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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

on restrictions on payments in cash

1. INTRODUCTION

On 2 February 2016, the Commission published a Communication to the European Parliament and the Council on an Action Plan to further step up the fight against the financing of terrorism¹. The Action Plan built on existing EU rules in order to adapt to new threats and aimed to update EU policies in line with international standards. It discussed numerous issues and solutions in different fields related to terrorism financing.

In the context of the Commission's action to extend the scope of the Regulation on controls of cash entering or leaving the European Union, reference was made to the appropriateness of exploring the relevance of potential upper limits to cash payments². The Action Plan also further noted that "Several Member States have in place prohibitions for cash payments above a specific threshold". However, such prohibitions have not been considered at EU level.

In its Conclusions on the fight against terrorism, the Economic and Financial Affairs Council ("ECOFIN") of 12 February 2016 called on the Commission "to explore the need for appropriate restrictions on cash payments exceeding certain thresholds".

Following the Action Plan and the support provided by the ECOFIN, the Commission services initiated informal contacts with Member States to collect information about their practices in the area, their national experience with restrictions on payments in cash and their views on a potential initiative in this area.

At the ECOFIN of 17 June 2016, the Commission reported on this quick informal survey and announced that a detailed impact assessment would be carried out, including an analysis of the costs and benefits of potential EU action. This assessment would also include a public consultation³.

The Commission commissioned an impact study to an external contractor⁴ and a public consultation was carried out between March and May 2017.

The findings of the study produced by the contractor suggested that restrictions on payments in cash would not significantly prevent terrorism financing, but indicated that such restrictions could be useful in combatting money laundering. The study also noted that the existence of diverging restrictions at national level had a noticeable negative impact on the internal market by distorting competition and creating an uneven playing field among some businesses.

The purpose of this Report is to present the findings of the study and the public consultation. The Report should be read in conjunction with the study, which contains more detailed information.

¹ COM (2016)50

² The Action Plan stated that "Payments in cash are widely used in the financing of terrorist activities... In this context, the relevance of potential upper limits to cash payments could also be explored. Several Member States have in place prohibitions for cash payments above a specific threshold".

³ The initiative was validated in the Commission's agenda planning in December 2016 and on 23 January 2017, an Inception Impact Assessment was published, setting out the case for further analysis http://ec.europa.eu/smart-regulation/roadmaps/docs/plan_2016_028_cash_restrictions_en.pdf.

⁴ HTML Link to Ecorys Report

2. CONTEXT

2.1. Features of cash

For the purposes of this Report, cash is understood as banknotes and coins issued by central banks.

The study provides detailed information on the use of cash across countries⁵. The Occasional Paper of the European Central Bank “The use of cash by households in the euro area” also provides valuable information on the use of cash at point of sale, based on a survey carried out in 2016⁶. According to this Report from the European Central Bank, cash remains the most common means of payment in the euro area and still represents a significant store of value.

The Commission's focus when assessing a possible cash payment limit was on high value payments, which represent only a minor share of all cash transactions⁷. The use of cash in general was not targeted.

2.2. Legal framework

2.2.1. EU level

There is currently no legislation at EU level restricting payments in cash⁸. However, two legal instruments impose obligations on cash use.

The Cash Control Regulation provides a system of controls that applies to natural persons entering or leaving the Union, and carrying currency or bearer-negotiable instruments worth EUR 10,000 or more. On 21 December 2016, the Commission issued a new legislative proposal aimed to further strengthen these controls. This proposal is currently being negotiated by the co-legislators.

The 4th Anti-Money Laundering Directive imposes due diligence obligations on persons trading in goods to the extent that they make or receive cash payments of EUR 10.000 or more, whether the transaction is carried out in a single operation or in several operations, which appear to be linked⁹.

