

October 2016

## Prevention of the use of the financial system for the purposes of money laundering or terrorist financing

*Impact Assessment (SWD (2016) 223, SWD (2016) 224 (summary)) of a Commission proposal for a directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on prevention of the use of the financial system for the purposes of money laundering or terrorist financing and Directive 2009/101/EC (COM (2016) 450)*

### Background

This briefing seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's [Impact Assessment](#) (IA) accompanying its above-mentioned proposal, submitted on 5 July 2016 and referred jointly to Parliament's Committees on Economic and Monetary Affairs (ECON) and on Civil Liberties, Justice and Home Affairs (LIBE). This proposal would amend the fourth Anti-Money Laundering Directive, which was adopted on 5 June 2015 and is due to enter into force in 2017. The terrorist attacks of late 2015 had already prompted a review of the anti-money laundering framework when, in April 2016, the Panama Papers created a renewed sense of urgency to act in a related field. As a result, the IA under review consists of two parts. Part 1 analyses the amendments brought about in the light of the terrorist attacks, whereas Part 2 addresses the Panama Papers revelations. Both parts are presented in parallel below. This IA builds on a 2013 [Commission IA](#), which was the subject of a separate [initial appraisal](#)<sup>1</sup>.

### Problem definition

**Part 1** - The action plan for strengthening the fight against terrorist financing, presented by the Commission in February 2016, contains a number of [measures](#) aimed at addressing problems that became even more evident after the recent terrorist attacks. The IA accompanying the current proposal identifies the following five problems:

1. suspicious transactions involving **high-risk third countries** are not efficiently monitored due to unclear and uncoordinated **customer due diligence requirements**;
2. suspicious transactions made through **virtual currencies** are not sufficiently monitored by the authorities, which are unable to link identities and transactions;
3. current measures to mitigate money laundering/terrorist financing risks associated with **anonymous prepaid instruments** are not sufficient;
4. **Financial Intelligence Units** have limitations in the timely access to – and exchange of – information held by obliged entities;
5. **Financial Intelligence Units** lack access or have delayed access to information on the identity of holders of bank and payment accounts.

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<sup>1</sup> Maniaki-Griva, Alexia, 'Initial appraisal of the impact assessment accompanying the Commission proposals for a directive on money laundering and terrorist financing and for a regulation on transfer of funds', European Parliament, July 2013, PE 508.970.

One of the strengths of the problem definition is the identification of the underlying drivers, which according to the Commission had not been sufficiently addressed in the recent Anti-Money Laundering Directive. Overall, this is supported by useful evidence. For instance, a quantification exercise shows the high costs for Member States of sending a blanket request to all banks, should they want to obtain a list of bank accounts held by a suspected terrorist, for example (IA, pp. 22-23 and p. 162). Anecdotal, but striking, evidence, such as of terrorists promoting virtual currencies (IA, p. 14) or using anonymous prepaid cards (IA, p. 18), is also provided. In terms of economic analysis, in the first part of the IA there is an attempt to consider that even though virtual currencies and pre-paid cards can be used for fraudulent reasons, they are mostly used for perfectly legitimate transactions.<sup>2</sup> However, a proper risk assessment, which, according to the Commission's Better Regulation (BR) Guidelines, would seem to be relevant for these issues, is lacking (See BR Toolbox, tool no 12). Moreover, the IA does not clearly show the links between the different problems identified. Broadly speaking, anonymity would appear to be the common thread linking most of these issues (and, indeed, the problems identified in the second part of the IA).<sup>3</sup> The overall consequence seems to be that criminal and terrorist financing flows are not effectively detected and, as a result, money laundering and terrorist financing are not prevented.

**Part 2** - The IA identifies the following four problems related to the Panama Papers revelations:

1. certain intermediary entities are particularly susceptible to hide illicit money;
2. there are excessive limitations in accessing the beneficial ownership registers for legal entities (such as companies);
3. trusts are not sufficiently transparent;
4. certain public authorities lack information.

