

June 2017

### Controls of cash entering or leaving the European Union

*Impact Assessment (SWD(2016) 470, SWD(2016) 471 (summary)) of a Commission proposal for a regulation of the European Parliament and of the Council on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005 (COM(2016) 825)*

#### Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's [impact assessment](#) (IA) accompanying the above proposal, adopted on 21 December 2016 and currently referred to Parliament's Committee on Civil Liberties, Justice and Home Affairs.

Against the backdrop of the activities of the international Financial Action Task Force (FATF),<sup>1</sup> Regulation (EC) No 1889/2005 on cash control was adopted as part of the EU anti-money-laundering and anti-terrorist financing policies, specifically to complement the Anti-Money-Laundering Directive (AMLD).<sup>2</sup> It introduced controls on movements of cash crossing the border of the Union, requesting natural persons entering or leaving the EU to declare the transport of €10 000 or more. It also provided for control and information exchange on such cash movements, as well as penalties in case of non-declaration, to be specified by national legislators. Per year, on average 100 000 cash declarations are submitted, representing a total amount of €60 to €70 million. Controls detect about €300 million per year of undeclared or incorrectly declared cash (IA, p. 9).

The regulation applies since 15 June 2007. While the Commission [report](#) on the application of the regulation (2010)<sup>3</sup> found that the implementation was generally satisfactory and the cash controls useful, it cited some shortcomings and possible adjustments to the legal provisions. These reflections were confirmed and further developed in the evaluation of the regulation performed in 2015 (Annex 2 of the IA), the completion of which was speeded up by the publication of the Commission's [action plan](#) for strengthening the fight against terrorist financing of 2 February 2016,<sup>4</sup> following the Paris attacks (IA, p. 10). This action plan announced a rapid presentation of an amendment of the cash control regulation in order to progress toward a genuine Security Union; the proposal for its revision was included in Annex 1 of the Commission's 2017 work programme.

The Commission proposes to improve the effectiveness of the regulation by extending some elements, while specifying or harmonising others, in view of meeting evolving FATF obligations and supporting the EU's action

<sup>1</sup> Set up by the G7 summit in Paris 1989. Its recommendation 32 is the reference for Regulation (EC) No 1889/2005.

<sup>2</sup> Directive (EU) 2015/849 of the European Parliament and of the Council 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, 20 May 2015. See also Remac, M., Controls of cash movements, EPRS, European Parliament, December 2016.

<sup>3</sup> Report from the Commission to the European Parliament and the Council on the application of Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community pursuant to Article 10 of this Regulation (COM(2010) 455 final).

<sup>4</sup> European Commission, communication on an action plan for strengthening the fight against terrorist financing, COM (2016) 50 final.

plan against terrorist financing. In addition to partly divergent implementation of the EU cash control regulation, Member States have put various national provisions in place on certain aspects of cash movements, creating an uneven playing field which terrorist financiers may exploit (IA, p. 5, 15).

A particular challenge for this proposal lies in the reconciliation of the principles of free movement of goods, persons, services and capital, and of fundamental rights (data protection, right to private life and property, freedom to conduct a business as defined in the Charter of Fundamental Rights of the EU (CFR)), on the one hand, and the prevention of money laundering and terrorist financing in the EU, on the other (IA, pp. 37, 138-141). There is also a direct link to the EU's fight against tax fraud/evasion (IA, pp. 17-18, 104).

## Problem definition

Based on a description of the current cash control regulation, i.e. the baseline scenario, the IA clearly identifies the nature and the cause of the problems. These relate to the effectiveness of the current provisions and diverging national implementation of some of them, as well as to international anti-terrorist financing activities. The IA defines four major and three minor problems (IA, pp. 12-28):

**1) Imperfect coverage of cross-border cash movements:** In 2013, the FATF established that not only cash movements by natural persons (covered by the current regulation), but also movements by post and freight should be controlled, as they are frequently used as alternative means for illicit cash transports into and out of the EU. The standard customs declaration currently used for cross-border cash courier shipments or freight does not solve the problem, as it does not contain any information on the identity of the owner of the cash, the recipient, its provenance or intended use, thus failing to meet FATF recommendation 32 (IA, p. 14).

