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**COUNCIL OF
THE EUROPEAN UNION**

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CRIMORG 141

NOTE

From: Presidency

To : Multidisciplinary Working Group on Organised Crime (MDG)

**Subject : Draft Council Decision concerning arrangements for cooperation between
financial intelligence units of the Member States in respect of exchanging
information**

Delegations will find attached a revised version of the draft Council Decision introduced by the Presidency to improve cooperation between Financial Intelligence Units. The text has been amended to take account of the MDG discussion on 13 December 1999.

The Netherlands and German delegations have entered general reservations in relation to the draft Decision.

COUNCIL DECISION 1999/ JHA

of

**concerning arrangements for cooperation between
Financial Intelligence Units of the Member States
in respect of exchanging information**

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 16-17 June 1997 ¹; the Action Plan recommended, in particular in point 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 (FIU), to collect and analyse information received under the provisions of Directive 91/308/EEC with the aim of establishing links between suspicious or unusual 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;

¹ OJ C 251, 15.8.1997, p. 1.

² OJ L 166, 28.6.1991, p. 77.

- (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 takes 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 Financial Intelligence Units referred to as "the Egmont Group",

HAS ADOPTED THIS DECISION

Article 1

1. Member States shall ensure that Financial Intelligence Units (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 ³ relevant information in accordance with their national powers.

2. For the purposes of paragraph 1, Member States shall ensure that FIUs exchange, spontaneously or upon 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.

Article 2

1. Member States shall ensure that FIUs correspond to the following definition:

X "A central, national agency 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 concerning suspected proceeds of crime ^{or} ~~are~~ required by national legislation or regulation" ⁴.

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

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 available and relevant information, including 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. A FIU shall not be obliged to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Member State. Any such refusal shall be appropriately explained to the FIU requesting the information.

Article 5

1. Information or documents obtained under the provisions of this Decision may only be used for the purposes of processing and analysing data within FIUs. ⁵

2. The use of information or documents referred to in paragraph 1 for criminal investigations or prosecutions shall be subject to the prior consent of the FIU which submitted the information or documents in question. ⁶

3. 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.

4. The information submitted will be protected 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.

5. The requesting FIU shall comply with any conditions on the use of the information laid down by the requested 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. The forwarding FIU may impose conditions on the use by the receiving FIU of the information referred to in paragraph 1. The receiving FIU shall be bound by those conditions.

3. Article 5 shall apply in relation to information forwarded under this Article.

Article 7

Member States shall provide for and agree upon appropriate ⁷ 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 Convention⁸. The Member States shall ensure that their FIUs will give effect to those obligations in accordance with the applicable national law.⁹

Article 9

1. To the extent that memoranda of understanding already concluded between authorities of the Member States are compatible with this Decision they shall continue to apply. 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 on ¹⁰.

2. Where national legislation is not compatible with this Decision, it shall be changed before ¹¹

3. The Council will assess Member States' compliance with the Decision before ¹² and may decide to continue such assessments on a regular basis.

¹⁰ Two years after the date of entry into force of this Decision.

¹¹ Three years after the date of entry into force of this Decision.

¹²

Article 10

This Decision shall enter into force on ¹³.

Done at Brussels,

For the Council
The President

¹³ Date of adoption of this Decision.