The IA does not clearly explain how the two sets of problems, identified separately in the two parts of the IA, might be inter-related. This is particularly striking for the issues affecting public authorities (problem 4 in part 2; problems 4 and 5 in part 1). Focusing on part 2, the BR Guidelines state that 'an IA starts by verifying the existence of a problem, identifying who is affected, estimating the problem's scale, analysing its causes and consequences...' (BR Guidelines, p. 19). Although the IA does verify the existence of the problem, it contains weaknesses related to the other elements of this initial step. Firstly, the IA does not analyse the role of tax advisors, law firms and other promoters, which, according to the Panama Papers, are involved in aggressive tax planning schemes. Although the Commission plans to adopt a related proposal introducing effective disincentives for these intermediaries in the second quarter of 2017, it would have been helpful to introduce the issue already in the IA. Moreover, it is difficult, based on the IA, to have a thorough understanding of the mechanisms behind the offshore entities. The explanation dedicated to the functioning of trusts (IA, p. 88) does not really enlighten the reader. Equally lacking is an analysis of the final beneficiaries of possible reforms. The Annex 'Who will be affected by the initiative and how', compulsory, according to the BR Guidelines, only deals with the first part of the IA (IA, pp. 123-126).

Secondly, the IA, invoking the scarcity of official data, attempts to estimate the scale of the money laundering / tax avoidance issues, but leaves some questions unanswered. There is, for instance, some data on the 'top 10 banks that requested the most offshore companies for clients'. According to the IA, these banks are based in Luxembourg (4); the Channel Islands (3); Switzerland (2) and Monaco (1) (IA, p. 83). Moreover, the IA presents two different sources - the Swiss national bank and the Panama Papers - which, according to the Commission, point to the British Virgin Islands, Panama, and the Bahamas, in this order, as playing a leading role as tax havens (IA, pp. 86-87). The main unanswered question, however, is the degree of involvement of entities in Member States. The figures from the Swiss national bank seem to imply that the United Kingdom, France, Germany and Italy could be considered offshore centres, but this is left unaddressed in the IA. Even though some double-counting cannot be

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<sup>2</sup> On this aspect, see also '[The law enforcement challenges of cybercrime: are we really playing catch up?](#)', Study for the LIBE Committee, Policy Department C, Study for the LIBE Committee, European Parliament, 2015.

<sup>3</sup> Scholars describe some virtual currencies as 'pseudonymous', rather than 'anonymous'. See 'The law enforcement challenges of cybercrime: are we really playing catch up?', p. 38.

excluded, it has been suggested that an alternative classification of EU Member States according to the number of offshore entities, based on the Offshore Leaks Database, could point to the leading role of the United Kingdom, Luxembourg and Cyprus.<sup>4</sup>

Thirdly, the IA does not clearly set out the links between causes, problems and consequences, and this does not facilitate the consideration of the Commission's reasoning. This is partly due to the fact that the second part of the IA does not follow the standard structure (BR Toolbox, tool no 8, 'Format of the IA report') and instead groups together problems, options, analysis of impacts and comparison of impacts.

## Objectives of the legislative proposal

The IA presents two general objectives for the proposal in the two parts of the IA. These objectives are coherent with each other, which might suggest that it would have been possible to present the two parts as a single, coherent text. Under **Part 1**, the general objective is to 'prevent money laundering and terrorist financing by more effective detection of criminal and terrorist financing flows' (IA, p. 26). Under **Part 2**, the general objective is to 'prevent money laundering and terrorist financing by greater transparency on capital flows' (IA, p. 84). Specific and operational objectives are indicated in the 'Options' section of the tables below.

## Range of options considered

In Part 1, the IA considers the status quo option and a non-regulatory option only once for all problem areas, as well as different regulatory alternatives for each of the problems identified. The status quo is not considered a viable option. The non-regulatory option entails, for instance, the mapping of obstacles to information exchange carried out by Financial Intelligence Units, the supranational assessment of money laundering and terrorist financing risks, and the cooperation with international fora, such as the Financial Action Task Force. The non-regulatory actions are part of the EU answer to terrorist financing, although they are considered not sufficient to completely solve the problems identified<sup>5</sup>. The table below provides a synoptic view of the main regulatory options analysed in the IA. The Commission's preferred options are highlighted in grey.

