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signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
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progress report towards an effective and genuine Security Union

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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL**

**Third progress report towards an effective and genuine Security Union**

## Third progress report towards an effective and genuine Security Union

### I. INTRODUCTION

This is the third monthly report on the progress made towards building an effective and genuine Security Union and covers developments under two main pillars: *tackling terrorism and organised crime and the means that support them; and strengthening our defences and building resilience against those threats*. The cowardly and despicable 19 December Berlin attack and the other terrible attacks of 2016 remind us again of our vulnerability and the need for us to continue working together to strengthen our collective security to protect our freedoms and way of life. Over the course of this reporting period concrete progress has been achieved on squeezing the space in which terrorists, and those who support them, can act. This report outlines the new **terrorist financing package adopted today**, which is an important step in stemming the financial resources that sustain terrorism. To further close down the space for terrorists, the Commission is also improving information exchange, by adopting a set of proposals to strengthen the effectiveness and efficiency of the **Schengen Information System**. During this reporting period, there has also been significant progress on key EU legislative files to counter terrorism and organised crime, and to reinforce security at our borders. The European Parliament and the Council have now reached political agreement on the **Directive on Combating Terrorism**, the revision of the **Firearms Directive** and the revision of the **Schengen Borders Code** to allow systematic checks on EU citizens.

Important progress has also been made in the fight against online radicalisation. The second high-level meeting of the **EU Internet Forum** delivered the announcement of a hash-sharing initiative from major internet platforms, enabling participating companies to use "hashes" to detect terrorist content, in order to ensure its permanent removal. This new tool is expected to further restrict the access of terrorist organisations to a key medium used for propaganda, recruitment and radicalisation. At the Forum, the Commission also launched a **Civil Society Empowerment Programme**, with €10 million funding, to support civil society partners in ramping up the volume of effective, alternative on-line narratives.

There have also been key developments in a number of other fields. Given the vital importance of full and timely implementation of the EU Passenger name Record (PNR) Directive, the Commission presented a **PNR implementation plan** to provide guidance to Member States. The Commission has also presented an **Action plan to strengthen the European response to travel document fraud**. The Action Plan provides operational recommendations to Member States to tackle the growing problem of travel document fraud, including registration of identity, the issuance of documents, document production and document control. Finally, to help protect citizens and critical infrastructures, the Commission has addressed the security of our energy grids in the **Energy Union package** adopted on 30 November. The package is designed to support Member States on risk assessments, risk preparedness and the management of crisis situations in relation to the Union's electricity systems.

## II. NEW EU LAWS TO FIGHT TERRORISM AND ORGANISED CRIME

### *Terrorist offences*

Following intensive negotiations, the European Parliament and the Council reached political agreement on 17 November on the Commission's December 2015 proposal for a **Directive on combatting terrorism**<sup>1</sup>. This is a crucial step in our fight against terrorists and that support them. The Directive consolidates existing EU legislation and international standards<sup>2</sup> on the criminalisation of terrorist offences and incorporates "new" terrorism-related offences including terrorist financing and travelling abroad to commit a terrorist offence or to participate in a training camp – as well as returning from such activities, providing or receiving training. It is a key element in the fight against foreign terrorist fighters. The Directive also includes provisions to meet the specific needs of victims of terrorism with information, support and protection. The European Parliament and the Council now need formally to adopt swiftly the text and Member States' implementation period will be 18 months.

### *Firearms control*

Following a Commission proposal in November 2015 and repeated calls to the European Parliament and Council, a political agreement was reached on 13<sup>th</sup> December 2016 between the co-legislators on the revision of the **EU Firearms Directive**<sup>3</sup>. This is a vital step in stopping legal access to military grade assault weapons. The revised Directive broadens the range of weapons being prohibited and thus falling under the strictest Category A control, including automatic weapons converted to semi-automatic and semi-automatic weapons fitted with high capacity magazines and loading devices. In future, it will no longer be possible to buy or trade these weapons other than for a very narrowly defined group of licence holders – such as museums or sport shooters – who will be subject to stringent security and monitoring requirements. For the first time, limits will be placed on magazine size for both long and short semi-automatic barrelled weapons and all essential components of firearms will need to be marked and registered.<sup>4</sup>

