

Proposal for a regulation of the European Parliament and the Council on the prevention of money laundering by means of customs cooperation

(2002/C 227 E/34)

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(Submitted by the Commission on 2 July 2002)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 135 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Acting in accordance with the procedure referred to in Article 251 of the Treaty,

Whereas:

- (1) Money laundering via cross-border cash movements represents a threat to the security and financial interests of the Member States and the Community. This threat can be effectively combated by the customs administrations. Customs officials are present at the borders, where controls are most effective. Indeed, some have built up practical experience in the matter. They are, moreover, able to control both cash and the valuables that are substitutes for it.
- (2) Furthermore, customs administrations are already familiar with international cooperation, and in particular the exchange of information pursuant to Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters ⁽¹⁾, and to the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations ⁽²⁾.
- (3) Account should also be taken of complementary activities carried out in other international forums. In particular, Recommendation No 22 of the OECD's Financial Action Task Force calls on governments to take measures to detect cash movements.
- (4) Recourse to customs cooperation is necessary because the machinery introduced by Council Directive 91/308/EEC

of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering ⁽³⁾ covers only money laundering operations conducted through credit institutions, financial institutions and certain professions.

- (5) The consequence is that large sums of money of dubious origin are entering and leaving the Community which cannot be detected by this mechanism. Some Member States have nevertheless taken initiatives outside the framework of the Community and introduced legislation allowing their customs services to perform controls on such sums. Other Member States, however, have no such legislation. The probability of detecting money laundering therefore depends on the Member State through which cash is brought in or taken out. This diminishes the protection afforded by the external frontiers against money laundering.
- (6) The existing legislation should therefore be supplemented by having recourse to customs cooperation arrangements under Article 135 of the Treaty, which now gives formal expression to customs cooperation. This should serve to harmonise the control methods instituted by national law and enable all the Community's customs administrations to gather information on cash entering or leaving the Community customs territory in sums equal to those covered by Directive 91/308/EEC. In these circumstances, the most appropriate way to gather such information is by imposing an obligatory declaration. In case of suspicion, the information is designed to be transmitted to the authorities which, by virtue of Directive 91/308/EEC, coordinate action against money laundering.
- (7) Accordingly, cash movements should be subject to the principle of obligatory declaration at the external frontiers. This is the most expedient way to control acts by which Community and national rules on laundering might be circumvented. However, in order to focus the authorities' action on significant instances of laundering, only movements of EUR 15 000 or more should be subject to an obligatory declaration.

⁽¹⁾ OJ L 82, 22.3.1997, p. 1.

⁽²⁾ OJ C 24, 23.1.1998, p. 2.

⁽³⁾ OJ L 166, 28.6.1991, p. 77; Directive as amended by Directive 2001/97/EC of the European Parliament and of the Council (OJ L 344, 28.12.2001, p. 76).

