



EUROPEAN COMMISSION

DIRECTORATE-GENERAL MIGRATION and HOME AFFAIRS

Open public consultation on broadening law enforcement access to centralised bank account registries

Summary of the responses

Context

Criminal groups, including terrorists, increasingly operate across different Member States and their investments/assets, including bank accounts, are usually located across the EU or even outside of it. They make use of modern technology that allows them to transfer money between several bank accounts and between different currencies in a matter of hours.

Expedient access to financial information is essential for the success of criminal investigations on serious crimes. Lack of access to financial information may result in missed opportunities to investigate serious crimes, disrupt criminal activities, stop terrorist plots and detect and freeze proceeds of crime. Many investigations come to a dead end because of failure to secure timely, accurate and comprehensive access to the relevant financial information.

On 2 February, the Commission adopted an Action Plan on strengthening the fight against terrorist financing¹ which presented how the Commission would seek to upgrade the 4th Anti-Money Laundering Directive² (4AMLD), the main EU legal instrument dealing with access to and exchange of financial information. Amongst the proposed amendments was the establishment of centralised bank account registries or data retrieval systems in all Member States containing information on all national bank accounts as well as the possibility of a self-standing legislative instrument to allow broadening the access to such registries and retrieval systems for law enforcement purposes.

In light of this, the Commission launched a public consultation with the aim of providing EU citizens and all interested stakeholders the opportunity to express their views on a measure to provide law enforcement authorities with access to the registries and retrieval systems. The consultation took place between 17 October 2017 and 9 January 2018.

The results of the public consultation contributed to an impact assessment on facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences. One of the measures, examined by the impact assessment, was the provision of access for law enforcement authorities to the centralised bank account registries and data retrieval systems.

¹ COM(2016) 50 final.

² Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141 of 5.6.2015, p. 73).

Overview of responses

The open public consultation received 24 replies³. The majority of respondents came from the general public (13) and from organisations (11). 2 respondents replied in their professional capacity as representatives of the banking or financial sector. 2 of the respondents submitted empty questionnaires.

Individuals⁴

The majority of respondents agree that in order to protect citizens from crime, it is necessary to grant access to the national centralised bank account registries to LEAs⁵, AROs⁶, national authorities investigating corruption and OLAF⁷. Half of the respondents support the granting of access to the centralised bank account registries and data retrieval systems to cover national tax authorities as well⁸. Two of the respondents specifically point out that “access should be granted when public safety is at stake” and that in light of the threat posed by terrorism, security should be a “top priority” for Europe.

In relation to the benefits or drawbacks of broadening law enforcement access to the registries, the majority of respondents agree that the initiative would speed up national investigations considerably⁹, that it would make it less burdensome for banks to provide information to investigators¹⁰ and that it would help identify bank accounts that would otherwise remain undetected¹¹.

With regards to the impact of the initiative on rights, which is a relevant issue for most of the public survey respondents, half of the respondents agree that granting access to the centralised bank account registries would keep to a minimum the exchange of personal data between investigators and banks¹². Furthermore, half of the respondents declare that they are concerned that their personal data might be used for other purposes.¹³ Therefore, it is not surprising that some of the respondents highlight the dangers related to the centralisation of data¹⁴ and the broadening of access to it. Several respondents emphasise the importance to provide strict safeguards and conditions of access, for example, the existence of an investigation and under the supervision of a judge or prosecutor.

Organisations¹⁵

³ 3 of the replies are not valid as the respondent has neither answered any of the questions nor provided any additional information. Hence, there are 21 valid answers.

⁴ 12 respondents have responded to the public consultation as individuals in their personal capacity

⁵ Open public consultation feedback: 66.67% (n=8)

⁶ Open public consultation feedback: 58.33% (n=7)

⁷ Open public consultation feedback: 66.67% (n=8)

⁸ Open public consultation feedback: 50% (n=6)

⁹ Open public consultation feedback: 66.67% (n=8)

¹⁰ Open public consultation feedback: 75% (n=9)

¹¹ Open public consultation feedback: 66.67% (n=8)

¹² Open public consultation feedback: 50% (n=6)

¹³ Open public consultation feedback: 50% (n=6)

¹⁴ As already noted, the establishment of new tools is not the objective of the initiative as it builds on the 5AMLD and its provisions on the compulsory development of centralised bank account registries and data retrieval systems.

¹⁵ 11 of the respondents have replied in their professional capacity on behalf of an organisation. 2 replies did not contain any information. .

Two representatives of the banking sector have expressed their opinions on the initiative. One of them supports the granting of access of law enforcement, AROs and OLAF to the national bank account registries and data retrieval systems but disagrees that the tax authorities should be granted access. The other respondent disagrees with the broadening of access to the registries and data retrieval systems for any authority and points out that setting up a bank account register is “incompatible” with data protection rules and represents a “very serious violation of personal integrity”.

One authority, managing an existing register has also responded to the questionnaire. Accordingly, only the provision of access for LEAs is supported, without any access for AROs, OLAF or tax authorities. One local public authority has also provided feedback, fully supporting the provision of access to the national bank account registries and data retrieval systems for law enforcement AROs, OLAF and the tax authorities and confirming that the initiative would speed up national investigations, would make it less burdensome for banks to provide information to investigators, that it would help identify bank accounts that would otherwise remain undetected and that it would keep to a minimum the exchange of personal data between investigators and banks. The respondent disagrees that the initiative represents a risk to the protection of personal data.

Two trade, business or professional associations have also responded. The first one fully disagrees that any authority should be granted access to the bank account registries or data retrieval systems or that the provision of such access would have any positive impact upon the execution of investigations. It points out that there is a risk for the protection of personal data. The other association stresses that access to the registers or data retrieval systems has to be provided for LEAs, subject to very strict conditions.

Three other¹⁶ organisations have also replied to the open public questionnaire. They all agree that LEAs, AROs, OLAF and tax authorities should be granted access to the registries and recognise the potential advantages regarding efficiency and effectiveness. One of them disagrees that the initiative would minimise the exchange of personal information and they all agree that it poses risks in relation to the protection of personal data. One of them specifically highlights that access should be provided only within the framework of a criminal investigation and that the citizens have to be reassured that their data is only processed in accordance with the principle of purpose limitation.

16 One NGO, one local legal association and one research institution.