**Table 1: Main regulatory options in part 1 of the IA**

Objective	Option	
1. Harmonised due diligence measures for obliged entities when dealing with high-risk countries	A - obliged entities would be required to apply at least all enhanced customer due diligence measures in a prescriptive list when dealing with high-risk third countries designated by the Commission	
	B = A + <i>and/or</i> , obliged entities would be required, <i>where appropriate</i> , to apply one of the counter-measures in an <i>illustrative</i> list when dealing with high-risk third countries designated by the Commission	
	C = B + the same requirements would apply also when dealing with high-risk third countries identified at national level, and at sectorial level (i.e. by obliged entities themselves)	
2. Address the anonymity of virtual	users	A - through mandatory registration
		B - through voluntary self-registration

<sup>4</sup> Ioannides, Isabelle, [The inclusion of financial services in EU free trade and association agreements: Effects on money laundering, tax evasion and avoidance](#), Ex-post impact assessment, EPRS, June 2016, pp. 19-20.

<sup>5</sup> See Commission's Question and Answer: Anti-money Laundering Directive, [Memo/16/2381](#)

currencies targeting by	exchange platforms	C - by regulating them under the fourth Anti-Money Laundering Directive (4AMLD)
		D - by regulating them under under the revised Directive on Payment Services (PSD2)
	custodial wallet providers	E - by regulating them under the 4th Anti-Money Laundering Directive
		F - by regulating them under under the revised Directive on Payment Services
3. Reducing the misuse of anonymous prepaid instruments	A - All prepaid cards are subject to Customer Due Diligence (CDD = simultaneous identification and verification of identity) from the first euro (= removing all the existing exemptions for pre-paid instruments = removing Article 12 of the 4AMLD)	
	B - All pre-paid cards are subject to CDD from the first euro only when used online	
	C - All prepaid cards with a value above €150 are subject to CDD	
	D - All pre-paid cards are subject to simplified customer due diligence (tobacco-style 'show your ID') from the first euro and reloadable ones are in addition subject to verification of identity at a later stage, e.g. upon crossing a €250 threshold	
	E – Non-reloadable cards with a value above €150 are subject to CDD; reloadable cards are subject to CDD from the first euro	
4. Improving FIUs' access to – and the exchange of – information held by obliged entities	A – aligning EU law with the latest international standards on anti-money laundering/countering the financing of terrorism (AML/CFT) in this field and clarifying Financial Intelligence Units (FIU) powers	
	B – Establishing a single European FIU to receive, analyse and disseminate results to national competent authorities	
5. An efficient mechanism to ensure timely access to information on the identity of holders of bank and payment accounts	A – an automated central <i>registry</i> at Member State level directly accessible to national FIUs (and other national AML/CFT competent authorities) for AML/CFT purposes	
	B – an automated central <i>mechanism</i> at Member State level directly accessible to national FIUs (and other national AML/CFT competent authorities) for AML/CFT purposes	
	C – an automated central <i>registry or mechanism</i> at Member State level, directly accessible to a <i>broader</i> range of national authorities and for a <i>broader</i> purpose	

Source: IA, author

Beyond these options, which are analysed more in depth, the IA considered and rejected other possibilities (IA, pp. 166-171). Some of these may have deserved a more thorough analysis, although one should acknowledge that the Commission's IA format is stretched to its limit when dealing with several issues at the same time, as in this case. Moreover, there are some additional weaknesses.

- As far as *virtual currencies* are concerned, it is unclear why software wallet providers would be excluded from regulation, whereas custodial wallet providers would be included. The technical difference presented does not, at first sight, seem to be sufficient evidence (IA, pp. 14-15; p. 31).
- As far as *prepaid cards* are concerned, it is unclear why Option D was analysed in depth, as the IA states that it would be ineffective (IA, p. 58). According to this option, the customer would simply need to show their ID, as it happens in some countries when purchasing tobacco or alcohol.