At the same time as strengthening controls on legally-held firearms, the Commission is working to reinforce the **fight against illegal firearms trafficking**, especially in the Western Balkans, as foreseen in the 2015-2019 Action Plan. The Ministerial meeting with the Western Balkans on 16 December was an important milestone on this issue and a joint statement was adopted by the EU and the Western Balkans countries, in order to highlight the steps needed to fight more effectively illegal firearms trafficking both in Europe and in the Western Balkans.

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<sup>1</sup> COM (2015) 625 final

<sup>2</sup> Including the Additional Protocol to the Council of Europe Convention on the prevention of terrorism, and the standards of the Financial Action Task Force (FATF).

<sup>3</sup> COM(2006) 93 final

<sup>4</sup> At the meeting of COREPER on 20 December 2016 on the text agreed by the co-legislators on the Firearms Directive, the Commission issued a declaration regretting that some parts of the original proposal which set a greater level of ambition, in particular in proposing a complete ban of the most dangerous semi-automatic firearms, were not supported by the Parliament and the Council.

The Commission has also further tightened measures on explosive precursors to make it even harder for terrorists to gain access to the raw materials used in the **illicit manufacture of explosives**. Harmonised rules on the availability, introduction, possession and use of substances or mixtures that could be misused for the illicit manufacture of explosives are outlined in Regulation (EU) No 98/2013 to limit their availability to the general public, and ensure the appropriate reporting of suspicious transactions throughout the supply chain. Three Delegated Regulations<sup>5</sup> have been adopted to control the use of explosives precursors on aluminium powder, magnesium powder and magnesium nitrate. The Regulations place a strict reporting obligation on sales of precursor substances to prevent their diversion towards the illicit manufacturing of homemade explosives.

#### *Systematic border checks*

While third-country nationals are already subject to systematic document and security checks against relevant databases upon entry, the targeted reform of the **Schengen Borders Code**<sup>6</sup>, agreed by the co-legislators on 5 December, introduces mandatory systematic checks of EU citizens against relevant databases. In addition, third-country nationals will now also have to be checked systematically upon exit against the Schengen Information System (SIS) and Interpol's Stolen Lost Travel Document database. This amendment will help detect all the wanted individuals who have an alert placed on them – including foreign terrorist fighters.

### **III. DELIVERING ON THE ACTION PLAN TO STRENGTHEN THE FIGHT AGAINST TERRORIST FINANCING**

To address the whole range of means used by terrorists to raise and move funds, the Commission brought forward a comprehensive **Action Plan to strengthen the fight against the financing of terrorism in February 2016**.<sup>7</sup> Today, the Commission has adopted a new package of proposals to deliver the actions it had committed to finalise by end 2016. The proposed instruments will both make it harder for criminals to finance their activities and make it easier to trace their financial transactions, stop them and bring them to justice. The measures focus on tackling money laundering and illicit cash movements linked to terrorism and crime, by improving the freezing and confiscation of assets, and by exploring how to improve the detection and tracing of financing movements of terrorists.

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<sup>5</sup> C(2016) 7647 final, C(2016) 7650 final and C(2016) 7657 final

<sup>6</sup> COM (2015)670 final

<sup>7</sup> COM(2016)050 final

## *1. Criminalising money laundering and detecting illicit cash movements*

For competent authorities to be able to prosecute criminals and terrorists and get them behind bars, they need adequate criminal law provisions. The proposed **Directive to criminalise money laundering**<sup>8</sup> will provide a comprehensive definition of money laundering offences and sanctions across the EU. This directive will reinforce the existing framework fighting money laundering. It will also ensure that the EU meets its international obligations in this area, including the Warsaw Convention<sup>9</sup>, as well as the relevant recommendations from the Financial Action Task Force (FATF) and therefore also help address the existing obstacles to cross-border judicial and police cooperation in the fight against money laundering, and improve enforcement. Finally, the proposal should prevent criminals from exploiting the differences between national legislation to their advantage and act as an effective deterrent.