2.2.2. National level

A majority of EU Member States have cash payment restrictions¹⁰. These restrictions vary from thresholds of EUR 500 to EUR 15.000. These measures are rather heterogeneous, with differences with regard to the type of measures, thresholds, and coverage. It must also be observed that the number of EU Member States with cash restrictions has increased rapidly in recent years, from 4 in 2008 to 17 in September 2017.

⁵ See study p. 18-21

⁶ <https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op201.en.pdf>

⁷ See ECB Occasional Paper, page 25.

⁸ It must be observed that the legal aspects of a potential EU measure restricting cash payment limits have not been assessed at this stage.

⁹ The directive was recently updated by the Fifth Anti Money laundering Directive.

¹⁰ The study provides a detailed overview of the national legislation in force by the end of 2017 (p. 25-29).

3. STEPS TAKEN FOLLOWING THE ECOFIN OF 17 JUNE 2016

To mobilise resources efficiently, a study was commissioned to a private contractor, a consortium formed by Ecorys and the Centre for European Policy Studies (CEPS). The main purpose of the study was to assess the potential impact of restrictions on cash payments on illicit activities and on the internal market¹¹.

In line with the Better Regulation Guidelines, a public consultation was carried out between 1 March 2017 and 31 May 2017. The results of this consultation are presented in Section 4, and indicate that a large majority of respondents were clearly opposed to any restrictions on payments in cash.

In February 2018, the contractor finalised the study. The main conclusions were that restrictions on cash payments would have little positive impact on terrorism financing or tax fraud. However, the study also concluded that restrictions on payments in cash were useful in combatting money laundering, and that the existence of diverging restrictions at national level had a noticeable negative impact on the internal market by distorting competition and creating an uneven playing field among some businesses.

4. THE PUBLIC CONSULTATION

A public consultation was carried out between 1 March 2017 and 31 May 2017 through an internet survey inviting respondents to answer various questions on the issue of cash restrictions¹².

Three different objectives were identified for the consultation of stakeholders.

First, it was recognised that cash remained the most accessible means of payment and in some Member States was deeply ingrained in the public's image of personal freedom. Any potential change of policy would therefore be sensitive and would affect all citizens. Against this background, the first and main objective of the consultation was to collect views of the public in general with regard to a potential introduction of restrictions on payments in cash.

Second, given that cash is still widely used, even for larger payments, in particular in certain economic sectors and by many small and medium-sized companies, it was recognised that these economic sectors and actors could be significantly impacted by an introduction of restrictions on cash payments. For this reason, a second objective of the consultation was to collect views from stakeholders who are active in sectors or activities that rely significantly on cash, and in particular obtain their assessment of the impact that any such restrictions would have on their activities.

Finally, in light of the objective of combatting terrorism financing and other illegal activities, the views of experts in criminal matters and law enforcement were also sought on the pertinence of restrictions on cash payments in relation to this specific objective.

While there were three categories of respondents, it should be underlined that the first category of respondents - the general public - constituted the main target of the electronic survey, which was carried out with the use of an electronic tool allowing the collection of

¹¹ For a detailed description of the methodology followed, see study, p.31-35

¹² Gross results are available at: <https://ec.europa.eu/eusurvey/publication/CashPayments> .

a considerable amount of replies. The questions were designed with this category in mind. Other categories, like for example the economic sector and law enforcement professionals, were not excluded from the survey and were also given the opportunity to contribute. However, these stakeholders were also consulted through a more qualitative enquiry in the process of the external study. The public survey was not designed to cater specifically for the specificities of these stakeholders.

The public consultation included several questions. All the details in relation to these questions and their answers have been published¹³.

The main message from the survey was that at a substantial majority (94.94%) answered negatively to the question "Would you agree to the introduction of restrictions on payments in cash at EU level?" This was a shared view between respondents, regardless of whether restrictions were in place or not in their own country of residence.