**Table 2 - Main options in part 2 of the IA**

Objective	Option
	1. Status quo

Improve the monitoring of beneficial owners of existing customers, like trusts, other legal arrangements and legal entities such as foundations to prevent the circumvention of EU transparency standards	2. Obligatory systematic review of all existing customer relations by all obliged entities
	3. 'Review of Passive Non-Financial Entities that have accounts over US\$1 million at the occasion of asking for self-certification from those Passive Non-Financial Entities' <sup>6</sup> (IA, p. 92)
Reduce the possibility for entities with no active business to circumvent the existing 25% threshold and hide their beneficial owner	1. Status quo
	2. Reduction of the ownership threshold for all corporate entities
	3. 10% beneficial ownership threshold for Passive Non-Financial Entities
Enhance transparency and improve public access to the beneficial ownership registers <i>for legal entities (such as companies)</i>	1. Status quo
	2. To make the current optional system in the fourth Anti-Money Laundering Directive mandatory, by giving full public access rights to the information held in beneficial ownership registers of legal entities
Align the understanding and application of how trusts should be registered and monitored in the EU	1. Status quo
	2. Registration of all trusts according to the law under which they are set up
	3. Registration of all trusts according to the place of administration of the trust
Enhance transparency and improve public access to the beneficial ownership registers <i>for legal arrangements (such as trusts)</i>	1. Status quo
	2. Give full public access to the beneficial ownership information on all trusts
Improve access to information collected for anti-money laundering purposes by competent authorities (such as tax authorities, law enforcement authorities)	1. Status quo
	2. Clarify in the text of the fourth Anti-Money Laundering Directive the notion of competent authorities

Source: IA, notably p. 84 (objectives); author

The BR Guidelines recommend to 'consult widely about alternatives, think outside the box and give due consideration to all different options' (BR Guidelines, p. 22). This requirement does not appear to have been met in the second part of the IA, at least in so far as it seems reasonable to assume that additional alternative options could have been considered. As the table above shows, for two of the declared objectives the IA does not select any preferred option. Although the implementation of mandatory public access to beneficial ownership information does not seem - according to the Commission - the best option to achieve more transparency, the IA does not suggest any other alternative to the status quo.

## Scope of the Impact Assessment

The IA, in both of its parts, assesses and compares all options according to four appropriate impact criteria: the achievement of the objectives, cost-efficiency (costs/administrative burden), data protection/fundamental rights, and proportionality. A first weakness, however, is that one does not get an overall view of the impacts of the proposals, as these criteria are analysed in just a few lines for each of the options. For instance, the impact of the

<sup>6</sup> A controlling person of an intermediary entity (so-called 'Passive Non-Financial Entity') having pre-existing accounts over US\$1 million is required by the Directive on Administrative Cooperation to self-certify some information. Under this option, when this happens, the financial institution would upgrade the beneficial ownership information as well.

proposal on data protection and fundamental rights is unclear in the IA. The explanatory memorandum is more helpful in this respect. The IA states that on 14 March 2016 it requested the European Data Protection Supervisor for an opinion on the issues covered by the amendments (IA, p. 121). However, this opinion is not available in the IA or on the EDPS website. This is regrettable, as it would have been interesting to know to what extent the [2013 EDPS opinion on the fourth Anti-Money Laundering Directive](#) has been taken into account. Nor is it clear whether the Commission's request of 14 March 2016 covers the amendments linked to the Panama Papers. A second weakness is that the content of the analysis remains mostly legal. Moreover, particularly for the second part of the IA, although it could be assumed that the preferred options would have positive indirect economic and social impacts, these aspects are not assessed in depth.

## **Subsidiarity / proportionality**

The legal basis of the initiative is Article 114 TFEU. The IA argues, in a similar way in both parts, that the need to act at European level is justified, for instance, by the need to ensure the cohesion of the internal market and to avoid the risk of regulatory arbitrage. The cross-border dimension of money laundering, terrorist financing, tax evasion and tax planning are given as reasons why EU action would add value (IA, part 1, pp. 24-25; part 2, p. 84)<sup>7</sup>. The deadline for national parliaments to raise objections to the proposal on grounds of subsidiarity is 27 October 2016. At the time of writing, no parliament has issued a reasoned opinion. All options proposed in both parts of the IA are assessed individually in terms of proportionality.

