

ROADMAP			
TITLE OF THE INITIATIVE	Appraisal of an EU framework for administrative terrorist asset freezing measures under Article 75 TFEU		
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

Context
<p>The <b>European Agenda on Security</b>, adopted in April 2015, announced, inter alia, a re-appraisal of an EU framework for the freezing of terrorist assets under Article 75 TFEU. In the <b>Action Plan for strengthening the fight against terrorist financing</b> adopted on 2 February 2016, the Commission announced that it "...will review (...) the scope and the added value of an EU regime under Article 75, and its complementarity to existing regimes at EU and national level". In this appraisal, the Commission will also explore measures of mutual recognition of national freezing decisions (e.g. by way of a European Asset Freezing Order). Under the Common Foreign and Security Policy, the EU imposes restrictive measures against entities and persons with links to international terrorism. The Council has recently adopted a new EU autonomous asset-freezing regime reflecting UNSCR 2253 (2015)<sup>1</sup>.</p>
Problem the initiative aims to tackle
<p>Terrorists need to raise, store and move funds in order to finance their operations and logistic needs. Based on research into the financing of European terrorist cells, it seems that perpetrators most commonly relied on funding from the cell members' own resources and rely less on external support and more on self-financing. "Jihadi" terrorist attacks in Western Europe have generally required low levels of funding (in most cases less than \$10,000). Terrorists are able to move funds quickly within the EU and to move assets to safe havens. <b>Measures to freeze assets must therefore be fast, effective and have a wide coverage</b> (in terms of persons and assets covered as well as its geographical scope).</p> <p>Existing listing systems and asset-freezing regimes at EU level implementing UN Resolutions are limited in scope to suspected terrorists having links to international terrorism (for the ease of reference, "EU external terrorists"). There is <b>no EU regime for freezing assets of persons or entities not necessarily having established links to international terrorism</b> and suspected of intending to carry out or support terrorist activities with the aim of causing harm to the EU or a specific Member State (for the ease of reference, "EU internal terrorists").</p> <p>Only a <b>minority of Member States have put in place national mechanisms</b> for the freezing of assets applicable to persons or entities acting, having links to or having assets within their jurisdiction. <b>Where such national systems exist, they differ in nature, scope, procedures, safeguards and effectiveness.</b> Existing differences could also hamper cross-border cooperation. Member States which have no national system in place are more attractive for terrorists and those financing terrorism who may <b>move their assets to such "safe(r) havens"</b>.</p> <p>The absence in a <b>number of Member States</b> of asset freezing regimes as well as – where such regimes exist – the lack of complete and effective systems for freezing the assets of so-called "EU internal terrorists" raise issues of <b>non-compliance with UNSCR 1373 and FATF Recommendation 6</b><sup>2</sup>. A considerable number of EU Member States was found to be non-compliant or only partially compliant by FATF and Moneyval. In addition, the EU, being member of the FATF, has been <b>criticised by FATF for not having an EU regime</b> in place allowing for the freezing of assets of EU internal terrorists.</p> <p>Furthermore, the co-existence of different listing and freezing systems at EU and national level and across Member States make <b>compliance by the financial sector burdensome and costly.</b></p>
Subsidiarity check
<p><b>Article 75 TFEU</b> foresees the establishment of "a framework for administrative measures with regard to capital</p>

<sup>1</sup> 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

<sup>2</sup> Recommendation on Targeted financial sanctions related to terrorism and terrorist financing

*movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-State entities" where necessary to achieve the objectives of the area of freedom, security and justice.*

Terrorism financing is a **problem at EU level** since the financiers of terrorism can move their funds easily across borders and thus avoid assets to be frozen. Even if Member States would individually take steps to freeze the assets of "EU internal terrorists" and ensure compliance with FATF standards, divergences among national systems would still remain; the effects of any such measures at national level would still be limited to their respective jurisdiction. As a consequence, obstacles to cross-border cooperation as well as the risk of "safe havens" would remain.

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

The main purpose of this initiative is to **identify the options for cutting off terrorists and terrorist organisations from their financial resources**, undermining their ability to carry out terrorist activities in the EU and thereby safeguarding the EU common area of freedom, security and justice. This will include in particular the appraisal of the impact of developments since the findings of the experts study elaborated in early 2013. As announced in the Action Plan, the Commission will explore as well an alternative option of a "European Asset Freezing Order".

The Communication will **present different options for EU action** that could contribute to more specific objectives such as enhancing the effectiveness of freezing measures while strengthening fundamental rights safeguards, reducing compliance costs for industry and improving compliance of EU Member States and the EU itself with international obligations and standards.

In identifying the options for potential actions under Article 75, particular attention will be paid to ensuring that the contemplated measures do not go beyond what is necessary to have the assets of suspected "EU internal terrorists" frozen across the EU in a comprehensive and timely manner, making sure that such persons or entities are effectively deprived of the means to plan, prepare or carry out terrorist attacks.

This will include careful appraisal of appropriate safeguards as referred to in Article 75(3) TFEU, such as provisions to ensure rights of defence and redress.

The proportionality assessment will also take into account other initiatives related to terrorist asset freezing regimes under CSFP.

## C. Better regulation

### Consultation strategy

Public stakeholders at EU and Member State level will be consulted, through **targeted consultations** to be carried out in the fourth quarter of 2016. The targeted consultation will take the form of a workshop, complemented where appropriate with bilateral meetings with relevant stakeholders. These include authorities in all Member States (relevant ministries, financial intelligence units and law enforcement authorities).

### 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 under Article 75 TFEU in light of recent developments. The results of this analysis 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 Commission can rely to a large extent on the draft study elaborated in early 2013. This will be taken into account to update the information about the financing sources and channels used by terrorists and terrorist organisations and about national freezing measures in the 28 Member States. The Commission can also rely on recent Europol and Eurojust reports, reports issued by the Financial Action Task force and recent mutual evaluation reports of FATF and MoneyVal as well as UN implementation reports on UN sanction regimes.