

ROADMAP			
TITLE OF THE INITIATIVE	A possible European system complementing the existing EU-US TFTP agreement		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	DG HOME – D.2 TERRORISM AND RADICALISATION	DATE OF ROADMAP	25/10/2016
LIKELY TYPE OF INITIATIVE	Communication		
INDICATIVE PLANNING	4 <sup>th</sup> quarter 2016		
ADDITIONAL INFORMATION	-		

A. Context, Problem definition and Subsidiarity Check	
<b>Context</b>	
<p>The <b>European Agenda on Security</b><sup>1</sup> of April 2015 highlighted the importance of tracking financial operations to help identify terrorists and their supporting networks. In this respect, it underlined the value of the <b>EU-US Terrorist Financing Tracking Programme (TFTP)</b>, which allows Member States to request a search of financial data when there is a suspicion of a nexus to terrorism or its financing. In the <b>Action Plan against terrorism financing</b><sup>2</sup> of 2 February 2016, the Commission announced its intention "...to analyse the possible need for complementary mechanisms to the TFTP to fill possible 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." In November 2013, the Commission concluded, in a <b>Communication on an EU Terrorist Finance Tracking System</b><sup>3</sup> that the need for setting up such a system was not demonstrated at that time. The present initiative will help assessing whether this conclusion needs to be reconsidered in light of the evolving terrorist threat.</p>	
<b>Problem the initiative aims to tackle</b>	
<p>Terrorists use a wide range of means transfer funds and make payments in order to finance their operations and logistic needs. <b>Terrorists are able to move funds quickly across borders</b> in order to sustain their operations. Detecting these financial movements is crucial for Financial Intelligence Units (FIUs) and law enforcement authorities (LAEs) to identify networks of terrorists and to prevent terrorist attacks. To carry out this task, they have access to data from company registers, suspicious transaction reports and data from banks, although <b>databases are mostly limited to information held at national level</b>. In cross-border cases, they cooperate with each other. In addition, FIUs and LAEs can request a search for financial transaction data from the TFTP when there is a suspicion of a nexus to terrorism or its financing. However, the <b>TFTP Agreement excludes</b> from its scope payments related to the <b>Single Euro Payments Area (SEPA)</b>. The resulting <b>information gap</b> decreases opportunities to detect and disrupt terrorist networks and financing activities. Therefore, the capability to establish financial linkages to trace and map terrorist networks within the EU is suboptimal. This intelligence gap is exacerbated by the <b>current terrorist threat in the EU</b>: the recent attacks were often committed by persons residing in EU countries, who move funds within the EU. Terrorist cells operating in Europe are also often to a large extent self-funded, which means they do not necessarily rely on international transfers. The TFTP provided 800 leads from financial data after the terrorist attacks in Paris. It can be expected that much more leads would have been generated from a system including SEPA payments. In addition, the <b>proliferation of new methods to transfer funds</b> creates opportunities for terrorists to transfer money without being detected through the TFTP, such as the use of virtual currencies and electronic money. The initiative will carefully look at the pros and cons of including such financial transaction data in an EU system equivalent to the TFTP, and of including other institutions beyond the current TFTP designated provider (remittance providers, clearing houses and card processors), which could provide data to an EU system. The initiative will also take into account the amendments to the 4AMLD including those aiming at increasing oversight over these means of payment, as announced in the Action Plan on terrorist financing. <b>If no action is taken</b>, the capacity of national authorities to track financial activities of terrorists within the EU will remain limited to existing tools, <b>hindering the capacity to trace terrorists and map their support networks</b>.</p>	
<b>Subsidiarity check</b>	

<sup>1</sup> COM (2015) 185 final of 28 April 2015.

<sup>2</sup> COM (2016) 50 final of 2 February 2016.

<sup>3</sup> COM(2013) 842 final of 27 November 2013.

Article 11 of the TFTP agreement tasks the Commission to explore the introduction of an EU system equivalent to the TFTP. **Article 87(2) TFEU** allows the EU to establish measures concerning the collection, storage, processing, analysis and exchange of information for the purpose of supporting cooperation between Member States' competent authorities in relation to the prevention, detection and investigation of criminal offences.

**This initiative does not aim for a proposal** based on Article 87(2) TFEU, but to provide for an overview of the options for an EU system equivalent to the TFTP.