- (8) The form of the obligatory declaration should also be laid down, otherwise it should be void. Imposing the use of a standard pre-printed declaration form will enable customs administrations to improve synergies and to exchange information more easily. In view of the preventive purpose and dissuasive character of the declaration, it may not be lodged after the external frontier has been crossed. The moment at which this formality has to be accomplished must therefore be determined. Lastly, it must be specifically laid down that the obligation to declare applies to the person carrying the cash, regardless of whether that person is the owner.
- (9) It is desirable to establish the definitions needed for a uniform interpretation of this Regulation. The term 'competent authorities' must cover not only the customs administrations, which bear primary responsibility for these rules, but any non-customs services which, subject to their remit and to each Member State's specific administrative arrangements, contribute to this Regulation's implementation. This definition will cover cases in which departments other than customs, such as police and border guards, are authorised to receive and check such declarations. In addition, 'cash' should encompass the whole range of fungible assets.
- (10) As far as geographical scope is concerned, in conformity with the requirements of the Treaty, and in particular Article 299(3), (4) and (6)(c) thereof, Directive 91/308/EEC does not apply to certain European countries and territories, including Monaco, the Channel Islands and the Isle of Man. Attention should therefore be paid to the risk of money laundering attaching to such countries and territories, and special arrangements should be made in their regard. The declaration should be given on demand, on entering or leaving such countries and territories, regardless of whether the movement is within the Community or to a non-member country.
- (11) In order to combine this Regulation with the national law governing money laundering, provision should be made for the automatic transmission of information gathered by controls. Such information must be accessible to the customs services of the Member State of residence and, as the case may be, the Member State of origin or destination, and also to the money laundering authorities of the Member States concerned. Where relevant, the information must also be transmitted to the Commission. Similarly, provision should be made for certain information to be transmitted whenever there are suspicions over repeated cash movements involving sums lower than the threshold laid down.
- (12) Customs officials should be vested with the powers needed to exercise effective control.
- (13) The powers of the customs authorities should be supplemented by the Member States' obligation to lay down penalties. However, penalties should only be imposed for failure to make a declaration, not for money laundering offences disclosed by the customs controls set out in this Regulation. Though genuinely dissuasive penalties are called for, fines should nevertheless be restricted as to their amount. The absence of any limit would enable Member States to impose fines so high as unduly to compromise the principle of the free movement of capital, or even to negate it altogether.
- (14) Provision should be made, in the event of cash movements connected with terrorism, for information gathered to be transmitted, under certain conditions, to non-member countries.
- (15) This Regulation in no way affects the application of general or specific Community rules on administrative cooperation, especially in the matter of customs or in the protection of the Community's financial interests, in particular where those rules might improve or strengthen the current machinery for administrative cooperation.
- (16) Since the objective of the Regulation, namely strengthening customs cooperation in the fight against money laundering, cannot be sufficiently achieved by the Member States acting in isolation and can therefore, by reason of the transnational scale of money laundering in the internal market, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity enshrined in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (17) This act respects the fundamental rights and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union,

HAVE ADOPTED THIS REGULATION:

Article 1

Obligation to declare

1. Any natural person entering or leaving the Community customs territory and carrying a sum of EUR 15 000 or more in cash shall be obliged to declare that sum in accordance with this Regulation.

Any natural person entering or leaving those parts of the Community customs territory to which Directive 91/308/EEC does not apply and carrying a sum of EUR 15 000 or more in cash shall also be obliged to declare that sum in accordance with this Regulation.

2. The obligation to declare shall not have been fulfilled unless the person referred to in paragraph 1 has completed the declaration form corresponding to the specimen in the Annex and handed it in to the customs office of the Member State through which he is entering or leaving the Community customs territory or parts of the Community customs territory to which Directive 91/308/EEC does not apply.

Moreover, the obligation to declare is not fulfilled if the information given is incorrect or incomplete.

Article 2

Definitions

For the purposes of this Regulation:

1. 'Community customs territory' shall mean the territory of the Member States referred to in Article 3(1) of Council Regulation (EEC) No 2913/92⁽¹⁾ establishing the Community customs code.
2. 'Competent authorities' shall mean the customs authorities of the Member States and the other authorities responsible for applying this Regulation.
3. 'Cash' shall mean:
 - (a) currency (banknotes, coins);
 - (b) traveller's cheques or postal cheques;
 - (c) any anonymous or bearer certificate of a financial or monetary character which is convertible into cash, irrespective of the issuer, and in particular negotiable securities and other bonds.

Article 3

Reporting

1. Where there is material or circumstantial evidence that cash is being carried for the purposes of money laundering operations, information obtained through the declaration provided for in Article 1 or subsequent controls shall automatically be transmitted to the competent authorities of, respectively, the Member State of residence of the person referred to in Article 1(1) and the Member State through which that person entered or left the Community customs territory.

It shall also be transmitted to the national authorities responsible under Article 6 of Directive 91/308/EEC for combating money laundering in the country through which the person concerned entered or left the Community customs territory.

Where the money laundering operations appear to involve the proceeds of fraud or any other illegal activity adversely affecting the financial interests of the Community, the information shall also be transmitted to the Commission.

