

欧盟理事会《关于协调各成员国金融情报机构在交换情报方面合作的决定》(2000)

Council Decision of 17 October 2000 Concerning Arrangements for Cooperation between Financial Intelligence Units of the Member States in respect of Exchanging Information

背景：欧盟理事会于 2000 年 10 月 17 日在卢森堡通过《关于协调各成员国金融情报机构在交换情报方面合作的决定》(2000/642/JHA)，并于同日生效。

1997 年欧洲议会批准的打击有组织犯罪的行动计划，建议应当根据理事会《关于防止利用金融系统洗钱的指令》(91/308/EEC 号)，加强相关机构在接收可疑交易报告方面的合作。欧盟成员国已建立金融情报机构(FIUs)，以建立可疑金融交易与潜在犯罪活动之间的联系，进而预防和打击洗钱。随着 FIUs 与成员国和 FIUs 多学科组织的调查部门之间的情报交换的提高，必须改善金融情报机构之间的情报交换机制来整合金融、法律执行和司法部门的知识。成员国各相关部门间必须进行密切合作，并制定这些部门间直接交流的规定，以确保在合理的时间内传递情报和资料。目前这方面的协调安排主要根据 FIUs 的非正式世界网络——“埃格蒙特集团” [1]提出的谅解备忘录设立的原则来进行。

下为该决定的全文。

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[2] or on request and either in accordance with this Decision or in accordance with existing or future memoranda of understanding[3], 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.[4]

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[5] this Decision to an authority of the receiving Member State designated for that purpose and being competent in the areas mentioned in paragraph 1.[6]

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[7]."

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[8] 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[9] information which could lead to impairment[10] of a criminal investigation being conducted in the requested Member State or, in exceptional circumstances, where divulcation of the information would be clearly disproportionate[11] 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. [12]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^[13] 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[14], 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.[15] 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[16] 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[17]. To this effect, notwithstanding[18] 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.

[1] Egmont Group: FIU 的非正式组织，成立于 1 9 9 5 年，以第一次会议的地点——比利时布鲁塞尔的 Egmont-Arenberg Palace 命名，目前已有 94 个国家的 FIU 参加了该组织。主要为 FIU 提供一个平台来帮助并改进成员国的反洗钱工作，促进国际合作。

[2] spontaneously[spCn5teinjiEsl] 自动地

[3] memoranda of understanding:谅解备忘录

[4] For the purpose……or legal person involved. 为第 1 款的目的, 成员国应保证 FIU 能根据本决定或根据已有的或将来的谅解备忘录, 自发或应请求交换 FIU 进行的有关洗钱及所涉及的自然人或法人的金融交易方面的信息处理、分析或调查的任何可得信息。

[5] pursuant to 按照

[6] Where a Member State……in paragraph 1. 成员国指定一警察部门作为其 FIU, 可根据本决定向接受国指定的具有该目的、并在条款 1 提及的领域具有相应职权的部门提供其 FIU 持有的情报以交换。

[7] A central, national unit which, …, required by national legislation or regulation: 为打击洗钱, 负责接收 (在允许程度上可进行请求)、分析和向权力当局传递有关犯罪可疑收益或被国家立法或规定要求的金融信息的披露情况的一个中央国家机构

[8] decentralize [9di:ˈsentrElaIz] 分散

[9] divulge [dai5vQIdV] 批露

[10] impairment[im5pZEmEnt] 损害

[11] disproportionate[7disprE5pC:FEnit] 明显不符

[12] A FIU may……national law. 如情报的泄漏可导致被要求成员国正进行的刑事调查受到损害, 或在特殊情况下, 与相关的自然人、法人或成员国的合法权益明显不符, 或与国内法的基本原则不一致, 一国 FIU 可拒绝披露该情报。

[13] stipulate[5stipjuleit] 规定

[14] Europol [5juErEpC:] European Police Office, 欧洲刑警组织

[15] To the extent……by this decision. 成员国当局已达成或将要达成的谅解备忘录中所阐明的 FIU 之间的合作程度若与本决定一致或超过本决定的条款规定, 则不应受本决定影响。

[16] supersede [7sju:pE5si:d] 代替, 取代

[17] Gibraltar [dVi5brC:ltE] 直不罗陀地区

[18] notwithstanding [7nCtwiW5stAndiN] 尽管