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Policy Summary:

# EFIPPP Practical Guide for Operational Cooperation between Investigative Authorities and Financial Institutions

## Background

The Europol Financial Intelligence Public Private Partnership (EFIPPP), established in 2017, provides a collaborative mechanism between private stakeholders, Financial Intelligence Units (FIUs) and Law Enforcement Agencies to address structured threat information across the members. The Secretariat of the EFIPPP is located within the European Financial and Economic Crime Centre (EFECC) at Europol. The Practical Guide is the result of the work of the EFIPPP's Legal Gateways Working Group, and as such, it benefited from contributions from numerous EFIPPP public and private sector members, from observers, and from other experts. The drafting of the Practical Guide was supported by a survey of existing operational cooperative mechanisms in Denmark, Ireland, Latvia, Sweden, the Netherlands and the UK.

Collaboration between competent authorities and the private sector in the financial arena is crucial to improve the fight against organised crime and terrorism, especially to tackle the complex schemes set up by criminal and terrorist groups to hide their assets across the globe. The **new EU Anti-Money Laundering/Counter-Financing of Terrorism (AML/CFT) legal framework** creates promising **new avenues for cooperation between competent authorities and the private sector**. The new Anti-Money Laundering Regulation introduces partnerships for information sharing between obliged entities, including financial institutions, for improving the detection of illicit financial flows. It also allows Financial Intelligence Units (FIUs) and investigative authorities to join these partnerships.

**In the last decade, several countries** across the world, including various Member States, have **established public-private** partnerships and similar mechanisms enabling operational cooperation between financial institutions, FIUs and investigative authorities. While these initiatives have shown the **crucial role of cooperative mechanisms in advancing criminal investigations**, investigative authorities have been less involved in the debate about public private cooperation in the fight against financial crime. To **build awareness** among policymakers and relevant authorities, in particular law enforcement, about the potential of operational cooperation in the fight against financial crime, **EFIPPP's Practical Guide** gives an overview of the objectives and added value of such cooperation and the building blocks necessary to ensure successful cooperation. With this Practical Guide, **EFIPPP delivers on the call** made by the European Commission in its **EU roadmap to fight drug trafficking and organised crime**.

## Objectives and added value of cooperation

### Operational public-private cooperation

complements the 'command and obey' approach based on orders from judicial and law enforcement authorities to financial institutions, with a **trust-based** model where investigative authorities and financial institutions exchange information and **work together in a secure environment** to uncover and disrupt illicit financial schemes. By enabling competent authorities to provide **case-specific contextual information to financial institutions**, cooperative mechanisms allow the latter to make the most out of their vast information, resources and skills to detect and deliver valuable information for investigators.

Such cooperation can pursue various **purposes**. Most notably, **cooperation can produce new investigative leads**, especially in cases when authorities have first indications of a crime, but the indications alone are not specific enough to use coercive investigative measures. They can also **support the gathering of evidence in an ongoing investigation**, going beyond the normal obligation of financial institutions to comply with court orders to enable financial institutions to provide better evidence to authorities. Operational cooperation also contributes greatly to **improve financial institutions' ability to detect financial crime**, by providing financial institutions with information that guides them to better detect suspicious transactions and enables them to protect themselves and their customers from criminal activity.

To these ends, collaborative mechanisms provide many **benefits**. They can facilitate a more **informed investigative approach**: authorities are not always aware of the wide range of data held by financial institutions, and investigators using the collaborative mechanism will better understand the full spectrum of data they can obtain, thereby creating new operational opportunities. They also allow investigative authorities to **build synergies with financial institutions** wide-ranging skills and increasingly capable digital applications to facilitate the detection of criminal activity. Cooperation can also enable a more **efficient access to private sector data** by allowing for making a combined enquiry to multiple financial institutions at the same time.

Setting up a cooperative mechanism can also help the financial institution **improve the quality of the information** it provides to authorities. By understanding the case-specific context of a request for data, financial institutions can identify more information in their databases, for example, when the investigator has asked for information between datasets X&Y, but the financial institutions identifies more useful information in dataset Z, then the financial institution's representative can raise that and the enquiry can be refined to help drive forward the investigation. Similarly, since financial institutions often operate globally and have customers worldwide, these cooperative mechanisms can provide a **cross border picture of illicit financial flows**.

Moreover, such mechanisms can **enhance operational security and control**. In 'traditional' enquiries from law enforcement to financial entities, it might not be clear how - and by whom - the information is treated at the receiving end, or what is the nature of the person mentioned in the order (a suspect, a victim, etc.). Built around a relatively small group of trusted individuals, a collaborative environment can help prevent unintended consequences for the investigation, in particular the accidental tipping-off of suspects.