## **Budgetary or public finance implications**

Member States have provided some estimates concerning the impact of some provisions on national authorities. In particular, costs for setting up automated centralised mechanisms to identify holders of bank and payment accounts vary between €175 000 and €1 200 000. Yearly recurrent costs for maintenance are within a very wide range, between €3 000 and €600 000 (IA, pp. 163-165). However, as data provided by Member States are anonymised, one cannot draw further conclusions, for instance by linking such costs to the size of the banking industry. Although budgetary or public finance implications of the measures more directly linked to the Panama Papers may well be covered by some generic statements in the sections relating to costs, these do not lend themselves to providing a coherent picture of this issue. The explanatory memorandum states that the proposal as a whole 'does not have a budgetary impact for the Union budget' (p. 12).

## **SME test / Competitiveness**

**Part 1** - The [inception IA](#) announced that the 'impact of the proposed measures on SMEs active in the field of prepaid instruments and virtual currencies... is to be examined further when conducting the impact assessment'. The IA itself, however, simply refers back to the analysis carried out for the original 2013 IA, arguing that it does not expect the five targeted amendments to generate additional effects toward SMEs or administrative burden (IA, p. 40). The impact of the initiative on competition is not assessed. This aspect appears to be relevant, for instance, for the online identification of prepaid cards users, an option retained by the Commission, as incumbent service providers in this niche market may enjoy a first-mover advantage.

**Part 2** - The IA argues that, at EU level, the implementation of the legislative proposal by all Member States should prevent distortions and maintain competitiveness of EU banks and financial institutions. Although the transparency issue is correctly framed within a wider international agenda (IA, p. 81), the progress and ambitions of non-EU countries in this field are not analysed in depth in the IA. As a result, it is unclear whether EU banks and financial institutions might become less competitive compared to non-EU banks and financial institutions. Finally, the IA makes a qualitative comparison of the administrative burden associated with the different options, but it does not provide cost estimations in terms of burden for obliged entities.

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<sup>7</sup> See also, ['The cost of non-Europe in the area of organised crime and corruption'](#), EPRS, 2016.

## Simplification and other regulatory implications

The IA analyses the coherence of the measures proposed with relevant pieces of law, most notably with: the fourth Anti-Money Laundering Directive (Directive (EU) 2015/849), which is being amended; the Directive on Administrative Cooperation (2011/16/EU); and the second Payment Services Directive (Directive 2015/2366). The date for transposition of the fourth Anti-Money Laundering Directive was set at 26 June 2017, but the current proposal brings forward the date for transposition of the entire framework into national law to 1 January 2017.

## Relations with third countries

For this IA, the Commission consulted authorities from third countries, such as the Japanese Financial Services Authority and the US Treasury (IA, p. 122). In the first part, useful evidence about third countries is provided on **prepaid cards** and **virtual currencies**, for instance, even though the IA argues against the solutions adopted. In the USA, anonymity for reloadable prepaid cards is lifted from the first euro (IA, p. 155). Still in the USA, a recent regulation on virtual currencies, to be applied to exchange platforms and custodial wallet providers, includes capital requirements and consumer protection rules (IA, p. 144). However, for customer due diligence, a more concrete and broader analysis of the **high-risk countries** with strategic deficiencies in their anti-money laundering framework might have been useful. For reference, the Commission delegated Regulation (EU) 2016/1675 sets out the [list](#) of such countries adopted by the Commission on 14 July 2016, and which is largely in line with the one adopted by the Financial Action Task Force. In the IA, this information is confined to p. 13, footnote 11 and pp. 131-134. The data presented shows that some of these countries have very limited or no trade relationships with the EU.<sup>8</sup> In its **second part**, the IA presents two different sources - the Swiss national bank and the Panama Papers - which, according to the Commission, point to a leading role as tax havens of the British Virgin Islands, Panama, and the Bahamas (IA, pp. 86-87). However, the analysis does not thoroughly address the impact of the proposal on tax havens. Generally speaking, it is unclear whether the impacts of the proposal could differ according to whether entities are based in a third country -- either in Europe (Switzerland, Monaco) or elsewhere; in Overseas Countries and Territories of a Member State (such as the British Virgin Islands, the Cayman Islands and Anguilla); in the UK Crown Dependencies (Isle of Man, Guernsey and Jersey) -- or in a Member State.<sup>9</sup>

