

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) No 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 (Text with EEA relevance)

## CHAPTER VI

### POLICIES, PROCEDURES AND SUPERVISION

#### SECTION 3

#### **Cooperation**

##### *Subsection I*

##### ***National cooperation***

##### *[<sup>F1</sup>Article 49*

Member States shall ensure that policy makers, the FIUs, supervisors and other competent authorities involved in AML/CFT, as well as tax authorities and law enforcement authorities when acting within the scope of this Directive, have effective mechanisms to enable them to cooperate and coordinate domestically concerning the development and implementation of policies and activities to combat money laundering and terrorist financing, including with a view to fulfilling their obligation under Article 7.]

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#### **Textual Amendments**

- F1** Substituted by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Text with EEA relevance).

##### *Subsection II*

##### ***Cooperation with the ESAs***

##### *Article 50*

The competent authorities shall provide the ESAs with all the information necessary to allow them to carry out their duties under this Directive.

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## *[<sup>F2</sup>Subsection IIa*

### ***Cooperation between competent authorities of the Member States***

#### *Article 50a*

Member States shall not prohibit or place unreasonable or unduly restrictive conditions on the exchange of information or assistance between competent authorities for the purposes of this Directive. In particular Member States shall ensure that competent authorities do not refuse a request for assistance on the grounds that:

- (a) the request is also considered to involve tax matters;
- (b) national law requires obliged entities to maintain secrecy or confidentiality, except in those cases where the relevant information that is sought is protected by legal privilege or where legal professional secrecy applies, as described in Article 34(2);
- (c) there is an inquiry, investigation or proceeding underway in the requested Member State, unless the assistance would impede that inquiry, investigation or proceeding;
- (d) the nature or status of the requesting counterpart competent authority is different from that of requested competent authority.]

## *Subsection III*

### ***Cooperation between FIUs and with the Commission***

#### *Article 51*

The Commission may lend such assistance as may be needed to facilitate coordination, including the exchange of information between FIUs within the Union. It may regularly convene meetings of the EU FIUs' Platform composed of representatives from Member States' FIUs, in order to facilitate cooperation among FIUs, exchange views and provide advice on implementation issues relevant for FIUs and reporting entities as well as on cooperation-related issues such as effective FIU cooperation, the identification of suspicious transactions with a cross-border dimension, the standardisation of reporting formats through the FIU.net or its successor, the joint analysis of cross-border cases, and the identification of trends and factors relevant to assessing the risks of money laundering and terrorist financing at national and supranational level.

#### *Article 52*

Member States shall ensure that FIUs cooperate with each other to the greatest extent possible, regardless of their organisational status.

#### *Article 53*

[<sup>F1</sup> Member States shall ensure that FIUs exchange, spontaneously or upon request, any information that may be relevant for the processing or analysis of information by the FIU related to money laundering or terrorist financing and the natural or legal person involved, regardless of the type of associated predicate offences and even if the type of associated predicate offences is not identified at the time of the exchange.]

A request shall contain the relevant facts, background information, reasons for the request and how the information sought will be used. Different exchange mechanisms

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may apply if so agreed between the FIUs, in particular as regards exchanges through the FIU.net or its successor.

When an FIU receives a report pursuant to point (a) of the first subparagraph of Article 33(1) which concerns another Member State, it shall promptly forward it to the FIU of that Member State.

2 Member States shall ensure that the FIU to whom the request is made is required to use the whole range of its available powers which it would normally use domestically for receiving and analysing information when it replies to a request for information referred to in paragraph 1 from another FIU. The FIU to whom the request is made shall respond in a timely manner.

When an FIU seeks to obtain additional information from an obliged entity established in another Member State which operates on its territory, the request shall be addressed to the FIU of the Member State in whose territory the obliged entity is established. [<sup>F1</sup>That FIU shall obtain information in accordance with Article 33(1) and transfer the answers promptly.]