**2) Difficulties regarding exchange of information on declared cash transport between competent authorities:** Information exchanges between customs and tax authorities and the Financial Intelligence Unit (FIU)<sup>5</sup> in each Member State, between Member States, with third countries and with the European Commission, are not currently automatic and lack clear procedures. As a result, in some Member States, tax authorities have access to cash control declarations, in some not, and some send information while others make it available only upon request. Besides these information gaps, this leads to divergent treatment of declarants among Member States. In addition, the regulation should be aligned to the fourth AMLD and its enlarged scope of 'predicate offences' (IA, p. 18).

**3) Missing common legal basis for competent authorities to detain temporarily amounts below the cash declaration threshold (€10 000):** Currently, control and recording of information is authorised if there are indications of illegal activities linked to cash movements under €10 000. The FAFT specifies, however, that in case of suspicion of money laundering or terrorist financing, the temporary detention of cash should be possible **irrespective of a declaration threshold** (IA, p. 20). Reports from Member States show that ISIS terrorists frequently transport smaller amounts (around €7 000) to avoid the declaration; and also refer to the phenomenon known as 'smurfing'<sup>6</sup> (IA, p. 21), leaving the Member States 'powerless' to act (IA, p. 22).

**4) Imperfect definition of 'cash':** Member States have identified suspicious shipments of gold or other precious goods for some time, but for diverse reasons the regulation's definition remained unchanged (Annex 2 of the IA, p. 105).<sup>7</sup> Considering the relevance of the issue, the above-mentioned action plan on terrorism of 2016 lists the expansion of the definition of 'cash' to include gold or other high value commodities, such as precious stones or prepaid cards<sup>8</sup> loaded with considerable amounts in third countries (IA, p. 24).

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<sup>5</sup> Central national units designated to receive and analyse information and suspicious transactions.

<sup>6</sup> Several people (often relatives, including children) travelling together, each carrying, for example, €9 500 in cash.

<sup>7</sup> Disadvantages of expansion of the definition, see above-mentioned Commission evaluation, p. 105.

<sup>8</sup> Their inclusion in the definition of cash came at a very late stage (internal consultation) and was not assessed in the IA, which instead provides an explanatory overview of the phenomenon, IA, pp. 46-48.

**5) Divergent penalties for failing to declare cash movements:** Article 9.1 of the current regulation leaves it to national regulators to specify the penalties in case of non-declaration, which has led to wide divergence and, in some cases to disproportionate penalties (IA, p. 25-26). Besides the unequal treatment of EU and third country citizens failing to declare, this favours a concentration of illegal cash movements in Member States with minimal penalties, distorting the internal market (IA, p. 26).

**6) Different implementation levels among Member States in other areas:** such as reporting on controls, infraction and penalties prevent a thorough analysis of the implementation of the regulation. In addition, since no specific form or layout for the declaration is laid down in the regulation, some Member States have incoherent systems (written, oral or electronic declaration) (IA, p. 27).<sup>9</sup>

**7) Divergent national measures to raise awareness:** Member States are not currently obliged to inform travellers of their obligations under the cash control regulation, and ignorance is frequently claimed in cases of revealed omission to declare, which is difficult to prove or refute (IA, p. 27).

The IA develops each problem and its drivers in a separate chapter, concluding with the assessment of the consequences, relevance and size. The IA considers that around 11 000 detected infractions per year – by omission or deliberate – involving €300 million, constitute 'a potentially very serious security problem' (IA, p. 21, 28). No distinction between major and minor problems is developed in the IA, which appears to be partly based on assumptions regarding the issues on which the Member States would accept legislative action – there seemed to be considerable opposition, in particular regarding the penalties. The IA identifies three main groups of actors affected by the proposal: natural persons, economic operators and public authorities (IA, p. 137). It also appears that more stringent EU rules for financial operations increase the use of cash payments by criminals or terrorists (Annex 2 of IA, p. 104, 115).

## Objectives of the legislative proposal

The IA presents all of the proposal's objectives in a table (IA, p. 30). The **general objective** is the promotion of safe, balanced and sustainable development of economic activities throughout the internal market. *Specifically*, the proposal aims at providing tools to safeguard society against money laundering and terrorist finance through cash movements. At the operational level, these **specific objectives** are addressed by seven *operational objectives*:<sup>10</sup>

- 1) cover all ways of effecting cross-border cash movements,
- 2) improve exchange of information between competent authorities,
- 3) enable competent authorities to detain sub-threshold amounts temporarily,
- 4) extend the definition of 'cash' to include precious metals,
- 5) provide guidance on penalties for non-declaration,
- 6) converge implementation levels among Member States (on reporting, declaration forms),
- 7) improve information for citizens on their obligations.

