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PROPOSAL

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| From: | Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director |
| date of receipt: | 22 December 2016 |
| To: | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union |
| No. Cion doc.: | SWD(2016) 471 final |
| Subject: | COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT Accompanying the document 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 |

Delegations will find attached document SWD(2016) 471 final.

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Brussels, 21.12.2016
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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

**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**

{COM(2016) 825 final}
{SWD(2016) 470 final}

Executive Summary Sheet

Proposal for an amendment of Regulation (EC) No 1889/2005 of the European Parliament and the Council of 26 October 2005 on controls of cash entering or leaving the Community

A. Need for action

Why? What is the problem being addressed?

An evaluation of the present Regulation demonstrated the need to review this instrument to take account of the evolution of international norms, the EU anti-money laundering / anti-terrorist financing framework and the Commission priorities listed in the 2016 Terrorism Finance Action Plan.

100 000 cash control declarations are submitted annually by persons carrying 10 000 Euro or more into or out of the EU, representing a total amount declared between 60-70 billion EUR.

Four major problems have been identified:

1. smuggling of cash in post and freight consignments;
2. inefficiencies regarding information exchange between authorities;
3. the use of other highly liquid stores of value, such as gold to escape the obligation to declare;
4. the inability by competent authorities to act on cases where amounts lower than 10.000 EUR are found but indications of criminal activity exist.

Three additional, less significant problems are also discussed and analysed in the IA report.

The absence of Union action will lead to failure to meet the international obligations. The most affected stakeholders are citizens, authorities and enterprises who will suffer from increased diversion of cash associated with money laundering and terrorism financing.

What is this initiative expected to achieve?

The objective of the proposal is the promotion and maintenance of a safe, balanced and sustainable development of economic activities throughout the internal market. This will be achieved through:

1. the extension of regulatory coverage to all ways in which cash can be transported thus enabling the effective monitoring of cash sent in post and freight;
2. the improvement of the framework for information exchange regarding cash controls data between competent authorities within the EU;
3. the development of a proportionate approach to tackle evasion behaviour that uses gold instead of cash;
4. enabling of competent authorities to act on sub-threshold amounts where indications of criminal activity exists.

What is the value added of action at the EU level?

The problem of money laundering and terrorist financing through the smuggling of cash is transnational. Given the principles of the internal market and the associated freedoms of movement the response to these challenges needs to be harmonised to an extent that cannot be achieved through national measures.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

Maintaining the status quo was considered for all the options but was only retained in a limited number of cases. The problems identified were tackled through a mix of legislative and non-legislative options (on EU level). The four main problems have been tackled using an EU level legislative approach; while in the case of the three remaining problems, they were addressed through a mix of soft-law measures and EU level legislation.

Who supports which option?

A public consultation has been conducted and feedback was requested through various questionnaires addressed to competent authorities and the Cash Controls Working Group national experts. As the opinions were heterogeneous depending on the issue queried, it is not possible to provide a succinct and correct overview but account was taken of the opinions during option selection.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

Broadening the scope of controls to include cash sent in post and freight and the possibility for detention of sub-threshold amounts in case of indication of criminal activity will ensure full and explicit compliance with international norms and best practice standards. This will be complemented by better possibilities for controls by competent authorities while keeping the additional administrative burden on citizens, enterprises and authorities

low.

The enlargement of the definition of 'cash' to include gold and certain prepaid payment instruments and the mechanism selected which provides for a possibility to flexibly amend the constitutive elements in function of evolving trends and technology takes account of the latest developments flagged by competent authorities and demonstrates the commitment of the EU to tackle escape routes used to transfer value. These measures also translate into action points which were listed for consideration in the Commission's Terrorism Finance Action Plan and strengthen the EU's Anti-Money Laundering and Terrorism Finance framework. They contribute to the harmonious development of the internal market and the protection of citizens and enterprises. The options proposed regarding penalties for non-declaration, implementation levels among Member States and the provision of information to stakeholders strive to achieve a common approach while being mindful of the subsidiarity principle..

What are the costs of the preferred option (if any, otherwise main ones)?

No significant negative impact in terms of compliance cost (economic, social, environmental) is expected for stakeholders (see item below for businesses).

How will businesses, SMEs and micro-enterprises be affected?

The measures developed concern cash equal to or in excess of 10 000 euro moved across the external EU borders either by persons or as freight/post. Enterprises very rarely employ this mode of transport. Currently, a physical person accompanying the cash shipment has to make a mandatory cash declaration. Experience shows that professional couriers accompanying the cash shipments are highly aware of their obligations and are largely compliant. The newly developed disclosure obligation for cash shipments in post/freight is conceived so as to allow authorities to perform controls and if they judge this necessary, request documentation. There is no obligation to systematically file a declaration and authorities are able to exercise discretion (e.g. in case of shipments between banks). It is expected that, due to the relative rarity of this shipment mode and the approach, any impact on professional couriers will be minimal. No specific SME or micro-enterprise impact is expected.

Will there be significant impacts on national budgets and administrations?

No significant impact on national budgets and administrations is expected. Some of the additional controls will require the allocation of human resources but the overall impact compared to the baseline is not expected to be significant. The cost of the system to transfer information between authorities will depend on the option retained, which is to be determined but is likewise not expected to be significant.

Will there be other significant impacts?

Concerning fundamental rights and personal data it should be noted that more information will be collected than under the present situation. This information will be shared with the Financial Intelligence Units which are subject to strict controls regarding the use and dissemination and between competent authorities. This is balanced by the necessity to do so in order to protect society and may be mitigated by the technology to exchange this data between authorities.

D. Follow up

When will the policy be reviewed?

Initial review five years after the entry into force of the new Regulation and every five years subsequently. The evaluation will take the form of a Commission report to the Parliament and the Council.