Controls on cash entering or leaving the Union

2016/0413(COD) - 21/12/2016 - Legislative proposal

PURPOSE: to provide for a system of controls with respect to cash entering or leaving the Union to complement the legal framework for the prevention of money laundering and terrorist financing.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the first Cash Control Regulation was adopted in 2005 (Regulation (EC) No 1889/2005 of the European Parliament and of the Council on controls of cash entering or leaving the Community). This Regulation complemented the provisions of Council Directive 91/308/EEC on the prevention of the use of the financial system for the purpose of money laundering by laying down a system of controls that applied to natural persons entering or leaving the Union who were carrying currency or bearer-negotiable instruments worth EUR 10 000 or more.

The evaluation of the first CCR showed that, while the overall performance of the Regulation was good, a **number of areas posed problems** and should be strengthened to improve its functioning:

- **the imperfect coverage of cross-border cash movements**: there is no provision for cash that is sent in post, freight or courier shipments;
- **difficulties in the exchange of information between authorities**: declaration data can be exchanged with competent authorities of other Member States only where there are indications of illegal activity and even then it is optional;
- the impossibility for competent authorities to **temporarily detain sub-threshold amounts;**
- **the imperfect definition of 'cash'**: cases have been flagged in which criminals have moved significant quantities of highly liquid commodities such as gold to transfer value so as not to have to make a declaration. It is also essential to take into account the rapidly changing face of criminality and the rise of cybercrime, online frauds and illicit online market places;
- **divergent penalties for non-declaration** in Member States Penalties for failure to declare cash;
- **different implementation levels among Member States**: under the current CCR, most Member States voluntarily use the same declaration form, but this is not obligatory. Member States also provide the Commission with statistical data, but neither this nor the level of detail of the data can be enforced.

This proposal brings the CCR into line with international norms and best practices in the fight against money laundering and the financing of terrorism. It implements a number of action points set out in the Commission's Communication on an action plan for strengthening the fight against terrorist financing.

IMPACT ASSESSMENT: an impact assessment was carried out and the Regulatory Scrutiny Board delivered a positive opinion. The options that have been selected to tackle the problems identified are compatible and would considerably improve the functioning of the current CCR without creating unnecessary administrative burdens.

CONTENT: this Regulation provides for a **system of controls with respect to cash entering or leaving the Union** to complement the legal framework for the prevention of money laundering and terrorist financing laid down in Directive (EU) 2015/849.

The new proposed Regulation:

- **extends the definition of 'cash'**: in order to take account of changes in behaviour by criminals seeking to avoid the obligation to declare, it establishes four broad categories: (i) currency, (ii) bearer-negotiable instruments, (iii) commodities used as highly liquid stores of value and, (iv) prepaid cards;
- requires natural persons to **declare sums of EUR 10 000 or more** and specifies the manner in which the declaration shall be made (in writing or electronically, using a specific form) and the data that will need to be provided;
- imposes a **disclosure obligation for unaccompanied cash (such as cash sent in freight or parcel consignments),** which will enable competent authorities, on encountering a cash shipment of EUR 10 000 or more, to exercise discretion and require the sender, intended recipient or their representative to make a declaration;
- enables authorities to **register details of movements of cash amounts** below the declaration or disclosure threshold. Given the impact that this has on fundamental rights and especially in connection with the temporary detention of cash, any action is subject to a sufficiently high threshold and requires indications of criminal activity;
- enables authorities to **detain cash temporarily** where a declaration or disclosure declaration should have, but has not, been made or — irrespective of the amount — where there are indications of criminal activity;
- requires the competent authorities to **actively transmit the information collected** to the national Financial Intelligence Unit (FIU) of the Member States in which it was collected (merely making this information at the disposal of the FIU is insufficient);
- **improves the exchange of information between competent authorities**, i.e. customs authorities and other authorities designated by the Member States for the purpose of applying the Regulation (e. g. border guards, fiscal authorities, etc.);
- **allows the exchange of information with non-EU countries**, subject to the agreement of the authorities that originally collected the information and compliance with all national and Union provisions regarding the transfer of personal data to non-EU countries;
- **provides for divergent penalties for non-declaration in Member States**: Member States are free to determine the penalties, but any penalty applies only to failure to declare under the Regulation and should be effective, proportionate and dissuasive in that respect.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.