



Home Office

Rt Hon Ben Wallace MP  
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Sir William Cash MP  
Chairman of the European Scrutiny Committee  
7 Millbank  
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24 July 2018

Dear Bill,

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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**

Thank you for the draft Report of the European Scrutiny Committee on the Explanatory Memorandum on the above Directive. I note that your Committee retains this Directive under scrutiny.

Your Report asks further information on a number of points.

**Council Decision 2000/642/JHA**

**You have asked whether the proposed Directive would be of greater operational benefit to the UK than Council Decision 2000/642/JHA** concerning arrangements for cooperation between financial intelligence units of the Member States; whether, if the UK did not opt in to the draft Directive, the Council Decision would apply to the UK until the end of the Implementation Period on 31 December 2020; and whether the UK's non-participation in the draft Directive would make the Council Decision inoperable for other Member States.

The Council Decision defined the principles of cooperation and information sharing between Financial Intelligence Units (FIUs), and the draft Directive states that the subject matter of the Council Decision is regulated by other European Union measures and consequently has no further value. Most of the provisions in the

Decision were replaced by those in the 4<sup>th</sup> Money Laundering Directive (4MLD), which the UK has joined. **The UK is therefore able to continue to cooperate with FIUs in other European Union Member States. The draft Directive covers a number of areas that are neither in the Council Decision, nor the 4MLD, including provisions relating to access by competent authorities to bank account register details.**

### **Draft Withdrawal Agreement**

**You have asked whether, under Article 122(1)(a) of the draft EU/UK Withdrawal Agreement, the proposed Directive will only apply if it is "binding upon and in the UK" by exit day, and whether this means that the proposed Directive will only apply if the Government decides to opt in *and* the proposal is formally adopted by the Council and the European Parliament by 29 March 2019. You have also asked whether there is a realistic prospect that the proposed Directive will be adopted before the UK leaves the EU.**

The Government has clarified the text of the Withdrawal Agreement in relation to the application of the JHA opt-in and Schengen opt-out with the European Commission. The UK will be bound by any measure where the UK has opted into or not opted out of before the date the Withdrawal Agreement enters into force, whether or not the measure has been formally adopted. We consider it possible, but unlikely, that the Directive will be adopted before 29 March 2019.

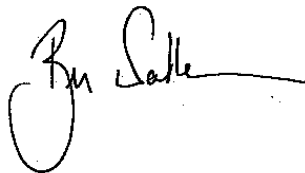
### **Future exchanges of information by the FIU**

**You have asked what the basis is on which the UK FIU would be able to exchange financial information with its counterparts in the EU post-exit (and post-transition). The UK FIU already exchanges information with a wide range of countries outside the UK to support investigations, and we envisage, at the very least, that those arrangements would be available to share information post-exit, as they are based on the provisions of the Crime & Courts Act 2013.**

The UK wants an ambitious and comprehensive security relationship which preserves mutually important operational capabilities whilst allowing the UK and EU to continue to work together to combat fast evolving security threats. The UK currently participates around 40 EU measures covering police and judicial cooperation in criminal matters under Chapters 4 and 5 of Title V of Part Three TFEU. We believe cooperation should continue in areas of mutual operational benefit across three categories: practical operational cooperation, multilateral cooperation through EU agencies, and data driven law enforcement. This is the best way to keep all of our citizens safe, and we believe this kind of relationship is in the interests of both the UK and the EU.

**I can confirm that the three-month deadline for opting into the proposal is 17 August. At the first officials working group on the Directive, all other Member States had similar concerns to the UK in relation to those I set out in the Explanatory Memorandum. I am therefore hopeful that the changes we wish to see made to the text will be made. I will keep your Committee informed of progress.**

I am copying this letter to Lord Boswell, Chair of the Lords European Union Committee; Chris Johnson, Clerk to the Lords Committee; Lynn Gardner, Clerk to your Committee; Les Saunders, Department for Exiting the European Union; and Alex Bernal, Departmental Scrutiny Coordinator.

A handwritten signature in black ink, appearing to read "Ben Wallace". The signature is written in a cursive style with a large initial "B" and a long horizontal stroke at the end.

**Rt Hon Ben Wallace MP**