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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 18 April 2018

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY
OF THE IMPACT ASSESSMENT Accompanying the document Proposal
for a Directive of the European Parliament and of the Council on 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

Delegations will find attached document SWD(2018) 115 final.

Encl.: SWD(2018) 115 final



EUROPEAN
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Strasbourg, 17.4.2018
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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposal for a Directive of the European Parliament and of the Council
on 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

{COM(2018) 213 final} - {SWD(2018) 114 final}

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Executive Summary Sheet	
Impact assessment on facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences.	
A. Need for action	
Why ? What is the problem being addressed ?	
<p>Criminal groups and terrorists often operate across different Member States and their assets, including bank accounts, are usually located across the EU or outside of it. Their financial activities might leave an information trail in other Member States that can be crucial for investigators. Lack of access or delayed access to financial information and bank account information hampers the detection of financial flows resulting from criminal activity. Proceeds of crime may remain undetected or cannot be frozen. In addition, Financial Intelligence Units (FIUs) face obstacles in the cooperation between them, as well as in accessing law enforcement information which is relevant to the performance of their tasks under the 4th Anti-Money Laundering Directive EU(2015)849 (4AMLD).</p>	
What is this initiative expected to achieve ?	
<p>This initiative aims at increasing the security in the EU Member States and across the EU by improving access to financial information, including bank account information to the competent authorities and bodies in charge for the prevention, investigation and prosecution of serious forms of crimes, enhancing their ability to conduct financial investigations and analysis, and improving their cooperation. In addition, the initiative aims at enhancing the ability of the FIUs to carry out their tasks under the 4AMLD.</p>	
What is the value added of action at the EU level ?	
<p>The EU action would provide a harmonised approach to facilitate competent authorities and bodies' access to financial information for the purposes of combating serious crime as well as to strengthen the FIUs' capabilities in fighting money laundering, its predicate offences and terrorist financing. Given the cross-border dimension of these crimes, the resulting need for competent authorities to have more expedient access to information for their analyses and investigations and to cooperate more effectively and efficiently at both the national and the cross-border levels, action at EU level is necessary to facilitate a smooth cooperation between authorities and to allow them to access and exchange relevant information.</p>	
B. Solutions	
What legislative and non-legislative policy options have been considered ? Is there a preferred choice or not? Why?	
<p>A non-legislative policy Option O and 13 legislative policy options were considered and grouped into:</p> <ul style="list-style-type: none"> • Block A: "WHY" should the competent authorities have access to or exchange financial information? <p>OPTION A.1: only to prevent and combat money laundering, its predicate offences and terrorist financing.</p> <p>OPTION A.2: only in respect of the "Eurocrimes" set out in Article 83(1) TFEU.</p> <p>OPTION A.3: in respect to the forms of crimes as set out in Annex I of the Europol Regulation.</p> <ul style="list-style-type: none"> • Block B: "HOW" should public authorities access and exchange financial information? <p>OPTION B.1: provide competent authorities with access to the national centralised bank account registries according to 1) Sub-option B.1.a: direct access; or 2) Sub-option B.1.b: indirect access.</p> <p>OPTION B.2: provide competent authorities with access to all other financial information according to 1) Sub-option B.2.a: direct access; or 2) Sub-option B.2.b: via the FIUs.</p> <p>OPTION B.3: provide measures for the exchange of information between FIUs and for FIUs access to and exchange of information that competent authorities hold according to 1) Sub-option B.3.a: direct cooperation between FIUs; or 2) Sub-option B.3.b: establish a central FIU.</p> <ul style="list-style-type: none"> • Block C: "WHO", to which public authorities do the conditions apply? <p>OPTION C.1: to public authorities responsible for preventing, investigating or prosecuting criminal offences</p> <p>OPTION C.2: to the public authorities in Option C.1 and additionally 1) Sub-option C.2.a: the Asset Recovery Offices; 2) Sub-option C.2.b: Europol; 3) Sub-option C.2.c: OLAF</p> <p>Regarding the access of competent authorities to information, contained in bank account registries, the preferred policy option is a combination of options A.3, B.1.a, C.2.a and C.2.b.</p> <p>Regarding the access of competent authorities to additional financial information, the preferred policy option is a combination of options A.3, B.2.b and C.2.b.</p> <p>In order to address obstacles in cross-border FIU cooperation and difficulties met by FIUs to cooperate with their domestic LEA partners the preferred policy option is a combination of options A.1, B.2.b, B.3.a and C.2.b.</p>	

Who supports the preferred option?
Stakeholders agreed that access to centralised bank account registries would facilitate the effectiveness of law enforcement investigations and avoid the costs and administrative burden of untargeted requests to the banks. Most respondents in the public consultation agreed to grant access to competent authorities including Asset Recovery Offices. Member States agree to facilitate the cooperation between FIUs and the exchange of information between FIUs and competent authorities. In a recent Eurobarometer survey 92% of the respondents agree that national authorities should share information with the authorities of the other EU Member States in order to better prevent and fight crime and terrorism.
C. Impacts of the preferred option
What are the benefits of the preferred option (if any, otherwise main ones)?
The preferred option is expected to provide better means of increasing security and fighting crime in the EU. It would provide speedier access to clearly defined financial information and more effective and efficient cooperation between FIUs and competent authorities. It would reinforce the possibility for competent authorities, including, Asset Recovery Offices and Europol to quickly access key financial information which is crucial for financial investigations. The preferred option would also substantially enhance the ability of FIUs to carry out financial analysis to prevent money laundering and terrorist financing. The preferred option would increase costs and administrative burden linked to sending and replying to untargeted "blanket" requests.
What are the costs of the preferred option (if any, otherwise main ones)?
The one-off costs of implementing the preferred option providing direct access to centralised bank account registries and data retrieval systems are estimated at between € 5 000 and € 30 000 (these have to be multiplied by the number of authorities to be connected to the centralised bank account registries and data retrieval systems). The costs of the access to financial information via the FIUs mainly fall on the FIUs.
How will businesses, SMEs and micro-enterprises be affected ?
Additional costs for the banking sector are not foreseen. On the contrary, this initiative would lead to significant financial savings for the banks, as they would not have to process and answer to blanket requests coming from the competent authorities. No specific impacts are expected on SMEs and micro-enterprises.
Will there be significant impacts on national budgets and administrations?
The costs of implementing direct access to centralised bank account registries and data retrieval systems and of the access to financial information via the FIUs will impact on national budgets and administrations. However, these costs should be offset by a reduction in the current administrative and financial costs of competent authorities, as well as by cost savings due to a more efficient cooperation between FIUs and with competent authorities.
Will there be other significant impacts?
The proposed measures would have an impact on fundamental rights; the interference with the right to the protection of personal data would be kept to the minimum, as the access is limited and targeted only to the relevant authorities, thereby ensuring proportionality. Direct access will be allowed to the CBAR/DRS since they contain limited information. Access to other types of financial information will be possible via the FIUs. The preferred options do not go beyond what is necessary to achieve the objectives, and are assessed as the least intrusive legislative instruments at Union level, in line with the requirements set out by the Court of Justice. A future legal proposal would not affect any procedural safeguards as laid down in national law and would provide strict safeguards, further mitigating any negative impacts on fundamental rights.
D. Follow up
When will the policy be reviewed?
The Commission will monitor the effective implementation of the proposed legislative instruments and, on the basis of consultations with Member States and stakeholders, will evaluate their achievements against their objectives and the problems to be addressed within 3 years after adoption of the measures proposed.