3 An FIU may refuse to exchange information only in exceptional circumstances where the exchange could be contrary to fundamental principles of its national law. Those exceptions shall be specified in a way which prevents misuse of, and undue limitations on, the free exchange of information for analytical purposes.

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**Textual Amendments**

**F1** Substituted by [Directive \(EU\) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive \(EU\) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU \(Text with EEA relevance\)](#).

*Article 54*

Information and documents received pursuant to Articles 52 and 53 shall be used for the accomplishment of the FIU's tasks as laid down in this Directive. When exchanging information and documents pursuant to Articles 52 and 53, the transmitting FIU may impose restrictions and conditions for the use of that information. The receiving FIU shall comply with those restrictions and conditions.

[<sup>F2</sup>Member States shall ensure that FIUs designate at least one contact person or point to be responsible for receiving requests for information from FIUs in other Member States.]

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**Textual Amendments**

**F2** Inserted by [Directive \(EU\) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive \(EU\) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU \(Text with EEA relevance\)](#).

*Article 55*

1 Member States shall ensure that the information exchanged pursuant to Articles 52 and 53 is used only for the purpose for which it was sought or provided and that any dissemination of that information by the receiving FIU to any other authority, agency or department, or any

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use of this information for purposes beyond those originally approved, is made subject to the prior consent by the FIU providing the information.

[<sup>F12</sup> Member States shall ensure that the requested FIU's prior consent to disseminate the information to competent authorities is granted promptly and to the largest extent possible, regardless of the type of associated predicate offences. The requested FIU shall not refuse its consent to such dissemination unless this would fall beyond the scope of application of its AML/CFT provisions or could lead to impairment of an investigation, or would otherwise not be in accordance with fundamental principles of national law of that Member State. Any such refusal to grant consent shall be appropriately explained. Those exceptions shall be specified in a way which prevents misuse of, and undue limitations to, the dissemination of information to competent authorities.]

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**Textual Amendments**

**F1** Substituted by [Directive \(EU\) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive \(EU\) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU \(Text with EEA relevance\).](#)

*Article 56*

1 Member States shall require their FIUs to use protected channels of communication between themselves and encourage the use of the FIU.net or its successor.

2 Member States shall ensure that, in order to fulfil their tasks as laid down in this Directive, their FIUs cooperate in the application of state-of-the-art technologies in accordance with their national law. Those technologies shall allow FIUs to match their data with that of other FIUs in an anonymous way by ensuring full protection of personal data with the aim of detecting subjects of the FIU's interests in other Member States and identifying their proceeds and funds.

*[<sup>F1</sup>Article 57*

Differences between national law definitions of predicate offences as referred to in point 4 of Article 3 shall not impede the ability of FIUs to provide assistance to another FIU and shall not limit the exchange, dissemination and the use of information pursuant to Articles 53, 54 and 55.]

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**Textual Amendments**

**F1** Substituted by [Directive \(EU\) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive \(EU\) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU \(Text with EEA relevance\).](#)

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### *[<sup>F2</sup>Subsection IIIa*

#### ***Cooperation between competent authorities supervising credit and financial institutions and other authorities bound by professional secrecy***

##### *Article 57a*

1 Member States shall require that all persons working for or who have worked for competent authorities supervising credit and financial institutions for compliance with this Directive and auditors or experts acting on behalf of such competent authorities shall be bound by the obligation of professional secrecy.

Without prejudice to cases covered by criminal law, confidential information which the persons referred to in the first subparagraph receive in the course of their duties under this Directive may be disclosed only in summary or aggregate form, in such a way that individual credit and financial institutions cannot be identified.

- 2 Paragraph 1 shall not prevent the exchange of information between:
- a competent authorities supervising credit and financial institutions within a Member State in accordance with this Directive or other legislative acts relating to the supervision of credit and financial institutions;
  - b competent authorities supervising credit and financial institutions in different Member States in accordance with this Directive or other legislative acts relating to the supervision of credit and financial institutions, including the European Central Bank (ECB) acting in accordance with Council Regulation (EU) No 1024/2013<sup>(1)</sup>. That exchange of information shall be subject to the conditions of professional secrecy indicated in paragraph 1.

