

Procedure file

| Basic information | |
|--|---------------------------------------|
| COD - Ordinary legislative procedure (ex-codecision procedure) Regulation | 2002/0132(COD) Procedure completed |
| Prevention of money laundering: controls of cash entering or leaving the Community Repealed by 2016/0413(COD) | |
| Subject 7.30.02 Customs cooperation 7.30.30.08 Capital outflow, money laundering | |

| Key players | | | | |
|---|---|---|------------|--|
| European Parliament | Committee responsible | Rapporteur | Appointed | |
| | LIBE Civil Liberties, Justice and Home Affairs | | 21/02/2005 | |
| | | PSE PEILLON Vincent | | |
| | Former committee responsible | | | |
| | LIBE Citizens' Freedoms and Rights, Justice and Home Affairs | | 11/09/2002 | |
| | | PPE-DE SCHMITT Ingo | | |
| | Former committee for opinion | | | |
| ECON Economic and Monetary Affairs | | 01/10/2002 | | |
| | | PSE TORRES MARQUES Helena | | |
| JURI Legal Affairs and Internal Market | The committee decided not to give an opinion. | | | |
| JURI Legal Affairs and Internal Market | | | 11/07/2002 | |
| | | NI GARAUD Marie-Françoise | | |
| Council of the European Union | Council configuration | Meeting | Date | |
| | Economic and Financial Affairs ECOFIN | 2672 | 12/07/2005 | |
| | Economic and Financial Affairs ECOFIN | 2638 | 17/02/2005 | |
| European Commission | Commission DG | Commissioner | | |
| | Taxation and Customs Union | | | |

| Key events | | | |
|------------|---|------------------------------|---------|
| 01/07/2002 | Committee referral announced in Parliament, 1st reading | | |
| 19/03/2003 | Vote in committee, 1st reading | | Summary |
| 19/03/2003 | Committee report tabled for plenary, 1st reading | A5-0073/2003 | |
| 15/05/2003 | Decision by Parliament, 1st reading | T5-0214/2003 | Summary |
| 24/02/2005 | Committee referral announced in Parliament, 2nd reading | | |
| | Vote in committee, 2nd reading | | Summary |

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|------------|---|---|---------|
| 26/05/2005 | | | |
| 07/06/2005 | Debate in Parliament |  | |
| 08/06/2005 | Results of vote in Parliament |  | |
| 08/06/2005 | Decision by Parliament, 2nd reading | T6-0225/2005 | Summary |
| 12/07/2005 | Act approved by Council, 2nd reading | | |
| 26/10/2005 | Final act signed | | |
| 26/10/2005 | End of procedure in Parliament | | |
| 25/11/2005 | Final act published in Official Journal | | |

Technical information

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|----------------------------|--|
| Procedure reference | 2002/0132(COD) |
| Procedure type | COD - Ordinary legislative procedure (ex-codecision procedure) |
| Procedure subtype | Legislation |
| Legislative instrument | Regulation |
| | Repealed by 2016/0413(COD) |
| Legal basis | EC Treaty (after Amsterdam) EC 135 |
| Stage reached in procedure | Procedure completed |
| Committee dossier | LIBE/6/26593 |

Documentation gateway

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|---|-------------|---|------------|-----|---------|
| Legislative proposal | | COM(2002)0328 OJ C 227 24.09.2002, p. 0574 E | 25/06/2002 | EC | Summary |
| Committee draft report | | PE319.258 | 14/01/2003 | EP | |
| Amendments tabled in committee | | PE319.258/AM | 11/03/2003 | EP | |
| Committee opinion | ECON | PE323.098/DEF | 12/03/2003 | EP | |
| Committee opinion | JURI | PE329.412/DEF | 17/03/2003 | EP | |
| Committee report tabled for plenary, 1st reading/single reading | | A5-0073/2003 | 19/03/2003 | EP | |
| Text adopted by Parliament, 1st reading/single reading | | T5-0214/2003 OJ C 067 17.03.2004, p. 0207-0259 E | 15/05/2003 | EP | Summary |
| Modified legislative proposal | | COM(2003)0371 | 01/07/2003 | EC | Summary |
| Council statement on its position | | 16047/2004 | 18/01/2005 | CSL | |
| Council position | | 14843/1/2004 OJ C 144 14.06.2005, p. 0001-0008 E | 17/02/2005 | CSL | Summary |
| Commission communication on Council's position | | COM(2005)0058 | 18/02/2005 | EC | Summary |
| Committee draft report | | PE355.777 | 12/04/2005 | EP | |