In order to pursue these crimes effectively, competent authorities need adequate tools to detect terrorists and their supporters. The existing Cash Control Regulation<sup>10</sup> requires those entering or leaving the EU with EUR 10 000 or more to make a declaration to that effect. However, there is no provision for cash that is sent in post, freight or courier shipments and competent authorities have signalled that criminals have resorted to sending or receiving cash via such shipments in order to escape the obligation to make a declaration under the Regulation.

Furthermore, the Cash Control Regulation requires only that declaration data be 'made available' by the competent authorities to the financial intelligence unit (FIU) of the Member State in which it was collected. This somewhat passive requirement can be met by simply making completed declaration forms available for inspection by the FIU. However, this is not sufficient as the information should be actively transmitted to the FIU in order to enable them to analyse it. Also, declaration data can be exchanged with competent authorities of other Member States only where there are indications of illegal activity and even then it is optional. This has given rise to inconsistent implementation and little systematic sharing of data.

The current Regulation also does not allow authorities to detain cash temporarily when they detect movements of sub-threshold amounts in relation to which there are indications of illegal activity. Issues have also been raised around the imperfect definition of 'cash'. And the levels of implementation of the existing rules differ widely among Member States.

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<sup>8</sup> COM(2016)826

<sup>9</sup> Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 2005, CETS No 198, [*which requests countries to criminalise the laundering of proceeds of a wide range of predicate offences (providing a list of predicate offence categories) and to criminalise ancillary activities, while making irrelevant whether the predicate offence was subject to the criminal jurisdiction of the country where the money laundering offence took place and requiring countries to ensure that a prior or simultaneous conviction for the predicate offence and the precise establishment of the predicate offence are not a prerequisite for a conviction for money laundering*].

<sup>10</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:309:0009:0012:EN:PDF>

For all these reasons, the **proposed Regulation to tackle illicit cash movements**<sup>11</sup> extends the scope of the existing Cash Control Regulation to include cash shipped by freight or post and will allow authorities to act upon lower amounts of cash where there are suspicions of illicit activity. The proposal also extends the obligation to declare to gold (in forms usable as highly liquid stores of value) and foresees a system of declaration on demand (a so-called 'disclosure' system) for cash moved by post and freight.

## *2. Asset freezing*

Asset freezing is an effective tool to prevent terrorists using and receiving funds and hindering their capacity to operate. Effective confiscation disrupts the sources of revenue of terrorist organisations in the long term and deprives criminals from profiting from their illegally obtained assets.

### *Freezing and confiscation measures in judicial proceedings*

One of the ways of doing this is to freeze and confiscate criminal assets in the course of judicial proceedings. This disrupts the sources of revenue of terrorist organisations in the long term and deprives criminals from using their illegally obtained assets.

To complement the 2014 Directive on confiscation and freezing<sup>12</sup> (which establishes minimum rules on the freezing and confiscation of criminal assets) and also the recently agreed Directive on Combatting Terrorism (which includes a self-standing criminal offence of terrorist financing), the Commission has proposed a **Regulation on the mutual recognition of criminal asset freezing and confiscation orders**<sup>13</sup>. This proposal will allow for more efficient cross-border freezing and confiscation of criminal assets issued in the framework of criminal proceedings, without any intermediate formalities. Taken together, these instruments will increase the possibilities to freeze and confiscate assets related to terrorism and crime by means of a judicial decision. This is particularly important, since judicial asset freezing in the context of criminal proceedings provides more safeguards than administrative asset freezing.

### *Administrative asset freezing*

When financial transactions linked to terrorism and crime are detected, public authorities can trace them and if necessary, block these and freeze the corresponding assets. Administrative asset freezing is a temporary tool of a preventive nature that can be applied in the absence of criminal proceedings to prevent suspected terrorists from using and receiving funds.