Such negative reaction can be explained by the fact that the question related to the introduction of a general prohibition, which would potentially apply to every citizen (unlike for instance a prohibition to produce certain chemicals, applying by definition exclusively to potential industrial producers). Furthermore, it is clear that public consultations reflect only the opinion of the respondents who spontaneously volunteer to answer the survey, unlike opinion polls where respondents are pro-actively contacted in a systematic manner...

In that context, it should be clarified that most respondents originated from three Member States: Austria, Germany and France. This was the result of the publicity given to the consultation in the national media in these countries. The Commission did not pursue any targeted communication. However, results from other countries did not differ significantly from the general trend observed in these three countries.

5. FINDINGS OF THE STUDY

5.1. Findings of the study with regard to terrorism financing

Cash is extensively used by terrorists and criminals because it helps them to minimise the chances of being caught¹⁴. Cash offers anonymity and facilitates the ability to conceal not only illegal activities, but also ancillary legal transactions that could otherwise be tracked by law enforcement agencies. In many terrorist activities, cash plays a significant role.

However, the detailed analysis of a selection of recent terrorist attacks presented in the study also highlighted that restrictions on payments in cash would have had little impact on the capacity to prepare these attacks.

Firstly, there is an observed trend of the decreasing costs of terrorist attacks since the 9/11 attacks, often going below EUR 10,000 being a fraction of the estimated budget of the 9/11 attacks which ranged between USD 400,000 and USD 500,000 .

Secondly, within such a limited budget the amounts of individual transactions are often even lower, and would therefore not have been impacted by restrictions which would

¹³ https://ec.europa.eu/info/sites/info/files/statistical_overview.pdf

¹⁴ Study, p. 21.

concern only high value payments. The case study analysis presented in the study¹⁵ demonstrates this extensively.

Finally, it must be observed that, when assessing the impact of a prohibition of payment in cash on terrorism and other criminal activities, a distinction must be made between the impact on illicit and on licit transactions.

Illicit transactions are transactions that are illegal (such as the acquisition of explosives), or seemingly licit transactions where both parties know that they serve an illegal activity. To the extent that these transactions are already illegal and that the parties willingly risk prosecution and law enforcement measures, it appears doubtful that a prohibition of cash payments would be respected or would have any deterrent effect. Criminals, who already wilfully breach the law, are unlikely to be deterred by an additional prohibition with regard to the payment of the transaction. This is particularly so when the sanctions associated with that additional prohibition are insignificant in comparison to the sanctions associated with the main criminal activity.

Licit transactions are ancillary transactions to the main criminal activity that are not in themselves criminal (such as renting a car), and for which the counterpart (e.g. the car-rental company) may be presumed to be unaware of the criminal purpose behind the transaction (for example the transport of explosives). In that context, a prohibition to pay in cash could be respected at the initiative of the honest counterpart, leading to the transaction being paid by other means or not being carried out. Unfortunately, in that case one would suspect that, because these transactions are licit and common, paying them by traceable means would not necessarily allow identifying a suspicious activity. It must be observed that many such common transactions were actually paid by traceable means in the preparation of recent terrorist attacks, without raising red flags¹⁶.

In conclusion, prohibitions on high value cash payments would not significantly hamper directly the financing of terrorist activities or other criminal activities. Most transactions would not be concerned, or the prohibition would likely be ignored, or would be respected only with regard to transactions which are in themselves so common that they are unlikely to trigger any suspicions.

5.2. Findings of the study with regard to tax fraud

While tax fraud¹⁷ and the use of cash are often associated, the study demonstrates that the relationship between the two is not always clear-cut¹⁸.

Firstly, while there is some correlation between the use of cash in an economy and the level of tax fraud, it seems that other factors also play an important role, which would explain the existence of outliers (such as Austria which has a low level of tax fraud but a high usage of cash).

Secondly, while cash is used extensively for terrorism financing and other criminal activities, a significant form of tax fraud is conducted through non-cash transactions,

¹⁵ See study p. 38-54;

¹⁶ See case studies referred to in the study;

¹⁷ Tax fraud must be differentiated from tax avoidance, which consists in using sophisticated but legal ways of avoiding or reducing tax bills.