The objectives derive from the problems identified by the IA, and appear to be consistent with the [EU agenda on security](#),<sup>11</sup> its action plan for strengthening the fight against terrorist financing, and the free movement of capital, as well as the international anti-terrorist financing activities of the FAFT. It is unclear in the IA whether

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<sup>9</sup> Considered a minor problem as 24 out of 28 Member States use a harmonised form.

<sup>10</sup> The Better Regulation guidelines require the reporting of operational objectives in the section referring to the preferred policy option and in relation to monitoring/evaluation, not together with the general and specific objectives, as in this case.

<sup>11</sup> European Commission, Communication on the European Agenda on Security, COM(2015)185 final.

the objectives fulfil some of the criteria required by the EU Better Regulation (BR) toolbox,<sup>12</sup> for instance, if they are measurable or time-bound.

## Range of options considered

The IA screens several policy options to tackle each of the seven problems identified. In most, but not all, cases stakeholders' perception of the option during the public consultation is presented at the end of the chapter (IA, pp. 30-34). The IA's preferred options are shaded in grey in this briefing.

### Problem 1 – Imperfect coverage of cross-border cash movements

**Option A:** Baseline, no policy change: declaration by natural persons over the threshold of €10 000.

**Option B:** Baseline, plus disclosure system for cash shipped per post, courier or freight if, upon checking, amounts of cash higher than the declaration threshold are found and competent authorities request additional information.

**Option C:** Mandatory cash declaration system for all types of cash movement over the threshold; this declaration would be additional to any customs declaration.

**Option D:** As option C, but with an exemption for registered financial institutions, which are already covered by other financial rules. Under this option, authorities would have to determine if an exemption applies or not.

**Option E:** Disclosure of all cash movements by natural persons carrying cash or by someone sending cash by post/freight in case of control, and a request by competent authorities to make a declaration.<sup>13</sup>

### Problem 2 – Difficulties regarding exchange of information on declarations between competent authorities of different Member States

**Option A:** Baseline, no policy change: Sharing of declarations and infraction data only in case of indications of illegal activity.

**Option B:** Obligation for competent authorities to exchange information regarding infractions concerning the requirement to declare, or declarations where there are indications of illegal activities.

**Option C:** As option B, plus the *optional* sharing of regular declaration information.

**Option D:** As option B, infractions and declarations where there are indications of illegal activity, plus the **obligation** to exchange regular declaration information.

### Sub-problem: Exchange of information between competent authorities and the FIU in each Member State

**Option A:** Baseline, no policy change: no definition of 'making information available'.

**Option B:** Specification that 'making available' means transmission of data by electronic courier or provision of access for the FIU to a database containing all the declaration information.

### Problem 3 – Missing legal basis for competent authorities to detain amounts below the threshold temporarily

**Option A:** Baseline, no policy changes: In case of indications of illegal activity, competent authorities may record, process and make available information, but cannot temporarily detain the cash.

**Option B:** Allow competent authorities to detain the cash temporarily if they judge that there are indications of illegal activities.

**Option C:** As option B, but specifying a limited list of objective criteria (by delegated legislation), allowing authorities to detain the cash temporarily.

**Option D:** As option B, but specifying 'indications of potential criminal activity' in the guidelines.

### Problem 4 – Imperfect definition of 'cash'

**Option A:** Baseline, no policy change: definition limited to currency and bearer negotiable instruments.

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<sup>12</sup> Objectives should be specific, measurable, achievable, relevant and time-bound ('S.M.A.R.T.').

<sup>13</sup> Option E was not included in the stakeholder consultation (taken into account at a later stage, see IA, p. 31).

**Option B:** Including gold in the definition, plus an annex to the regulation, modifiable by delegated act, for specifications of categories included in a broader definition, taking into account the evolution of society/technical progress.<sup>14</sup> Some Member States have national provisions requesting declarations for gold transport (IA, p. 23).

**Option C:** Including gold and precious metals in the definition.

#### **Problem 5 – Divergent penalties for failing to declare cash movements in Member States**

**Option A:** Baseline, no policy change: Member States determine penalties.

**Option B:** Specify in the regulation (or a delegated act) provisions on the nature and severity of penalties.

**Option C:** Baseline, plus guidance by the Commission on penalties to be applied.

#### **Problem 6 – Different implementation levels among Member States (declaration form, reporting)**

**Option A:** Baseline, no policy change: no obligation to use a standard declaration form, nor to provide data.

**Option B:** Mandatory harmonised declaration form (implementing legislation for a template) and periodic provision of data to the Commission,<sup>15</sup> on all declarations, controls and penalties.

