Controls on cash entering or leaving the Union

2016/0413(COD) - 08/12/2017 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs and the Committee on Civil Liberties, Justice and Home Affairs adopted the report prepared jointly by Mady DELVAUX (S&D, LU) and Juan Fernando LÓPEZ AGUILAR (S&D, ES) 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.

The committee recommended that the European Parliaments position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows.

Key concepts: the term cash shall include four categories: cash, bearer negotiable instruments, highly liquid value goods and certain types of anonymous prepaid cards. Members clarified the term unaccompanied cash to mean cash making up part of a consignment without a carrier. Carrier shall mean any natural person entering or leaving the Union carrying cash on his or her person, in his or her luggage or in the conveyance in which he or she cross the external border.

Obligation to declare unaccompanied cash: any carrier carrying at least EUR 10 000 in liquid on their person, in their luggage or in the conveyance in which they cross the external border shall be required to declare the amount to the competent authorities of the Member State. They shall be required to make the cash available to the competent authorities for control.

Members extended the information to be indicated in the declaration and specified their nature, both for natural persons (bearer, owner, recipient) and for legal persons. The declaration shall contain information on the value of cash, its source and its intended use. Declarants shall always be able to obtain a written copy.

Disclosure obligation for unaccompanied cash: the competent authorities of the Member State through which the cash is entering or leaving may, following a risk analysis, require the sender or the recipient or their representative to make a disclosure declaration, within a set deadline of no more than 30 days. The competent authorities may retain the cash until the sender, recipient or its representative makes the disclosure.

Control powers on the competent authorities: controls shall be based primarily on a risk analysis, with the purpose of identifying and evaluating the risks and developing the necessary countermeasures. The risk analysis shall not prevent competent authorities from proceeding with spontaneous controls or controls based on specific information obtained by another authority.

The Commission may adopt delegated acts with respect of detailed rules for the carrying out of controls by competent authorities, taking into account the common risk management framework as defined in Regulation (EU) No 952/2013 and the risk assessment analysis carried out under Directive (EU) 2015/849.

Sharing of data: for the purpose of ensuring that the Financial Intelligence Units have prompt access to the information necessary for the conduct of their investigations, the interconnection of the Customs Information System and the decentralised computer network FIU.net shall be encouraged.

Members suggested that Member States be required to provide information no later than four working days after the date of collection, instead of one month as required by the proposed regulation.

By 1 January 2019, the Commission shall assess the appropriateness of establishing a Union Financial Intelligence Unit and shall, if appropriate, present a legislative proposal.

Exchange of information with third countries: the Commission should be informed of any exchange of information with third countries pursuant to this Regulation and should report thereon on a yearly basis to the European Parliament.

Personal data protection and retention periods: the processing of personal data on the basis of this Regulation shall take place only for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

If there are indications that the cash is related to a criminal activity, personal data obtained shall be stored by the competent authorities and the Financial Intelligence Unit for no longer than five years. In such case the reasons for this longer storage shall be justified and recorded. If no decision is taken on the continued storage that data shall be erased automatically after three years.

Penalties for non-compliance: Member States shall aim at introducing a coordinated set of penalties across the Union. To achieve this aim, the Commission shall, if appropriate, present a legislative proposal.

Reporting on the implementation of the Regulation: the Commission shall publish an annual report on the statistical information to estimate the scale and sums of smuggled cash. As soon as the Regulation is implemented, the Commission, in cooperation with the Member States and the European Data Protection Supervisor, shall carry out awareness raising campaigns aimed at informing Union citizens and third-country nationals, as well as legal persons, of the obligation to declare cash when crossing borders.