laid down in the Europol Convention.

Article 9

1. To the extent that the level of cooperation between FIUs, as expressed in memoranda of understanding concluded or to be concluded between authorities of the Member States, is compatible with this Decision or goes further than the provisions thereof, it shall remain unaffected by this Decision. Where the provisions of this Decision go further than the provisions of any memorandum of understanding concluded between the authorities of Member States, this Decision shall supersede such memoranda of understanding two years after this Decision takes effect.
2. The Member States shall ensure that they are able to cooperate fully in accordance with the provisions of this Decision at the latest three years after this Decision takes effect.
3. The Council will assess Member States' compliance with this Decision within four years of the date on which it takes effect, and may decide to continue such assessments on a regular basis.

Article 10

This Decision shall apply to Gibraltar. To this effect, notwithstanding Article 2, the United Kingdom may notify to the General Secretariat of the Council an FIU in Gibraltar.

Article 11

This Decision shall take effect on 17 October 2000.

Done at Luxembourg, 17 October 2000.

For the Council
The President

É. Guigou

(1) OJ C 251, 15.8.1997, p. 1.

(2) OJ L 166, 28.6.1991, p. 77.