#### **Problem 7 – Divergent national measures to raise awareness**

**Option A:** Baseline, no policy change (no obligation or guidelines to raise public awareness).

**Option B:** Obligation to raise public awareness, but allow Member States to determine how to organise this.

**Option C:** As option B, but harmonise measures in all Member States.

**Option D:** No harmonised provisions, but encourage Member States via guidelines.

The development and presentation of the policy options in the IA is logical and coherent, always using the baseline scenario as the benchmark for the alternative policy instruments, as required by the Better Regulation guidelines. Some options, however, lack precision, for example option B/problem 2 or option C/problem 7 (IA, p. 31, 34).<sup>16</sup> The IA explains that the use of cash control declarations for fiscal purposes was considered highly relevant in the stakeholder consultation, but could not, for legal reasons, be addressed by this proposal (IA, p. 19). No other discarded option is indicated in the IA at this stage of the IA process,<sup>17</sup> including the rather obvious option to lower the threshold of cash to declare.

### **Scope of the impact assessment**

All of the policy options screened in the IA were retained for further analysis. The IA assesses their impacts problem by problem, resulting in a summary listing of seven preferred options, i.e. one for each problem (IA, pp. 53-57). The IA then assesses the impact of each option against the criteria of effectiveness, costs/efficiency and coherence, including the consequences for those affected. The assessment and the comparison of the options is made in one step, and illustrated in summary tables at the end of each option assessment.

The IA provides an assessment of the economic and fundamental rights impacts. Social impacts, the contribution to the general objectives of safety or other benefits for society beyond the obvious, for example, do not feature.<sup>18</sup> No environmental impacts are mentioned, nor are impacts on third countries, although the latter seem to be relevant according to the IA (IA, p. 8, 17, 24, 26).<sup>19</sup> The IA focuses on the benefits and administrative burden/costs of the options, with large parts of the assessment being qualitative, supported by quantitative

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<sup>14</sup> The IA features here an addendum on prepaid cards (which were not assessed, see footnote 8 (IA, pp. 46-48)).

<sup>15</sup> The provision of data was not submitted to stakeholder consultation (IA, p. 34).

<sup>16</sup> Information on infractions 'or' declarations in case of illegal activity – logically it should be both. Option C for problem 7: it is unclear how harmonisation is to be carried out through the regulation (by delegated or implementing act?).

<sup>17</sup> Subsequently (in the comparison of options), one baseline option is discarded, see IA, p. 42, 44.

<sup>18</sup> For example, the effect on the evasive behaviour of terrorists could be of relevance.

<sup>19</sup> The BR guidelines require a review of all potentially important impacts, regardless of whether they can be assessed precisely, and an explicit statement if economic, social or environmental impacts are not considered significant.

estimations for potential costs of option B under problem 1. These cost estimations are based on a number of uncertain assumptions and limitations that the IA nevertheless lists in a transparent way (IA, p. 36-37).<sup>20</sup> However, they provide only a rough impression of potential costs of this particular option, without specifying the authorities that are responsible, and the IA notes a number of factors that could modify the estimations for economic operators considerably. Costs of all other options are not quantified, due to missing verifiable data and to highly variable national procedures (IA, p. 35, 43, 49).<sup>21</sup> Overall, the IA expects insignificant administrative costs for the competent authorities in the Member States, mainly in the areas of control, risk analyses and information exchange. Neither are benefits quantified, which is why more explanation on the comparison of options and details about the effects on the different actors would have been useful, including indirect benefits, for example on national rules that might become redundant. Nevertheless, the assessments provided, and the concluding comparisons of the options, appear to be consistent. As regards the wider definition of 'cash', the IA notes that, prior to adjustments following future developments as envisaged in the preferred option, a further IA would be necessary (IA, p. 46).