2. Where there is material or circumstantial evidence that a natural person is repeatedly entering or leaving the Community customs territory or parts of the Community customs territory to which Directive 91/308/EEC does not apply with sums of cash lower than the threshold fixed in Article 1, the name of that person, his nationality and the registration number of the means of transport used may also be transmitted, with the material or circumstantial evidence, to the competent authorities and, in the circumstances described in paragraph 1, to the Commission.

3. The provisions of Titles V and VI of Regulation (EC) No 515/97 shall apply *mutatis mutandis* to the transmission of information gathered pursuant to this Regulation.

Article 4

Powers of the competent authorities

In order to check compliance with the obligation under Article 1 to declare, officials of the competent authorities shall be empowered, even where there is no prior evidence that an offence is being committed, to control persons and their baggage, to question persons about the provenance of cash found in the course of such controls and to detain such cash by administrative decision.

Cash may be detained for up to three working days; that period may, however, be extended in accordance with national law. The period shall, in any event, be no longer than is necessary for the investigation.

Article 5

Penalties

1. Without prejudice to the penalties applicable in the event of money laundering, the Member States shall, in accordance with their national legislation, make sure that proceedings are initiated against those responsible where controls or inspections carried out under this Regulation establish that the obligation to declare laid down in Article 1 has not been fulfilled.

Those proceedings shall, in accordance with the relevant provisions of national law, be such as to produce effects proportionate to the seriousness of the offence constituted by the failure to make a declaration or the lodging of an inaccurate or incomplete declaration, and thereby deter others from committing offences of a similar nature.

⁽¹⁾ OJ L 302, 19.10.1992, p. 2.

2. The level of fines resulting from the procedures referred to in paragraph 1 may not exceed a quarter of the sum carried.

3. Member States shall notify to the Commission, at the latest by 31 December 2003, the applicable penalties in the event of non-compliance with the obligation to declare.

Article 6

Relations with non-member countries

1. Where there is material or circumstantial evidence that cash is being carried for the purposes of money laundering operations by or for terrorist groups, the information obtained under this Regulation may be divulged to a non-member country, with the consent of the competent authorities having provided the information and subject to compliance with their internal provisions on the transfer of personal data to non-member countries.

2. Member States shall notify the Commission of exchanges of information with non-member countries in the course of mutual administrative assistance where particularly relevant to the effectiveness of action against money laundering under this Regulation and where such information falls within the scope of this Regulation.

Article 7

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX

DECLARATION FORM

I hereby declare that I am carrying a total of EUR 15 000 or more in the form of the sums, bonds or securities listed below.

TYPE OF DECLARATION	ENTERING THE COMMUNITY	Yes/No (*)		
	LEAVING THE COMMUNITY	Yes/No (*)		
DECLARANT	SURNAME, FIRST NAME			
	Address (main residence)			
	Nationality			
	Date of birth			
	Place of birth			
IDENTITY OF THE OWNER OF THE FUNDS (if they are being carried for another person)	SURNAME, FIRST NAME			
	Address (main residence)			
	Nationality			
INTENDED RECIPIENT OF THE FUNDS	SURNAME, FIRST NAME			
	Address (main residence)			
	Nationality			
		(*)	AMOUNT	CURRENCY
NATURE OF THE SUMS, BONDS OR SECURITIES:	Banknotes, coins	Yes/No		
	Traveller's cheques/postal cheques	Yes/No		
	Any other anonymous or bearer certificates of a financial or monetary character, such as negotiable securities and other bonds	Yes/No		
		TOTAL	(in EUR)	
PURPOSE OF THE FUNDS				
ROUTE	Country of origin/Member State of departure			
	Country of provenance/Member State of exit			
	Member State/Country of final destination			
MEANS OF TRANSPORT	AIR	Yes/No		
	SEA	Yes/No		
	ROAD	Yes/No		
	RAIL	Yes/No		

(*) Delete as applicable.

In the event of inaccurate or incomplete information, the signatory will be considered not to have fulfilled the obligation to declare.

Place, Date and Signature