By 10 January 2019, the competent authorities supervising credit and financial institutions in accordance with this Directive and the ECB, acting pursuant to Article 27(2) of Regulation (EU) No 1024/2013 and point (g) of the first subparagraph of Article 56 of Directive 2013/36/EU of the European Parliament and of the Council<sup>(2)</sup>, shall conclude, with the support of the European Supervisory Authorities, an agreement on the practical modalities for exchange of information.

- 3 Competent authorities supervising credit and financial institutions receiving confidential information as referred to in paragraph 1, shall only use this information:
- a in the discharge of their duties under this Directive or under other legislative acts in the field of AML/CFT, of prudential regulation and of supervising credit and financial institutions, including sanctioning;
  - b in an appeal against a decision of the competent authority supervising credit and financial institutions, including court proceedings;
  - c in court proceedings initiated pursuant to special provisions provided for in Union law adopted in the field of this Directive or in the field of prudential regulation and supervision of credit and financial institutions.

4 Member States shall ensure that competent authorities supervising credit and financial institutions cooperate with each other for the purposes of this Directive to the greatest extent possible, regardless of their respective nature or status. Such cooperation also includes the ability to conduct, within the powers of the requested competent authority, inquiries on behalf of a requesting competent authority, and the subsequent exchange of the information obtained through such inquiries.

5 Member States may authorise their national competent authorities which supervise credit and financial institutions to conclude cooperation agreements providing for collaboration

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and exchanges of confidential information with the competent authorities of third countries that constitute counterparts of those national competent authorities. Such cooperation agreements shall be concluded on the basis of reciprocity and only if the information disclosed is subject to a guarantee of professional secrecy requirements at least equivalent to that referred to in paragraph 1. Confidential information exchanged according to those cooperation agreements shall be used for the purpose of performing the supervisory task of those authorities.

Where the information exchanged originates in another Member State, it shall only be disclosed with the explicit consent of the competent authority which shared it and, where appropriate, solely for the purposes for which that authority gave its consent.

#### *Article 57b*

1 Notwithstanding Article 57a(1) and (3) and without prejudice to Article 34(2), Member States may authorise the exchange of information between competent authorities in the same Member State or in different Member States, between the competent authorities and authorities entrusted with the supervision of financial sector entities and natural or legal persons acting in the exercise of their professional activities as referred to in point (3) of Article 2(1) and the authorities responsible by law for the supervision of financial markets in the discharge of their respective supervisory functions.

The information received shall in any event be subject to professional secrecy requirements at least equivalent to those referred to in Article 57a(1).

2 Notwithstanding Article 57a(1) and (3), Member States may, by virtue of provisions laid down in national law, authorise the disclosure of certain information to other national authorities responsible by law for the supervision of the financial markets, or with designated responsibilities in the field of combating or investigation of money laundering, the associated predicate offences or terrorist financing.

However, confidential information exchanged according to this paragraph shall only be used for the purpose of performing the legal tasks of the authorities concerned. Persons having access to such information shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 57a(1).

3 Member States may authorise the disclosure of certain information relating to the supervision of credit institutions for compliance with this Directive to Parliamentary inquiry committees, courts of auditors and other entities in charge of enquiries, in their Member State, under the following conditions:

- a the entities have a precise mandate under national law to investigate or scrutinise the actions of authorities responsible for the supervision of those credit institutions or for laws on such supervision;
- b the information is strictly necessary for fulfilling the mandate referred to in point (a);
- c the persons with access to the information are subject to professional secrecy requirements under national law at least equivalent to those referred to in Article 57a(1);
- d where the information originates in another Member State, it shall not be disclosed without the express consent of the competent authorities which have disclosed it and, solely for the purposes for which those authorities gave their consent.]

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- (1) [<sup>F2</sup>Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).]
- (2) [<sup>F2</sup>Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).]

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#### **Textual Amendments**

- F2** Inserted by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Text with EEA relevance).