The IA provides a systematic analysis of the impact of the different options on fundamental rights, in particular data protection. It points out the experience of the relevant authorities in securing information, the type of information exchanged, the procedures and the purpose of the data exchange. It concludes that, in view of the overall objective, appropriate safeguards to guarantee respect for fundamental rights and data protection exist (IA, p. 140). According to the IA, a study should determine the appropriate means to manage the various data flows (IA, p. 141). Concerning the right to property and to conduct a business (Articles 16 and 17 CFR), in the context of the temporary detention of cash and the expansion of the definition of 'cash', the IA prefers the options with the lowest impact to ensure sufficient safeguards (IA, p. 38, 39, 41).<sup>22</sup>

## **Subsidiarity/proportionality**

The IA notes that, based on Article 114 TFEU (internal market) and Article 33 TFEU (customs cooperation), EU measures to ensure harmonisation between Member States are necessary to prevent criminals and terrorist financiers from exploiting inconsistencies in the current rules (IA, p. 29).<sup>23</sup> The IA consistently takes the principle of proportionality into account, especially in the comparison of the options, selecting those most proportionate in terms of effectiveness, acceptable level of administrative burden, and the lowest impact on fundamental rights and personal data protection (IA, p. 39, 41, 44, 50, 53).

No reasoned opinion under Protocol 2 TFEU was received from national parliaments by the deadline of 9 March 2017. The Spanish and Czech parliaments provided supportive contributions, as did the European Social and Economic Committee, asking the Commission in its [opinion](#) of 27 April 2017, to go further and set out harmonised penalties.

## **Budgetary or public finance implications**

The explanatory memorandum of the proposal notes that it has no significant implications for the budget of the European Union. Additional controls in Member States are expected to be dealt with by re-allocation of human resources in the competent national authorities.

## **SME test/Competitiveness**

The IA does not provide specific information regarding potential costs or benefits for enterprises. It stresses that most postal/parcel operators expressly prohibit the sending of cash or valuable commodities because of the

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<sup>20</sup> Estimated EU-wide costs for two scenarios (10 000 or 50 000 detections per year, and disclosure requested for 80 % of cases for the former and 100 % for the latter) amount to €312 500 or €1.9 million. Estimations do not take into account the potential income for the Treasury from penalties. The IA considers the estimated costs for operators (€100 000 or €625 000) as 'unlikely'.

<sup>21</sup> Except for problem 7: Without further explanation, preliminary costs of €20 000 were estimated for all Member States, see IA, p. 52.

<sup>22</sup> See also explanatory memorandum of the proposal, p. 8-9.

<sup>23</sup> Member State measures which restrict capital movements in case of serious difficulties (Article 66 TFEU), or in case of serious crisis in the balance of payments (Article 143-143 TFEU) are not concerned by the proposal.

impossibility to ensure such consignments against loss, and concludes that a very limited effect on economic operators is expected (IA, pp. 35-36). In terms of competitiveness, the fight against illicit cash movements is expected to mitigate unfair treatment of law-abiding citizens and businesses, as well as distortions of the internal market (IA, p. 18, 29).

## **Simplification and other regulatory implications**

One aim of the revision of the regulation consists in making it coherent with the AMLD and comply with FAFT recommendation 32 (IA, p. 7). According to the IA, positive Member State feedback regarding standardised methods to declare cash movements included simplification for travellers and competent authorities (IA, p. 106).

## **Quality of data, research and analysis**

The nature of the phenomena assessed in this IA, i.e. illegal activities, concern *per se* activities that are hard to document (IA, p. 15, 23). The IA repeatedly cites the lack of reliable data when explaining the difficulty to quantify potential effects of policy options (IA, p.15, 26, 35, 43). The data provided by Member States to the Commission since 2007 are limited and variable – in particular, information regarding criminal investigations and court decisions on money laundering and terrorist financing are apparently rarely shared (IA, p. 81). In addition, the IA has the specificity that the process was relatively short,<sup>24</sup> and conducted 'back to back' with the evaluation that started in September 2014, and was also carried out internally by Commission services (TAXUD) (IA, p. 68). Such a 'parallel' process could be problematic from the point of view of the 'evaluate first' principle. The only reason given in the IA for this procedure is the time pressure in the follow-up to the EU's action plan on terror financing (IA, p. 10, 68). The IA is based on the data sources of the evaluation, complemented with stakeholder views (IA, p. 68, 134).<sup>25</sup> It recognises that the analysis was also partly based on political decisions, for instance regarding the issue of detention of sub-threshold amounts not featured in the evaluation, but which were included in the action plan on terrorist financing of 2016 (IA, p. 10).