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<sup>11</sup> COM(2016)819

<sup>12</sup> Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union

<sup>13</sup> COM(2016) 826

The Financial Action Task Force (FATF) requires Member States to have provisions in place to freeze without delay the assets of persons or entities with links to terrorism. The absence of asset freezing regimes in a small number of Member States as well as the fact that some of the existing national regimes are not complete or effective have raised questions as regards the full compliance with international requirements. In a recent analysis<sup>14</sup>, the FATF considers that 14 EU Member States are not able to apply asset freezing measures to what the FATF calls "EU internal terrorists"<sup>15</sup>. Following the entry into force of the Lisbon Treaty, the EU acquired explicit competence via Article 75 TFEU to adopt administrative measures against individuals and legal persons, groups and non-state entities where necessary to achieve the objectives of the area of freedom, security and justice. The Commission committed in the February Action Plan to assess the need for a supplementary administrative system for freezing the assets of terrorists within the EU.

In terms of the current security threat in Europe, today, the biggest threat to European security remains jihadi-inspired terrorism<sup>16</sup>, while the assessment of the overall threat from other terrorist groups - with very few exceptions - remains low<sup>17</sup>. Therefore, the added value in terms of law enforcement and the fight against terrorism of a system under Article 75 TFEU is for the time being considered to be low.

Moreover, the current threat emanating from international terrorism is covered by existing provisions under EU law. The EU asset freezing regimes adopted under Common Foreign and Security Policy (CFSP) enable the freezing of funds and other assets linked to terrorism. These regimes have recently been upgraded and allow for the first time the autonomous establishment of a number of measures including the freezing of assets of persons linked to ISIL (Da'esh) and Al Qaeda<sup>18</sup>. The new system allows for the blocking of the funds of persons and entities associated with these organisations or participating in activities such as financing, training, recruiting, inciting to commit terrorist acts, as well as travelling outside or into the EU to participate in activities of ISIL (Da'esh) or Al Qaeda. These regimes apply to third country nationals as well as to EU citizens, as far as they have a link to international terrorism. This means the EU can block the assets of any terrorist operating in Europe insofar as they have links to these groups.

For other groups operating in the EU, the reinforced criminal law framework provides more options to block funds linked to terrorism than in the past, with more safeguards than administrative asset freezing while still enabling quick and effective action.

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<sup>14</sup> Results of the TF Fact-Finding Initiative, FATF/PLEN(2015)36

<sup>15</sup> However, the Commission considers that there are no grounds in national or international law to distinguish between internal and international terrorism.

<sup>16</sup> "Changes in Modus Operandi of IS revisited"; Europol, 2 December 2016

<sup>17</sup> European Union Terrorism Situation and Trend Report (TE-SAT) 2016, Europol

<sup>18</sup> Council Decision (CFSP) 2016/1693 concerning restrictive measures against ISIL (Da'esh) and Al-Qaeda and persons, groups, undertakings and entities associated with them, and repealing Common Position 2002/402/CFSP, and Council Regulation (EU) 2016/1686 of 20 September 2016 imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaeda and natural and legal persons, entities or bodies associated with them.



Taking into account the limited additional value in terms of law enforcement activities of a new regime adopted under Article 75 TFEU, that existing instruments already cover the needs arising from current threats, and the increased possibilities in the context of EU criminal law to freeze assets related to terrorism, the Commission does not consider it necessary to take further steps at this point in time. However, the Commission will continue to monitor the evolution of the terrorist threat within the EU very closely and will review the necessity of introducing measures on the basis of Article 75 TFEU on a regular basis.