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|--|--|---|------------|-----|---------|
| Amendments tabled in committee | | PE357.862 | 17/05/2005 | EP | |
| Committee recommendation tabled for plenary, 2nd reading | | A6-0167/2005 | 30/05/2005 | EP | |
| Text adopted by Parliament, 2nd reading | | T6-0225/2005 OJ C 124 25.05.2006, p. 0264-0390 E | 08/06/2005 | EP | Summary |
| Commission opinion on Parliament's position at 2nd reading | | COM(2005)0288 | 21/06/2005 | EC | Summary |
| Commission response to text adopted in plenary | | SP(2005)2882 | 13/07/2005 | EC | |
| Draft final act | | 03646/2005 | 26/10/2005 | CSL | |
| Follow-up document | | COM(2010)0429 | 12/08/2010 | EC | Summary |

Additional information

European Commission

[EUR-Lex](#)

Final act

[Regulation 2005/1889](#)

[OJ L 309 25.11.2005, p. 0009-0012](#) Summary

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

PURPOSE: to prevent money laundering through customs cooperation. **CONTENT:** 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 customs administrations, which are already familiar with international cooperation. Recourse to customs co-operations is also necessary because the machinery introduced by Council Directive 91/308/EC covers only money-laundering operations conducted through credit institutions, financial institutions and certain professions. The consequence is that large sums of money of dubious origin are entering and leaving the Community, which cannot be detected by this mechanism. Accordingly, this proposal deals with the obligatory declaration of cash at external frontiers: -any person entering or leaving Community customs territory and carrying a sum of EUR 15000 or more in cash must declare that sum. -the form of obligatory declaration is laid down in the proposal. Imposing the use of a standard pre-printed declaration form will enable customs administrations to improve synergies and exchange information more easily. -"cash" encompasses a whole range of fungible assets. -where there is evidence that cash is being carried for the purposes of money-laundering operations, information obtained through the declaration or through subsequent controls will automatically be transmitted to the competent authorities of the appropriate Member State, and, in certain circumstances, the Commission. -the competent authorities have the powers to ensure compliance with the obligation to declare and to exercise effective control. -Member States must introduce penalties for failure to lodge a declaration. The level of fines may not exceed a quarter of the sum carried. -there are provisions for divulging information to non-Member countries if cash is being carried for terrorist groups. ?

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

The committee adopted the report by Ingo SCHMITT (EPP-ED, D) amending the proposal under the 1st reading of the codecision procedure. It said that Member States should be allowed to choose between two procedures: the obligation to declare or the obligation to disclose. Under the disclosure procedure, a traveller entering or leaving the Community customs territory with sums of EUR 15 000 or more in cash would be required to provide information at the request of a customs official. In particular, he or she would be required to "disclose the nature, denominations and value of that cash and give details of its provenance, owner and purpose". Following on from Member States' right to choose between two alternative procedures, the committee said that a directive was preferable to a regulation as the legal form for this proposal and amended the text to reflect this. While agreeing with the Commission that cash may be detained for up to three working days, the committee was concerned that restrictions should be imposed on any extension of that period. It accordingly specified that the three-day period during which cash may be detained may be extended once only "up to a period of one month". Moreover, it proposed that the information obtained by means of the two procedures should be administered in a Europol database, to which each Member State would have access. It should be possible to call up the data stored on that database only in connection with measures to prevent money laundering. Lastly, the committee wanted the Member States to transpose the directive into national law no later than 31 December 2004 and called on the Commission to assess its application and report to Parliament and the Council within two years. ?

