



Formal comments of the EDPS on the Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) No 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

1. Introduction and background

- The following comments concern the Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) No 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 Proposal')¹.
- The Proposal introduces an amendment to Article 4 of Directive (EU) No 2019/1153², inserting the following paragraph 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*"³.
- The proposed amendment is needed to provide law enforcement authorities, designated under Article 3(1) of Directive (EU) No 2019/1153, access to the platform interconnecting bank account registers across the Union. The aforesaid platform is established, as explained in recital (4) of the draft Proposal, by the Proposal for a Directive amending the Fifth Anti-Money laundering Directive⁴.
- These comments are provided in response to the legislative consultation by the European Commission of 20 July 2021 pursuant to Article 42(1) of Regulation (EU)

¹ Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) No 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, 2021/0244 (COD).

² 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 L 186, 11.7.2019, p. 122–137.

³ Article 1 of the Proposal.

⁴ Recital (4) of the Proposal: "*Directive (EU) YYYY/XX of the European Parliament and of the Council, which replaces Directive 2015/849 of the European Parliament and of the Council, 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.*"

2018/1725 ('the EUDPR')⁵. We limited our comments below to the provisions of the Proposal that are relevant from a data protection perspective.

- These formal comments do not preclude any future additional comments by the EDPS, in particular if further issues are identified or new information becomes available. Furthermore, these formal comments are without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 of the EUDPR.

2. EDPS comments

- The EDPS welcomes the assessment made by the Commission in relation to the possible impact of the Proposal on the fundamental rights to privacy and to the protection of personal data⁶.
- In this regard, the EDPS wishes to highlight the following points, which are of particular importance having regard to the proportionality of the proposed addition to Article 4 of Directive (EU) No 2019/1153.
- Directive (EU) 2019/1153 gives access solely to a limited set of information (including the owner's name, date of birth, bank account number), which is strictly necessary to ascertain whether the subject of an investigation holds an account in a bank and to identify in which bank(s). Accordingly, Article 14(3) of the proposed new Anti-Money Laundering Directive⁷ lays down that competent authorities of the member States will be able to access and search only the following information:
 - for the customer-account holder and any person purporting to act on behalf of the customer: the name, complemented by either the other identification data required or a unique identification number;
 - for the beneficial owner of the customer-account holder: the name, complemented by either the other identification data required or a unique identification number;
 - for the bank or payment account: the International Bank Account Number (IBAN) and the date of account opening and closing;
 - for the safe-deposit box: name of the lessee complemented by either the other identification data required under or a unique identification number and the duration of the lease period.

⁵ 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.

⁶ See at pages 5-6 of the Explanatory Memorandum, "Fundamental rights".

⁷ Proposal for a Directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849, COM(2021)423 final.

It is the understanding of the EDPS that this limitation will continue to apply in relation to the access possibilities created by the Proposal, which does not introduce any change in this regard⁸.

- As stated in the Explanatory Memorandum, “[...] *authorities competent for the prevention, detection, investigation or prosecution of criminal offences will therefore still not be able to access and search sensitive data, such as information on transactions or the accounts balance. Only information strictly required to identify a holder of a bank or payment account or a safe deposit box will be made accessible through the BAR single access point. Once the authorities identify, by virtue of the access provided under this proposal, with which financial institution the subject of an investigation holds a bank account in another Member State, they will, where deemed necessary, have to request further information (e.g. a list of transactions) via appropriate police or judicial cooperation channels*”⁹. This safeguard will also apply in the context of access to and searches by law enforcement authorities to the interconnected national centralised bank account registers.
- Moreover, the EDPS notes that the safeguards provided for in Directive (EU) 2019/1153, and in particular the safeguards provided for in Articles 3, 4, 5 and 6¹⁰, will also apply to any access to and searches by designated authorities to the interconnected system of centralised bank account registries¹¹.
- It is important to note that the Proposal builds on the **EU-wide interconnection of national centralised bank account registers**, necessary to speed up access by law enforcement authorities and Financial Intelligence Units (FIUs) to financial information and facilitate cross-border cooperation, which is established by Article 14(5) of the proposed new Anti-Money Laundering Directive¹².
- In this regard, we recall that in EDPS Opinion 5/2020 on the European Commission’s action plan for a comprehensive Union policy on preventing money laundering and

⁸ See at page 4 of the Explanatory Memorandum.

⁹ See at page 4 of the Explanatory Memorandum.

¹⁰ Article 3, Designation of competent authorities; Article 4, Access to and searches of bank account information by competent authorities; Article 5, Conditions for access and searches by competent authorities; Article 6, Monitoring access and searches by competent authorities.

¹¹ See recital (6) of the Proposal: “*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**.” [emphasis added].*

¹² Article 14(5) states that: “*The centralised automated mechanisms referred to in paragraph 1 shall be **interconnected via the bank account registers (BAR) single access point to be developed and operated by the Commission**. The Commission is empowered to adopt, by means of implementing acts, the technical specifications and procedures for the connection of the Member States’ centralised automated mechanisms to the single access point. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2).*” [emphasis added].

terrorism financing¹³, the EDPS recommended: “Concerning the works on **the interconnection of central bank account mechanisms and beneficial ownership registers**, [...] that they comply, in particular, with the principles of **data minimisation, accuracy and data protection-by-design and by default**”¹⁴ [emphasis added]. The EDPS will continue to pay specific attention to this aspect having regard to the Proposal for new Anti-Money Laundering Directive, as well as the other legislative proposals under the so-called Anti-money laundering and countering the financing of terrorism (AML/CFT) legislative package¹⁵.

- Finally, the EDPS welcomes the specific reference to the applicability of Directive (EU) 2016/680 under recital (7) of the draft Proposal¹⁶.

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(e-signed)

¹³ EDPS Opinion 5/2020 on the European Commission’s action plan for a comprehensive Union policy on preventing money laundering and terrorism financing, available at:

https://edps.europa.eu/sites/default/files/publication/20-07-23_edps_aml_opinion_en.pdf

¹⁴ See page 16 of EDPS Opinion 5/2020; see also at paragraph 14: “The Commission’s report to the European Parliament and the Council on the interconnection of national centralised automated mechanisms of the Member States on bank accounts concluded that the interconnection of these mechanisms is possible. The EDPS welcomes that in this report, which assesses various IT solutions at EU level which may serve as models for the interconnection of these centralised mechanisms, the Commission takes into account the data protection principles and highlights the need to restrict the scope of the information accessible through the interconnection platform to the minimum required (data minimization) and to keep the proportionality between the scope of access to personal data and what is necessary to comply with the objectives of the AML Directive (proportionality principle).”

¹⁵ https://ec.europa.eu/info/publications/210720-anti-money-laundering-countering-financing-terrorism_en

¹⁶ Recital (7) of the Proposal states: “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 Council. 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.”