¹⁸ Study, p. 64-67.

with the fraud relying on complex legal structures and operations which are often of a multinational nature and which do not involve any use of cash. In these cases, a prohibition on payments in cash would be totally ineffective.

Finally, in the cases where cash is indeed used for tax fraud purposes, two cases can be distinguished. In both cases, cash restriction would not appear to meet the purpose of limiting fraud. The first case involves transactions where both parties are involved in the tax fraud, such as undeclared labour. Such transactions may be of high value (such as salary payments), but because both parties are already exposed to the penalties associated with the tax fraud, a prohibition of payments in cash would exert little deterrence. The second case involves transactions where only one party relies on the cash-nature of the transaction to carry out tax fraud (generally a seller), while the other party remains uninvolved and unaware of the fraud. It appears to the Commission that cash restrictions could have an impact in such cases. However, given that the amounts involved in these kinds of transactions are often low (e.g. restaurant bills), they would in general not be covered by a prohibition on high value payments in cash¹⁹.

In conclusion, it would appear that a restriction on high value payments in cash would have only a limited impact on tax fraud, unless the threshold is put at a very low level.

5.3. Findings of the study on money laundering

Many criminal acts are perpetrated with the goal of generating profits for the individual or group that carries out the act. Money laundering is the processing of these criminal proceeds²⁰ to disguise their illegal origin, so that the resulting money appears legal and can be spent in the real economy²¹. As indicated in the study²², it is clear that cash transactions play an important part in money laundering, the main reason being that, despite the steady growth on non-cash payment methods and the changing face of criminality (with a rise of cybercrime, online fraud and illicit online market places), criminal activities continue to generate profits in the form of large amounts of cash. Cash is thus often the starting point of money laundering, which therefore requires some cash transactions, often through the acquisition of high value goods. The European Commission's Supranational Risk Assessment Report²³ also highlights the important role played by cash in money laundering (see in particular chapters 2.1.4 and 2.2.1).

Despite the fact that not all cash transactions would be impacted by a cash restriction, transactions related to money laundering are often of high value. A prohibition or declaration obligation would remove the anonymity of the transaction and would render money laundering via the purchase of high-value goods more difficult. However the overall value of these transactions, and the impact of a cash restriction on money laundering in general, cannot be precisely quantified. In this context, a declaration

¹⁹ Study, p. 133.

²⁰ Criminal proceeds should be understood in the widest sense and include in particular tax fraud profits.

²¹ This is an important difference with terrorism, where the objective is not enrichment of the individual or the group, but terror. In the case of terrorism, income is not an objective but a means to achieve the objective. Terrorists are in general less concerned with laundering their funds since they do not plan to spend them legally. Recent terrorist plots did not appear to have had any for-profit criminal purpose. Criminals typically obtain funds illegally with the aim of introducing them in the legitimate financial system. Terrorists obtain funds legally (salaries, loans, sale of goods, etc.) and spend them on a criminal activity.

²² Study p.57-64

²³ COM (2017) 340

obligation would already provide law enforcement with intelligence. However, the effectiveness of a declaration obligation would depend on the levels of compliance by high-value dealers and the extent to which the reports are actually analysed and effectively used as intelligence, information or evidence in money laundering investigations. Compliance costs are expected to be higher in comparison with the costs arising from a plain cash prohibition²⁴.

One specific feature of money laundering is its international aspect and the fact that criminals exploit differences between national laws regarding cash transaction reports and limits on cash payments²⁵. The differences between EU Member States' laws on cash limitations not only hamper the proper functioning of the internal market (see below), but also provide opportunities to circumvent controls in their country of origin by investing in cash intensive businesses in another EU Member State with no or a lower control of cash expenditures. In other words, the existence of cash payments limitations in some Member States, and their absence in other Member States, creates the possibility to bypass the restrictions by moving to another EU Member State.