Due to its transnational nature, the terrorist threat affects the EU as a whole and therefore requires a **European response**. This is also true for the financing of terrorism due to the **global nature of financial services and the freedom of capital movements** within the EU. To detect terrorist activities, tools providing **access to financial data within the entire EU** and not confined to information held at national level can provide an added value.

## B. What does the initiative aim to achieve and how

The **objective** of this initiative is to identify the options for developing a mechanism to detect financial transaction data of terrorists in order to trace terrorists and map terrorist networks operating within the EU.

The assessment of 2013 was carried out in a **different context**, with a terrorist threat that differs substantially in nature and level from the current situation, as explained above. The Commission will use the current exercise as input to reconsider its conclusion of 2013 in light of this threat. The Commission will therefore - in contrast to the options identified in 2013 - look into including financial transaction data not included in the TFTP, in particular **SEPA payments**. In other words, the Commission will look into an EU system *complementing* the TFTP.

This initiative will also explore other options for an EU system equivalent and complementary to the current TFTP. Depending on the results of a preliminary analysis of what **other types of financial transaction data or providers** may be appropriate to include, other options will be defined.

A **proliferation of data and providers** will have substantial potential **security benefits**, as they may allow authorities to better track the financial activities of terrorists and uncover terrorist networks. At the same time, this also influences the **costs** of setting up an EU TFTP. For instance, transaction data from providers may be difficult to integrate into one system due to different formats these providers apply to their data. The impact on small size enterprises would need to be carefully considered, balancing the administrative burden that they might have to face to comply with any requirement with the risk of these companies being targeted by terrorist groups and financiers as means to move and conceal their funds.

An EU system would require the collection, processing and analysis of a large number of data which is privately held and collected by service providers for a different purpose than the fight against terrorism. Such a system would inevitably lead to the **collection of personal data**, therefore having an impact on the fundamental rights to the protection of private life and to the protection of personal data.

The Commission appraisal of the proportionality of setting up an EU system will take into consideration the need to put in place **strong controls and oversight measures** to ensure that safeguards, including those on personal data protection, are duly respected. It will also take into account the economic costs of such a system.

These aspects would also be assessed further in detail in any possible follow-up initiatives.

## C. Better regulation

### Consultation strategy

**Public and private stakeholders** at EU and national level will be consulted, including relevant ministries, law enforcement/intelligence agencies, data protection agencies, the private sector, notably financial institutions and financial services providers. The targeted consultation will take the form of **workshops**, complemented where appropriate with bilateral meetings with relevant stakeholders.

**Consultation of public authorities** will focus on ways to track terrorists through specific financial transaction data and on options for an EU TFTP. **Consultation of the private sector** will focus on data they hold, the way this data could feed into an EU TFTP and associated costs. Relevant associations and the EDPS will be consulted on the possible effect of an EU TFTP on fundamental rights, including the right to privacy.

The stakeholder consultation will make use, to the largest extent possible, of **existing expert groups** as well as input from Europol and other EU agencies where appropriate.

### Impact assessment

As follow-up to the Action Plan to strengthen the fight against terrorist financing, the objective of the present initiative is to identify the policy options for taking action as regards a possible European system complementing the existing EU-US TFTP agreement, in light of recent developments. The results of this appraisal will be presented in a Communication. **An impact assessment is not needed at this stage as the Communication will not decide on a particular policy option.** Based on the presented options, follow up actions -including legislative action- could be considered at a later stage by means of an impact assessment.

### Evaluations and fitness checks

The present initiative will take into account the work carried out previously on this topic, in particular the abovementioned **Communication** and accompanying **Impact Assessment** of 27 November 2013<sup>4</sup>.

This initiative will also take into account the results of **joint reviews** of the TFTP Agreement and the **joint report regarding the value of the TFTP**.<sup>5</sup> So far, three joint reviews of the TFTP have been carried out and a fourth review will be completed by end 2016.

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<sup>4</sup> SWD (2013) 489 final.

<sup>5</sup> <http://ec.europa.eu/dgs/home-affairs/news/intro/docs/commission-report-on-the-joint-review-of-the-tftp.pdf>, SWD(2012) 454 final of 14 December 2012 and COM(2014) 513 final of 11 August 2014. A fourth review took place in the spring of 2016. The report is expected in the summer of 2016.