Council of the European Union

Brussels, 23 November 2023
(OR. en)

15802/23

Interinstitutional File: 2023/0355(COD)

JAI 1542
COPEN 409
DROIPEN 167
ECOFIN 1251
UEM 401
GAF 39
CODEC 2221

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	17 October 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 582 final
Subject:	Proposal for a DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2014/62/EU as regards certain reporting requirements

Delegations will find attached document COM(2023) 582 final.

Encl.: COM(2023) 582 final

EUROPEAN
COMMISSION

Brussels, 17.10.2023
COM(2023) 582 final

2023/0355 (COD)

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2014/62/EU as regards certain reporting requirements

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In its Communication on 'Long-term competitiveness of the EU: looking beyond 2030' ([1]), the Commission has stressed the importance of a regulatory system that ensures that objectives are reached at minimum costs. It has committed therefore to a fresh push to rationalise and simplify reporting requirements, with the ultimate aim to reduce such burdens by 25%, without undermining the related policy objectives.

Reporting requirements play a key role in ensuring correct enforcement and proper monitoring of legislation. Their costs are overall largely offset by the benefit they bring, in particular in monitoring and ensuring compliance with key policy measures. Reporting requirements can however also impose disproportionate burdens on stakeholders, particularly affecting SMEs and micro-companies, also given organisational and technological developments that call for original reporting requirements to be adjusted. Their cumulation over time can result in redundant, duplicating or obsolete obligations, inefficient frequency and timing, or inadequate methods of collection.

Streamlining reporting obligations and reducing administrative burdens is therefore a priority. In this context, the present proposal aims to simplify an initiative included in headline ambition "an Economy that works for people" in the policy area of Economic and Monetary Union.

The proposal will rationalise reporting obligations by removing reports which are not necessary any longer.

The reporting requirements concern public authorities. This proposal would abolish the obligation for Member States' competent authorities to transmit statistical data to the Commission on the number of counterfeiting offences and on the number of persons prosecuted and convicted of the counterfeiting offences, as laid down in Article 11 of Directive 2014/62/EU[2]. While Member States' authorities have difficulties gathering and transmitting reliable data in order to comply with this specific provision, they do not play a pivotal role in the effective implementation of this specific legal act.

• Consistency with existing policy provisions in the policy area

The proposal is part of a first package of measures to rationalise reporting requirements. This is a step in a process looking comprehensively at existing reporting requirements, with a view to assess their continued relevance and to make them more efficient.

The rationalisation introduced by these measures will not affect the achievement of objectives in the policy area, for the following reasons:

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1 COM(2023)168.

2 OJ L 151, 21.5.2014, p.1.

The primary objective of Directive 2014/62/EU is to protect the euro and other currencies against counterfeiting by criminal law.

It establishes minimum rules concerning the definition of criminal offences and sanctions in the area of counterfeiting of the euro and other currencies as well as common provisions to strengthen the fight against those offences and to improve investigation of them and to ensure better cooperation against counterfeiting.

The main elements of the Directive include the criminalisation of the 'production' and 'distribution' of counterfeit currencies as well as 'preparatory offences' like the production of security features, the provisions on penalties, and the principle of territoriality and the extraterritorial jurisdiction. It also includes a provision on the use of certain investigative tools, and a provision ensuring that the National Analysis Centres (NACs) and the Coin National Analysis Centres (CNACs) can analyse euro counterfeits during on-going judicial proceedings. The effective transposition of these elements into national legislations is essential to achieve the objectives of the Directive.

In addition, the Directive requires Member States to transmit to the Commission relevant statistical data relating to the number of offences concerning counterfeit notes and coins and the number of persons prosecuted and sentenced.

This data would in principle help to gain a more complete picture of the problem of counterfeiting at Union level and thereby contribute to formulating a more effective response.

However, experience has shown that the statistical data on Euro-counterfeiting criminal proceedings produced by the Member States according to this provision are not comparable and often scattered, incomplete and inaccurate. Thus, in practice, the obligation does not contribute effectively to monitoring and evaluating whether the Directive has reached its objective.

Not fulfilling statistical data reporting obligations cannot generally justify liberating Member States from those obligations. It should, on the contrary, lead to efforts to comply, including by testing different approaches and/or by facilitating common reporting standards and formats by the Commission as a basis for reporting obligations upon Member States.

However, specifically, with regard to Euro-counterfeiting, there are already reporting obligations on the number of confiscated counterfeit coins and banknotes in place. National authorities in EU countries must send counterfeit notes and coins to their national analysis centres for analysis and identification. Banks and other credit institutions must withdraw from circulation all euro notes and coins which they suspect to be counterfeit and hand them over to the relevant national authorities.

Thus, the size and trends of the phenomenon as such is well documented and known to the competent national authorities[3]. For this specific area of crime, the obligation to report statistical data on criminal proceedings therefore is not essential to ensure that the objectives of the Directive are achieved and monitored.