Finally, cooperative mechanisms **complement the AML/CFT reporting framework by enhancing the quality of financial institutions reporting of suspicious activities**. The exchange of operational information enables financial institutions to develop a more precise, intelligence-led understanding of criminal activity (individuals involved, criminal typologies, trends and methods, etc.) strengthening financial institutions' financial crime risk management and improving the quality of their suspicious activity reports.

## Examples of cooperation

The benefits of such cooperation are already visible in the cooperative mechanisms set up across the world in the last decade, including those established by EU Member States, which are presented in more detail in the Practical Guide. A number of scenarios, inspired by the existing experiences with cooperative instruments, can provide a more tangible view of the various forms of cooperation between investigative authorities and financial institutions:

### Scenario 1

An authority is investigating an alleged member of a criminal network, who seems to have received the help of other, unknown individuals. To identify them, the authority provides some financial institutions with details about the suspect's alleged criminal activities and links with the criminal network. This allows financial institutions to uncover connections with the unknown individuals and thereby **identify new leads for the ongoing investigation**.

### Scenario 2

After successfully concluding an investigation into a criminal network, investigators suspect that other members of the network remain unknown. The authority provides some financial institutions with details of the investigation (names and accounts of convicted individuals, their criminal activities, etc.). With the information **from past investigations**, financial institutions are able to report **new leads** to the FIU, allowing the opening of new criminal investigations.

### Scenario 3

An investigative authority issues an order to obtain information held by a financial institution about a suspect. In order to help the institution identify relevant information, the authority provides it with context to make the request more targeted (details about the suspect and the crime, modus operandi or contact persons of the suspect). This will help speed up and improve the quality of the information the financial institution will provide to the authorities, thereby **improving the effectiveness of information requests**.

### Scenario 4

In the aftermath of a terrorist attack, the authorities arrested some attackers, but fear others may still be at large and commit more attacks. In order to **gather information about an imminent threat**, the authorities provide information about the likely profile of potential attackers to a number of financial institutions with whom the arrested individuals hold accounts. This allows the institutions to identify and report to the authorities a hidden network linked to the attackers.

### Scenario 5

A financial institution has detected what appears to be a criminal abuse of its services. As time is of the essence, in parallel to reporting to the FIU, the **financial institution proactively reaches out to the investigative authorities to report the crime** and meets them only hours after reporting it. This allows the staff of the financial institution and the investigators to develop a strategy that allow the **securing of evidence and assets** while momentarily **avoiding a tipping-off** to the relevant customers.

## Building blocks for public private cooperation.

To advance and facilitate the building of cooperative mechanisms, the Practical Guide provides policymakers, investigative authorities and private stakeholders with **best practices and lessons learned** from existing cooperative mechanisms, both from a legal and a practical perspective. The Practical Guide offers **hands-on guidance to investigative authorities and financial institutions** in shaping their cooperation, insofar as a Member State's law already provides for adequate legal gateways to this effect, and **provides inspiration for policymakers** where the law does not yet provide an enabling legal environment.

Even though each Member States' circumstances are innately different, a number of key legal prerequisites will likely always be relevant when setting up a cooperative mechanism. On the side of investigative authorities, this includes the need to ensure the **lawfulness of the cooperation**, including, where personal data is shared with financial institutions, the necessity and proportionality of this exchange, and respect for **applicable procedural laws**, not least, where relevant, the involvement of judicial authorities. At the same time, a set of key legal considerations will determine and delimit the **ability of financial institutions to participate** in cooperative mechanisms. This concerns in particular the availability of a **legal basis** allowing for voluntary cooperation, respect for the **principle of data minimisation** to avoid an excessive processing of personal data, and strict **compliance with any conditions** set by the authority.

The Practical Guide furthermore shows that the success of cooperative mechanisms often depends on factors that are more practical in nature. It therefore explores steps that are necessary to **establish trust between public and private stakeholders**, to **start small and with realistic expectations**, and to provide **leadership by example**.

To facilitate this process, a number of crucial steps will help a cooperative mechanism to develop, such as

- the **selection of participating parties** guided by clearly-defined operational objectives;
- the **setting up of a governance structure** including all stakeholders to handle key decisions, through the drafting of **terms of reference**, and the drafting of **rules on the handling of shared data**.

**The latter** is particularly important to prevent **unintended consequences**, such as the closure of accounts of unsuspected customers, and to protect the **integrity of investigations**, especially through appropriate precautions for the secure handling of sensitive information. Moreover, it is important to consider the **role of other relevant public authorities** in the setting up of cooperative mechanisms, in particular as regards AML/CFT supervisors, data protection authorities and FIUs.

The Practical Guide concludes with a short outlook at the future of cooperative mechanisms under the **new EU AML/CFT framework**, sketching opportunities on how the **avenues for operational public-private cooperation** that the new framework provides can be leveraged by investigative authorities.