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

The European Parliament adopted a resolution drafted by Ingo SCHMITT (EPP-ED, Germany) by 320 votes to 47, with 47 abstentions and made some amendments to the Commission's proposal. (Please see the summary dated 19/03/03).?

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

Of the 23 amendments adopted by Parliament, eight of which are of substance, the rest are only adjustments to the wording - two are accepted in their entirety by the Commission, and three are accepted in part. As regards the amendments accepted by the Commission, they concern: - the proposal to replace the words "traveller's cheques or postal cheques" with the word "cheques" in the definition of cash; - the proposal to add a short phrase linking Article 6 with Article 1 of Directive 91/308 in order to specify clearly which are the competent authorities to whom the information is to be transmitted. With regard to the amendments accepted in part by the Commission, they : - would cite Article 95 of the EC Treaty as a further legal basis in addition to Article 135, already cited in the proposal. Article 95 concerns the approximation of the laws, regulations and administrative provisions of the Member States that directly affect the establishment and functioning of the internal market; - proposes limiting the extension of the period for which cash may be held by the competent authorities to a single occasion of not more than one month; - alter the name of the Official Journal as a consequence of the entry into force of the Treaty of Nice.?

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

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 by the 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.

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

The Commission considers that the common position constitutes an acceptable compromise even if not all of the amendments of the EP have been taken on board. The Commission is nevertheless convinced that the views of Council and Parliament are sufficiently close to suggest an agreed position is attainable in the near future, especially given the interest of all sides to improve controls to stop the flow of funds to terrorists and criminal organisations.

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

The committee adopted the report by Vincent PEILLON (PES, FR) broadly approving the Council's common position under the 2nd reading of the codecision procedure, subject to a few amendments designed to improve the protection of personal data.

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

The European Parliament adopted a resolution drafted by Vincent PEILLON (PES, FR) supporting the Council's common position which reduces the threshold from EUR 15,000 to EUR 10,000. (Please see the summary of 26/05/2005.) The amendments adopted were to ensure that the future regulation will respect all the necessary provisions on the protection of personal data and the confidentiality of the information regarding the professional secrecy.

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

Parliament adopted 3 amendments to the Council's common position at second reading. The Commission can accept those 3 amendments in their entirety, as negotiated during the trialogue meetings in which it fully participated.

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

PURPOSE : to prevent money laundering through customs cooperation.

LEGISLATIVE ACT : Regulation 1889/2005/EC of the European Parliament and of the Council of the European Parliament and of the Council on controls of cash entering or leaving the Community.

CONTENT : this Regulation complements the provisions of Directive 91/308/EEC, which covers money-laundering operations conducted through credit institutions, financial institutions and certain professions. Since there are large sums of money of dubious origin entering and leaving the Community, which cannot be detected by this mechanism, this Regulation deals with the obligatory declaration of cash at external frontiers. The main points are as follows:

- any natural person entering or leaving the Community and carrying cash of a value of EUR 10 000 or more shall declare that sum to the competent authorities of the Member State through which he is entering or leaving the Community;

- the form of obligatory declaration is laid down in the Regulation. Imposing the use of a standard pre-printed declaration form will enable customs administrations to improve synergies and exchange information more easily. The declarant must provide prescribed information, including details of

the owner of the cash and the intended recipient of the cash;

- in the event of failure to comply with this obligation, cash may be detained by administrative decision in accordance with the conditions laid down under national legislation;

- "cash" encompasses a whole range of fungible assets;

- where there is evidence that cash is being carried for the purposes of money-laundering operations, information obtained through the declaration or through subsequent controls will automatically be transmitted to the competent authorities of the appropriate Member State, and, in certain circumstances, the Commission;

- the competent authorities have the powers to ensure compliance with the obligation to declare and to exercise effective control;

- Member States must introduce penalties for failure to lodge a declaration. By 15 June 2007, Member States shall notify the Commission of the penalties applicable in the event of failure to comply with the obligation to declare;