[3] All data on counterfeit banknotes and coins are registered in the ECB's Counterfeit Monitoring system (CMS) and shared with the national competent authorities through reports and participation in experts groups meetings.

- **Consistency with other Union policies**

Under the Regulatory Fitness and Performance Programme (REFIT), the Commission ensures that its legislation if fit for purpose, targeted to the needs of stakeholders and minimizes burdens while achieving its objectives. This proposal is therefore part of the REFIT programme, reducing the complexity of reporting burdens arising from the EU legal environment.

While certain reporting requirements are essential, they need to be as efficient as possible, avoiding overlaps, removing unnecessary burdens and using as much as possible digital and interoperable solutions.

The current proposal rationalises reporting requirements thus making the achievement of the objectives of legislation more efficient and less burdensome for public authorities.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this proposal is Article 83(1) on judicial cooperation on criminal matters, which is compatible with the Directive 2014/62/EU.

- **Subsidiarity (for non-exclusive competence)**

The reporting requirements concerned are imposed by EU law. Their rationalisation is therefore best done at EU level to ensure legal certainty and consistency of reporting. This will ensure a level playing field for public administrations across the EU, which will be benefiting from the rationalisation of reporting requirements arising from these measures.

- **Proportionality**

The rationalisation of reporting requirements simplifies the legal framework by introducing minimum changes to existing requirements that do not affect the substance of the wider policy objective. The proposal is therefore limited to those changes that are necessary to ensure efficient reporting without changing any of the substantial elements of the legislation concerned.

- **Choice of the instrument**

Considering that the amendments only concern the deletion of an obligation for the Member States to provide data, which does not require any transposition by the Member States, a Decision of the European Parliament and of the Council adopted in compliance with the procedure set out in Article 83(1) TFEU is deemed to be the most appropriate legal instrument.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

N/A

- **Stakeholder consultations**

N/A

- **Collection and use of expertise**

This proposal has been identified following a process of internal scrutiny of existing reporting obligations and based on the experience from implementation of the related legislation. Since this is a step in the process of continuous assessment of reporting requirements arising from EU legislation, the scrutiny of such burdens and of their impact on stakeholders will continue.

- **Impact assessment**

The proposal concerns limited and targeted changes of legislation in view of rationalising reporting requirements. It is based on experience from implementing legislation. The changes do not have significant impacts on the policy, but ensure a more efficient and effective implementation. Its targeted nature and the lack of relevant policy options make an impact assessment not necessary.

- **Regulatory fitness and simplification**

This is a REFIT proposal, aiming to simplify legislation and cut burdens for stakeholders.

It will reduce the administrative burden on competent authorities by eliminating a redundant statistical reporting requirement.

- **Fundamental rights**

N/A

4. BUDGETARY IMPLICATIONS

N/A

5. OTHER ELEMENTS

- **Explanatory documents (for directives)**

N/A

- **Detailed explanation of the specific provisions of the proposal**

This proposal repeals Article 11 of Directive 2014/62/EU on the protection of the euro and other currencies against counterfeiting by criminal law, taking into account the particular circumstances relevant to combating the counterfeiting of currencies and the euro. It thus abolishes the redundant statistical reporting requirements instituted by that specific provision.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[4],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Reporting requirements play a key role in ensuring proper monitoring and correct enforcement of legislation. However, it is important to streamline those requirements, in order to ensure that they fulfil the purpose for which they were intended and to limit the administrative burden.

(2) Article 11 of Directive 2014/62/EU of the European Parliament and of the Council[5] requires Member States to transmit statistical data to the Commission, at least every two years, on the number of offences concerning counterfeit notes and coins and the number of persons prosecuted for and convicted in connection with those offences.

(3) With regard to euro-counterfeiting, there are already reporting obligations on the number of confiscated counterfeit coins and banknotes in place, namely in Article 3(1) of Council Regulation (EC) No 1338/2001[6]. The size and trends of the phenomenon as such is well documented and known to the competent national authorities. For this specific area of crime, the obligation to report statistical data on criminal proceedings is therefore not essential to ensure that the objectives of Directive 2014/62/EU are achieved and monitored.

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4 OJ C 271, 19.9.2013, p. 42.

5 Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA (OJ L 151, 21.5.2014, p. 1).

6 Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting (OJ L 181, 4.7.2001, p. 6.).

(4) Therefore, the requirement under Article 11 of Directive 2014/62/EU should be abolished, in line with the Commission's Communication on 'Long-term competitiveness of the EU: looking beyond 2030'[7].

(5) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union ('TEU') and to the Treaty on the Functioning of the European Union ('TFEU'), Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

(6) ["In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, Ireland has notified its wish to take part in the adoption and application of this Decision "OR "In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application."].

(7) Directive 2014/62/EU should therefore be amended accordingly,

HAVE ADOPTED THIS DECISION:

Article 1

Article 11 of Directive 2014/62/EU is deleted.

Article 2

This Decision is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

[7] COM(2023)168.