## Quality of data, research and analysis

The IA presents some useful information and data, drawn for example from publications of the Financial Action Task Force and the European Central Bank, as well as findings on the Panama Papers by the International Consortium of Investigative Journalists. Overall, however, the quality of the analysis does not seem always to meet the high standards required by the Commission's BR Guidelines. Some sources quoted in the inception IA are unfortunately not cited in the IA itself. Therefore, the text refers at times to unsourced evidence. For instance, the unsourced statement that most of the so-called 'miners' of virtual currencies are located in China does not, on the face of it, appear to constitute sufficient evidence to exclude from the regulation the estimated 10 000 miners located in the EU (IA, p. 15 and 140).<sup>10</sup> Finally, some assessments and conclusions appear at first sight to be questionable. For instance, in the first part of the IA:

- As far as **virtual currencies** are concerned, the IA states that voluntary self-registration of users would be more effective than mandatory registration, 'as criminals will typically choose not to identify' and would therefore be more easily targeted by authorities (IA, p. 49).
- Likewise, the IA chooses to subject all prepaid cards to customer due diligence, but only for online use, assuming that 'the cardholder would be more willing to go through a [Customer Due Diligence] process

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<sup>8</sup> On due diligence, tax transparency and public registers in third countries, see Ioannides, Isabelle, [The inclusion of financial services in EU free trade and association agreements: Effects on money laundering, tax evasion and avoidance](#), EPRS, June 2016.

<sup>9</sup> See [Influence of EU law on taxation in the EU Member States' Overseas Territories and Crown Dependencies](#), In-depth analysis for the TAXE 2 Committee, Policy Department A, European Parliament, 2016.

<sup>10</sup> See, Scheinert, Christian, [Virtual currencies - Challenges following their introduction](#), EPRS, March 2016.

if it is performed online'. It admits, however, that 'such an approach has not been tested and consumer organisations have not commented on that aspect' (IA, p. 56).

In the second part of the IA, for instance:

- The data protection impacts of giving broader access to information to authorities other than anti-money laundering authorities, such as law enforcement authorities and tax authorities, do not seem to be analysed in sufficient depth (IA, p. 113). It would be interesting to know the opinion of the European Data Protection Supervisor in this respect.
- Concerning the **25% threshold**, the IA states that the current obligation to declare ownership for natural persons who own at least 25% of a corporate-form legal entity is very easy to circumvent for entities which do not conduct real business (IA, pp. 94-95). However, the IA does not explain why or how this is the case, which raises the question as to why the 10% threshold would be less easy to circumvent than the 25% threshold. The 2013 IA on the fourth Anti-Money Laundering Directive does not seem to address this issue either.

Finally, the language of the second part is rather technical and the glossary could have been more comprehensive.

## Stakeholder consultation

The Commission's BR Guidelines require an open, internet-based public consultation lasting a minimum of 12 weeks for initiatives with IA, but do also mention 'exception cases' (BR Guidelines, p. 66, and footnote 87). The Commission states that for this IA, because of time constraints, it consulted mainly informally, from December 2015 onwards. At institutional level, it consulted Member States and the European Data Protection Supervisor, although no information is provided on the latter's response. With regard to other stakeholders, the list provided shows that the financial industry is fairly well represented, by both organisations and individual firms. A handful of consumers' associations are listed, but there is a lack, for instance, of non-financial businesses organisations or firms (IA, pp. 121-122). The views of stakeholders are incorporated systematically in the first part of the IA, but not in the second part.