- there are provisions for divulging information to non-Member countries in the framework of mutual administrative assistance. Member States shall notify the Commission of such exchanges of information where particularly relevant for the implementation of the Regulation;

- all information which is by nature confidential or which is provided on a confidential basis shall be covered by the duty of professional secrecy. It shall not be disclosed by the competent authorities without the express permission of the person or authority providing it. The communication of information shall, however, be permitted where the competent authorities are obliged to do so, particularly in connection with legal proceedings. Any disclosure must comply with prevailing data protection provisions, in particular Directive 95/46/EC and Regulation 45/2001/EC;

- the Commission shall submit to the European Parliament and the Council a report on the application of the Regulation four years after its entry into force.

ENTRY INTO FORCE : 15 December 2005.

DATE OF EFFECT : 15 June 2007.

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

This report concerns the application of Regulation (EC) No 1889/2005 of the European Parliament and of the Council on controls of cash entering or leaving the Community.

To recall, this Regulation entered into force on 15 December 2005. Article 10 of the Cash Control Regulation requires the Commission to submit a report on its implementation to the European Parliament and the Council 4 years after its entry into force. The Cash Control Regulation is applicable since 15 June 2007 and given this recent applicability, focus has been put, both by Member States and the Commission, on the creation of appropriate structures and the development of adequate procedures so as to allow for a harmonised implementation of the Cash Control Regulation.

To start the evaluation process, the Commission sent out questionnaires to the Member States in July 2008. The replies provided the Commission with sufficient information to draw up this report.

Conclusions: the report concludes that the contributions received by the Member States show that the recent implementation of the Cash Control Regulation is generally satisfactory. Member States have organised competent authorities as to ensure that passengers comply with their obligation to declare, cash declarations are processed and controls are carried out on passengers, the luggage and the means of transport. They also have put in place a penalty system and/or cash detention system for cases of non-compliance with the cash declaration requirements. Member States have organised themselves to ensure that the information gained from the cash declaration system is made available to the national FIU. They exchange information where relevant with other Member States, Commission and third countries, whilst complying with confidentiality and data protection standards. Considering the differences between Member States in cash declarations gathered and controls performed, a close monitoring of Member States is necessary to enhance the harmonisation of the implementation of the Cash Control Regulation by the Member States. Where necessary, Member States will be required to take remedial actions.

In a few MS some shortcomings have been detected in the recording, processing and making available of control information and in the introduction of national penalties. The Commission is taking the necessary action to ensure that the EU legislation on cash controls is appropriately implemented in all Member States.

Recommendations: the experience gained from the practical implementation of the Cash Control Regulation, has led to conclude that a thorough review of the Regulation is NOT necessary.

However it does show that some adjustments to the cash control regulatory framework could be considered:

- revising article 3 of the Cash Control Regulation to cater for the practical control difficulties of Member States with regard to transit passengers;
- introducing a Common EU Cash Declaration Form, based on the Common Declaration Form currently in use by the majority of Member States to allow for further harmonisation of the data gathered, travellers' awareness and possible computerisation;
- inserting compulsory (quarterly) reporting requirements to the COM on statistics gathered by MS, to ensure the monitoring of the effectiveness of the Cash Control Regulation. These reporting requirements are currently based on voluntary agreements;
- inserting a compulsory requirement to raise awareness on the cash declaration obligation. At present all communication actions are taken on a voluntary basis;
- introducing a Committee procedure to institutionalise the discussions with MS on the management of the Cash Control Regulation;
- envisaging a COM implementing Regulation for technical elements such as the format of the Common Declaration Form or the content of reporting requirements.

Greater harmonisation could already be achieved by exchanging best practices and by enhancing harmonisation of procedures via soft law, like guidelines or technical agreements between the Member States via the Cash Control Working Group.

In order to achieve complete harmonisation of cash controls on entering and leaving the EU it would be necessary to amend the Cash Control Regulation.