In conclusion, it appears that homogeneous restrictions on high value payments in cash, whether in the form of a prohibition or declaration obligation, would have a positive impact on the fight against money laundering, even though this impact could not be exactly quantified. Given that money laundering is typically a by-product of other criminal or illicit activities, such positive impact would extend indirectly to the fighting of these activities, even though the restrictions would not affect the activities themselves.

5.4. Findings of the study with regard to the internal market, distortion of competition and restrictions to payments in cash

The existence of diverging national restrictions raises the question as to whether these restrictions induce displacements of activities across borders. The study answers this question in the positive.

A well-functioning Internal Market requires maintaining a level playing field across EU Member States, which is not possible to achieve when having largely varying legislation at Member State level. Distortions of the functioning of the Internal Market may affect consumers as well as businesses.

Different restrictions on payments in cash may lead to consumers and businesses switching to an alternative method of payment, not performing the transaction at all or relocating the transaction to a jurisdiction where such restrictions do not exist.

This aspect has been examined in the study²⁶, which analysed the cross border behaviour of buyers and sellers and conducted an econometric assessment of some specific sectors relying significantly on cash.

Overall, the results, particularly for euro area countries, show support for the assumption that cash restrictions have an impact on displacement of turnover from one country to another in case of diverging cash restrictions. This is true for domestic cash restrictions, as well as for cash restrictions in neighbouring countries, with the former having a

²⁴ Study p. 10

²⁵ Study p. 67-70

²⁶ Study, p. 70-77.

negative and the latter a positive impact on the turnover of cash intensive sectors. Against this background, the study concludes that national cash restrictions distort the internal market²⁷.

It should be highlighted that such displacement of turnover concerns both legitimate transactions and transactions performed for the purpose of money laundering. The latter ones are not illegal transactions per se, but regular transactions performed for the sole illegitimate purpose of money laundering where the other party (generally a seller) is not complicit or aware of the illegitimate purpose of the transaction. Nevertheless, both sorts of displacements of transactions have an impact on the integrity of the internal market and lead to an uneven playing field, which might distort competition. But it is important to consider that, in addition to affecting the internal market, the cross border displacement of transactions aimed at laundering money also lowers the effectiveness of the national restrictions in fighting money laundering .

Based on the study, it appears that diverging restrictions across Member States lead to artificial displacements of business activities across borders²⁸. This affects both the integrity of the internal market and the efficiency of national measures in reaching their public-policy objectives.

6. CONCLUSIONS

Based on the study, it can be concluded that cash restrictions would not significantly address the problem of terrorism financing. The ineffectiveness of the measure stems from the fact that transactions targeted under these objectives are either of a value too low to be covered, or are already illegal transaction where an additional prohibition would have little impact, or both.

However, preliminary findings of the study indicate that a prohibition of high value payments in cash could have a positive impact on the fight against money laundering. Given that money laundering typically concerns funds originating from criminal activities or tax fraud, restrictions on payments in cash could possibly have an indirect impact on such activities.

However, a further targeted assessment of this matter would be required, given that the focus of the current initiative was to counter terrorism financing.

Another important conclusion is that diverging national provisions on payments in cash distort competition in the internal market, leading to potential relocations of businesses across borders, in particular for some specific sectors relying significantly on cash transactions, such as jewellery or car dealers. These diverging national restrictions also potentially create loopholes allowing the bypassing of national cash payment limits, and therefore decreasing their efficiency.

Finally, it must be observed that restrictions on cash payments is a sensitive issue for European citizens and that many of them view the possibility to pay in cash as a fundamental freedom, which should not be disproportionately restricted.

²⁷ Study, p. 77.

²⁸ Study, p. 70-77.

Considering the internal market aspects and the significance and sensitivity of such a potential measure, this matter requires further assessment. At this stage, the Commission is not considering any legislative initiative on this matter.