## Monitoring and evaluation

Monitoring and evaluation are dealt with in two separate sections for the two parts of the IA, and this causes some duplication in what should logically be undertaken as a common task (IA, pp. 78-80; pp. 114-116). Relevant indicators are nonetheless provided in both sections, but these do not seem to have been taken up in the text of the proposal. On the other hand, the general monitoring and evaluation framework appears to be in line with what is planned in the fourth Anti-Money Laundering Directive. The IA states that the Commission will cooperate, for instance, with the Joint Committee of the European Supervisory Authorities on Anti Money Laundering. At international level, the Commission relies on the mutual evaluation processes of the FATF, to which [15 EU Member States](#) belong, as well as of Moneyval, where the other [13 Member States](#) are represented. The [Executive Summary](#) of the IA indicates that the policy will be reviewed two to four years after the adoption of the directive.

## Commission Regulatory Scrutiny Board

The Regulatory Scrutiny Board examined the quality of this IA on 12 May 2016 and issued a [positive opinion](#), which covers also the second part of the analysis, 'on the understanding that the impact assessment report will be further improved.' The IA seems to respond to the Board's comments regarding subsidiarity, the need for clarification on how the context has changed since the last revision of the Anti-Money Laundering Directive and data protection issues. However, it does not appear to respond appropriately to other requests, for instance to '[d]escribe more in detail how the policy options would be implemented in practice and how they relate to each other'. The time pressure under which the IA, particularly the second part, was prepared is clearly an issue. Press articles related to the Panama Papers were first published on 3 April 2016. The first part of the IA was sent to the Board on 12 April, and the second part two weeks later, on 27 April. The piecemeal approach adopted as a result of this timeframe appears to be a major flaw, as amendments relating to one piece of law and in some cases affecting

the same public authorities (for instance Financial Intelligence Units) are decoupled as a result. Consequently, a coherent analysis of the issue is largely lacking.

## Coherence between the Commission's legislative proposal and IA

The legislative proposal and the recommendations expressed in the IA seem to correspond, with an important clarification to be made, however, concerning the second part of the IA. As noted above, the IA considered only two options beyond the status quo in order to improve public access to the beneficial ownership registers: (i) giving full public access rights to the information held in beneficial ownership registers of **legal entities**; and (ii) on **all trusts**. Neither of these options was selected as preferred option in the IA. The proposal introduces a third option and justifies it on grounds of proportionality. The explanatory memorandum states that 'the option retained as the most appropriate from a costs, impacts and legitimacy perspective was that of requiring Member States to disclose via a register beneficial information for companies and business-type trusts and other similar legal arrangements, while retaining the necessity to demonstrate a legitimate interest for access to that information in respect of trusts and other legal arrangements that do not qualify as business-type.' Elsewhere, the explanatory memorandum clarifies that this refers only to 'a limited set of information on the beneficial owners'. Therefore, although the proposal addresses a weakness of the IA by providing an additional option, the impact of that option is not, strictly speaking, analysed in the IA, but only partly in the explanatory memorandum.

## Conclusions

This initial appraisal concludes that, while this impact assessment is generally based on useful information and data, the fact that it was apparently prepared under severe time constraints has affected the overall quality of the analysis, which as a result does not entirely meet the quality standards set out in the Better Regulation Guidelines. The structure of the IA itself, organised in two parts, but amending one piece of legislation, does not provide a fully coherent picture of the issues at stake and does not necessarily facilitate the co-legislators' understanding of the reasoning. Quality weaknesses appear to apply particularly to the second part of the IA, which was added as a direct consequence of the Panama Papers revelations. The problems in this case are not clearly defined, the analysis and research are rather weak and the economic and social impacts are largely unaddressed. Moreover, the reader often has to make assumptions and deductions in order to try to understand the content of the IA. The first part of the IA, on the other hand, provides some useful information and evidence, with a better problem definition, incorporating the views of stakeholders. Some weaknesses concern the definition of the options and some of the conclusions drawn, where additional elements might have been useful.

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*This note, prepared by the Ex-Ante Impact Assessment Unit for the European Parliament's Committees on Economic and Monetary Affairs (ECON) and on Civil Liberties, Justice and Home Affairs (LIBE), analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.*

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