### ***3. Tracking terrorist financing***

The Action Plan on Terrorist Financing highlighted that when it comes to detecting the movement of funds through financial transactions or the identification of terrorist networks and affiliates, both Financial Intelligence Units (FIUs) and tracking systems such as the EU-US Terrorist Financing Tracking Programme (TFTP) are key tools. However, existing capacities should be reinforced to focus both on complex and large-scale funding operations, and on "low cost" terrorist operations which use new modes of payment which are difficult to track. The speed of reaction is also essential, as current financial services allow terrorists to move funds very rapidly from one place to the other. This clearly shows the need to improve cooperation and exchange of financial and law enforcement intelligence. Tracking of international transactions through the EU-US Terrorist Finance Tracking Programme (TFTP) agreement appears to function effectively. Following an impact assessment, a Commission Communication of November 2013 concluded that setting up an EU-based system (referred to as TFTS, Terrorist Finance Tracking System) duplicating the TFTP would not be proportionate or bring added value.

However, given the rapidly evolving pattern of terrorist financing, it would nevertheless be worthwhile to analyse the need for complementary mechanisms to the EU-US TFTP to fill any potential gaps (i.e. transactions which are excluded from the EU-US TFTP agreement – notably intra-EU payments in euro – and may not be possible to track otherwise).

First, since 2013, the situation has evolved: the terrorist threat has shifted and the financial resources used by terrorists are often smaller and do not necessarily transit through transfer systems such as the one covered by EU-US TFTP. Many new means of payment have also emerged offering new ways for terrorists to finance themselves.

Discussions with Europol and Member States suggest that a European system complementing EU-US TFTP could provide competent authorities with a more complete picture of relevant financial transactions that are currently missing, without having to consult numerous databases (mostly limited to information held at national level) and the related risk of possibly overlooking crucial information. It would also enable cross-checking of that information with the authorities of other Member States. Combined with other intelligence, it could help to identify suspects earlier in an investigation with a view to preventing attacks, provide useful intelligence right after an attack, allow faster identification of the perpetrators and their supporters, and provide important evidence for the prosecution of terrorists.

However, the added value of a European complementary system would need to be weighed against other considerations. This would need to include notably: (i) an assessment of the risks of a particular channel to be used for terrorist financing, and the proportionality of the measure envisaged; (ii) the technical complexity, feasibility and costs of collecting and processing large amounts of data from a wide range of entities and the economic impact on these entities; and (iii) the impact on fundamental rights, notably the protection of private life and the right to the protection of personal data.

A key issue would be the scope of such a system, notably which payment and money transfer services could be included and which entities holding financing information could be required to provide information to this system.

Limiting the scope to Single European Payments Area (SEPA) wire transfers could already provide some added value in terms of law enforcement: the majority of terrorist cells located in Europe have derived some income from legal sources – usually received through the formal banking system – and use bank accounts and credit cards both for their everyday economic activities and for attack-related expenses. The potential providers of data would be financial message services providers and automated clearing houses, but could also include credit institutions. However, while a system covering SEPA transfers would benefit from an existing regulatory framework and common standards, it would exclude transactions across the EU in currencies other than the euro and using other means of payment.

Extending the scope to cover transfers in other currencies as well as payments with credit, debit and pre-paid cards, e-wallet providers, money remittances or virtual currencies could further increase the added value in terms of law enforcement. At the same time, it would involve a significant additional amount of data and providers, which could have a further significant impact on the costs of the system and its proportionality.

In light of these considerations, the Commission will continue its assessment and will consider options to set up a European system to track terrorist financing, complementary to the existing TFTP, including the impact of these options on fundamental rights. Considering the technical and legal complexity of the issues involved, detailed consultation with financial services providers will be necessary. The Commission will report on its findings in the summer of 2017.

Looking ahead, the work to fully deliver the Action Plan to strengthen the fight against terrorist financing will continue in 2017, notably on the possibility to reinforce the powers of customs authorities to fight against terrorism financing, presenting a proposal to address terrorism financing through trade in goods and illicit trade in cultural goods, and examining possibilities to extend law enforcement and other public authorities access to bank account registers. The Commission is encouraging co-legislators to prioritise the legislative files already presented and to reach agreement on the revised 4th Money Laundering Directive without further delay<sup>19</sup>.

