Prevention of money laundering: controls of cash entering or leaving the Community

2002/0132(COD) - 17/02/2005 - Council position

The common position was adopted by a qualified majority, with the Italian delegation voting against.

The Council took the following positions on the amendments adopted by the European Parliament:

- Legal basis : in line with the Opinion of the European Parliament the Council added Article 95 as a legal basis to the proposal;

- Transformation into a Directive : the Council could not accept the EP amendments linked to the transformation of the proposal into a Directive;

- Obligatory Declaration : the Council supported the Commission's proposal for a system of obligatory declaration. The Council did not favour the idea of allowing Member States to choose between a declaration or a disclosure system as suggested by the European Parliament. Such a choice between two systems would be contrary to the uniform Community-wide application of the measures proposed. However, the Council introduced a degree of flexibility by leaving the choice to Member States to introduce an obligation for written, oral or electronic declarations. Consequently, the Council agreed to delete the declaration form contained in the Annex to the proposal and to insert a provision on the information to be provided by the written, oral or electronic declarations;

- Threshold for declaration : the Council opted for a threshold of EUR 10 000 which is lower than the thresholds foreseen in the Commission proposal and in the European Parliament's Opinion (EUR 15 000);

- Powers of the competent authorities : the empowerment of national authorities should be done in accordance with the conditions laid down under national legislation. In addition, national authorities should also be empowered to control the means of transport in order to check compliance with the obligation to declare. However, the Council did not maintain the maximum time period of three days for the detention of cash as foreseen in the proposal and supported an amendment considering that such a limitation in time would not allow the necessary flexibility for authorities to carry out controls and subsequent investigations in order to determine whether a penal procedure needed to be opened in a specific case;

- Definition of "cash" : the Financial Action Task Force on Money Laundering (FATF) adopted in 2004, its Special Recommendation IX on cash couriers. This Recommendation, agreed at international level, contains a definition of "cash", which the Council inserted in the present draft Regulation in order to guarantee the widest possible coherence of rules at Community and international levels. The text extends the definition of cash to cover a wider range of cheques than initially proposed;

- Exchange of information : the Council clarified and restructured the provisions on exchange of information between authorities. Firstly, it is clarified that the information obtained by declarations or controls shall be recorded and processed by the competent authorities of a Member State and, within that same Member State, be made available to the Financial Intelligence Unit (FIU), the latter point being also explicitly included in the FATF Special Recommendation IX. In the case of persons entering or leaving the Community with less than EUR 10 000 but where there are indications of illegal activities, certain information on this person may also be recorded and processed by the competent authorities within one Member State and be made available to that Member State's FIU. Secondly, information obtained by

declarations or controls may be exchanged between Member States. Finally, information may be exchanged with third countries, in the framework of a mutual administrative assistance agreement. However, the communication of information is subject to the consent of the authority that collected the information initially and to personal data protection provisions. The Commission should be notified of such exchanges of information where particularly relevant to the implementation of the Regulation;

- Joint database : the Council did not accept the idea of forwarding the information obtained to a database jointly administered by the Member States and held by the European Police Office (Europol);

- Report by the Commission : the Council introduced a provision requiring the Commission to submit a report to the European Parliament and the Council four years after the entry into force of the Regulation.

In addition to the items on which the European Parliament has delivered its Opinion and on which the Council common position is reflected above, the Council inserted the following new elements into the proposal:

- Scope of the Regulation Intra-Community controls of cash may be maintained where these measures are in conformity with the Treaty. In addition, the Council adapted the geographical coverage of the Regulation considering that, for the sake of transparency for travellers and in order to facilitate the application of the Regulation by the competent authorities, the control of cash movements should be carried out when a natural person is entering or leaving the Community territory;

- Declaration Form : the declaration form proposed by the Commission was not accepted bythe Council. Instead, the Council preferred to specify the data to be provided in the declaration. This intends to limit the administrative burden for the competent authorities to the strict minimum when collecting the information from travelers whilst ensuring that a minimum of information on cash movements is collected and, subsequently, is available for exchange with other authorities;

- Copy of a written declaration : in the case of a written declaration by the declarant, the Council inserted a provision ensuring that the declarant shall be entitled to receive an endorsed copy of the declaration upon request;

- Penalties : the Council simplified the provision on penalties aligning it with similar provisions in comparable legal acts5. Member States should therefore introduce penalties of an effective, dissuasive and proportionate nature for infringements of the obligation to declare cash movements when crossing the external Community borders. The Council accepted the amendment concerning the extension of the time limit for notification of the applicable penalties to the Commission. It set a period of 18 months after the entry into force of the Regulation.