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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	15819/16 ADD1+ADD2+ADD3
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on Controls of Cash Entering or Leaving the Union and Repealing Regulation (EC) No 1889/2005 - Mandate for negotiation with the European Parliament

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**STATEMENT BY SPAIN**

on the 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

Draft Presidency compromise text. Rev 5.

**Spain will support** the draft Presidency compromise text on the proposal of Regulation of the European Parliament and of the Council on controls on cash entering or leaving the Union in a compromise effort to allow the text to be submitted for consideration by the European Parliament.

However, SPAIN would like to include in the present statement its concerns on the proposal presented by the European Commission.

One of the objectives of the Cash control regulation is to fight against money laundering and financing of terrorism.

Based on the experience taken In the application of Regulation 1889/2005 it has been concluded the need to reinforce the mechanisms of control of movement of cash through the European borders mainly because it has been appreciated that illicit movements of cash were being perpetrated by means and ways that could elude the provisions of the Regulation in place.

This is the aim in the proposed modification of Regulation 1889/2005 presented by the Commission.

SPAIN however, considers that the proposal of the Commission on the provisions of the regulation in regards to unaccompanied cash (Article 4) are not sufficiently effective to fulfil the aims of the regulation in combating money laundering and financing terrorism.

While there is an **obligation to declare** the movements of 10.000€ or more crossing the European borders when the cash is carried by a natural person, the proposed regulation only provides a **disclosure declaration that may be asked by the competent authorities when the** same cash is moved in non accompanied baggage or freight.

SPAIN believes that **without a mandatory condition to declare the unaccompanied cash** for an amount of 10.000 euros or more such provision will lose its effectiveness. It is necessary that unaccompanied cash of 10.000€ or more be declared and not only in those cases where it is discovered or known by the authorities.

Cash in unaccompanied baggage or freight is the **alternative way** for a natural person to make a physical transfer of cash without complying with the obligation of declaration provided for in Article 3.

It is important to highlight that the transfer of not accompanied cash, when it is lawful, is done between financial or credit institutions in almost 100% of the cases. The provision of cash in different countries (or even the payment of goods or services) for the rest of the entities or individuals is normally made through bank transfers.

In order to avoid *"imposing a systematic burden in terms of Declaration, for example in relation to shipments between recognised financial institutions"* as indicated in the whereas, we were proposing to add a new subparagraph to exempt those institutions already obliged by the anti-money laundering Directive.

Therefore, the **obligation of Declaration of unaccompanied cash** plus an exception provided for those entities that are obliged and controlled in the framework of the Directive on anti money laundering (Art.2) or for the financial or credit institutions will reinforce the obligation of declaration provided for in Article 3, while the incentive to transfer cash in non accompanied way for natural persons will be eliminated.

We consider this to be an important element to better fight against cash leaving the EU for money laundering purposes or for cash entering in the EU for financing terrorism.

In this respect, during the discussions at the Customs Union Group we proposed the following amendment to Article 4 :

*“Article 4*

*Obligation to declare unaccompanied cash*

1. *Where unaccompanied cash of a value of EUR 10 000 or more is entering or leaving the Union, the sender or the recipient or their representative as the case may be, **shall make a previous declaration** to the competent authorities of the Member State from where that cash is sent or in which it is going to be received and, at the **request of these authorities, make it available to them for control**. The obligation to declare shall not be deemed to be fulfilled if the information provided is incorrect or incomplete.*
  
2. *The declaration referred to in paragraph 1 shall provide the details of:*
  - (a) *the declarant, including full name, address, date and place of birth, nationality and identification document number;*
  
  - (b) *the owner and, where available, the sender of the cash, including for natural persons full name, address, date and place of birth, and identification document number, where available, and nationality, and for legal persons full name, address and where available registration number or Value Added Tax registration number;*
  
  - (c) *the intended use and, where available, the recipient of the cash including for natural persons, full name, address, date and place of birth, **identification document number, where available, and** nationality, and for legal persons full name, address and where available registration number or Value Added Tax registration number;*
  
  - (d) *the nature, and amount or value of the cash;*
  
  - (e) *the economic provenance of the cash.*

3. *The information shall be provided in writing or electronically using the form laid down pursuant to Article 15(a). A copy shall be delivered to the declarant upon request.*
  
4. *The obligation provided in this article shall not be applied to the institutions referred to in Article 3, paragraphs 1 and 2 of the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 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./”*

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