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<sup>19</sup> [https://ec.europa.eu/priorities/sites/beta-political/files/joint-declaration-legislative-priorities-2017\\_en.pdf](https://ec.europa.eu/priorities/sites/beta-political/files/joint-declaration-legislative-priorities-2017_en.pdf)

#### IV. STRENGTHENING INFORMATION SYSTEMS AND TACKLING BLIND SPOTS

Effective and systematic information exchange between Member States and strong, interconnected information systems are key tools in strengthening our defences against terrorism and organised crime. The Commission is driving this work forward by ensuring better implementation by Member States of existing instruments, and by accelerating its work towards stronger and smarter information systems for borders and security as initiated in April 2016.<sup>20</sup> This aims to ensure that competent authorities systematically have the necessary information from different information systems at their disposal to address current security challenges.

A key aspect of improving information management at EU level is to address shortcomings in existing systems and to optimise their performance. To that end, the Commission presented a set of proposals to strengthen the effectiveness and efficiency of the **Schengen Information System (SIS)** as the most important and widely used information-sharing instrument today.<sup>21</sup> Based on a comprehensive evaluation, the Commission's new proposals<sup>22</sup> seek to improve the functionalities of the system to meet new operational needs.

The proposal will improve and extend the use of SIS and its added value for law enforcement and strengthen the access rights of competent EU Agencies such as Europol and Eurojust. It will extend some of the existing alert categories and types of checks, introducing a new alert category on "unknown wanted persons" and a preventive alert on children at high risk of abduction. It will also introduce an obligation to create a SIS alert in case a person is sought in relation to a terrorist offence. The proposal will also improve the enforcement of return decisions issued to irregularly staying third-country nationals by introducing a new alert category for return decisions. Moreover, it will contribute to the effective enforcement of entry bans for third-country nationals at the external border by making their introduction in the SIS compulsory. The proposal will provide new functionalities to the system, such as a more effective use of data such as facial imaging and fingerprints. It will also enhance data security and the quality of the data recorded in SIS, for example by providing for uniform requirements to officers on the ground on how to process SIS data in a secure way.

The proposal will strengthen data protection by introducing additional safeguards to ensure that the collection, processing and access to data is limited to what is strictly necessary, in full respect of EU legislation and fundamental rights, including the right to effective remedies.

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<sup>20</sup> See the Communication on "Stronger and Smarter Information Systems for Borders and Security", COM(2016) 205 final of 6.4.2016.

<sup>21</sup> In 2015, national competent authorities checked persons and objects against data held in SIS on nearly 2.9 billion occasions and exchanged over 1.8 million pieces of supplementary information.

<sup>22</sup> COM(2016) 883

In addition to improving the functioning of existing systems, work will also continue on how information systems interact with each other. President Juncker's State of the Union address in September 2016 and the European Council conclusions of December 2016 refer to the importance of overcoming the current shortcomings in information management and of improving the **interoperability and interconnection between existing information systems**. The Commission's High Level Expert Group on Information Systems and Interoperability is assessing options to achieve this. The High Level Expert Group multi-disciplinary and multi-agency cooperation approach as outlined by the European Agenda on Security, including possible synergies with information systems for border management and law enforcement and customs authorities as set out in the EU Customs Union governance.

In order to accelerate delivery the **High Level Expert Group on Information Systems and Interoperability** presented, on 21 December, a chairman's interim report with a proposal to create a single search portal allowing law enforcement and border management authorities on the ground to search simultaneously existing EU databases and information systems. Member States' competent authorities would also be able to conduct such simultaneous searches with Europol's databases, thanks to a system interface that Europol is developing with Member States. The report also highlights the importance of data quality and makes recommendations to improve the quality of data in EU systems.

The High Level Expert Group will present its final report in the first half of 2017. Based on these findings and discussions with the European Parliament and the Council, the Commission will consider measures to further boost the interoperability of EU information systems and increase their effectiveness to address the current security threats.

#### **IV. CONCLUSION**

The Commission will continue to drive forward work on the implementation of the European Agenda on Security, towards an effective and genuine Security Union, and will report on further progress in January. The report in January will focus on strengthening our defences – including taking forward the interim report of the High Level Experts Group on information systems and interoperability.