The evaluation lists the common databases of the Member States consulted for the analysis (IA, pp. 90-92), and features the questionnaire (and feedback) (five questions) sent to the Member States in August 2014. Further targeted questionnaires were used to complement the evidence base. These were sent to Member States in June 2014, to fiscal authorities in January 2015, and to police authorities, FIUs and custom authorities in June 2016 (IA, pp. 12, 80-81). Finally, the meetings of national experts in the Cash Controls Working Group, under the aegis of the Customs 2020 programme, of the EU FIU platform and of the G7 FATF, were used to overcome the data limitations; no other outside research, study or source is referenced to support the IA.

## **Stakeholder consultation**

An internet-based open public consultation ran from 28 February to 31 May 2015, consisting of nine very specific multiple-choice questions on the major options of the IA, and had a wide scope (IA, pp. 121-133). It received only 35 replies and can therefore 'in no way be seen as representative', as the IA correctly points out (IA, pp. 11-12). Nevertheless, the IA considered the replies to be helpful, and refers to them frequently to underpin the analysis. The majority of the respondents<sup>26</sup> seems to support the preferred options of the IA, except on the expansion of the definition of cash, which was rejected by a small majority, and the inclusion of prepaid cards, which was not assessed in the IA. Moreover, three targeted questionnaires were sent out (see above), which received sufficient feedback (IA, p. 12). The IA also states that there appeared to be a majority in the public consultation in favour of some harmonisation of penalties for the failure to declare, but not in the questionnaires (IA, p. 33).

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<sup>24</sup> Started in April 2016 and presented to the Regulatory Scrutiny Board (RSB) in September 2016 (IA, p. 134). The IA acknowledges that 'the process did not follow all the steps set out in the Better Regulation guidelines' (IA, p. 68).

<sup>25</sup> 'The evaluation has been conducted back-to-back to the work on the impact assessment with no separate open public consultation covering the retrospective elements.' See IA, pp. 68-69 (Annex 2).

<sup>26</sup> Individual citizens (77.14 %), public authorities (11.43 %), associations (8.57 % and private companies (2.89 %), see IA, p. 123.

## Monitoring and evaluation

The Commission currently has a non-enforceable agreement with Member States to provide data on the number of cash declarations received and the number of infractions, communicated on a quarterly basis; regarding the penalties imposed, information is provided by only two thirds of Member States (IA, p. 27). The preferred options of the IA contain several elements to remedy the current lack of relevant coherent data, necessary to monitor and evaluate the implementation of the regulation (IA, pp. 53-56). To increase the possibilities to investigate and combat criminal activities, the options propose to streamline and clarify data and statistics collection concerning the relevant indicators. These include declarations registered; controls made in cases with or without declaration; penalties imposed; and the exchange of data between competent authorities in and between Member States, with third countries and the Commission (IA, pp. 57-58). The IA envisages a Commission evaluation report, five years after the entry into force of the regulation, and every five years subsequently, assessing to what extent the objectives have been met.

## Commission Regulatory Scrutiny Board

The Commission's Regulatory Scrutiny Board issued a positive [opinion](#) on the draft IA report on 12 October 2016 with three main recommendations for improvement. These have been partly addressed in the final IA, clarifying the effectiveness of the current regulation, the discarded option related to fiscal fraud and the support for stakeholder views, for instance. However, the request to provide more details and quantified estimations for the cost and benefits of all options, and especially regarding the different affected actors, appear not to have been consistently delivered.

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

The Commission proposal largely follows the recommendations of the IA, providing for disclosure of unaccompanied cash movements, possible detention of any cash in case of indications of criminal activity, a wider, yet flexible definition of 'cash', clarified rules on information exchange and provision of data to the Commission. The guidance on penalties for failure to declare as envisaged in the preferred option is not mentioned in the proposal. The provisions on monitoring and evaluation are in line with the IA.

## Conclusions

The anonymity of cash transactions and the illegal nature of the problems identified in the IA bring about considerable challenges for the analysis, including a limited evidence base and trade-offs between the options to tackle the problems and their impact on several Union principles. The mostly qualitative analysis is generally logical and coherent, leading to a pertinent set of preferred options. For various reasons, however, it provides, very little quantification of costs and none of benefits, and focuses mainly on administrative burdens for competent authorities. To partly compensate for the lack of reliable data, despite apparent time constraints for the preparation of the evaluation and the IA – both conducted internally – the IA consistently indicates stakeholder views, which appear to support most of the preferred options of the IA, although they cannot be considered representative due to the small number of respondents.

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*This note, prepared by the Ex-Ante Impact Assessment Unit for the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, 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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