

EN

EN

EN



EUROPEAN COMMISSION

Brussels, 12.8.2010  
COM(2010) 429 final

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

**On the application of Regulation (EC) No 1889/2005 of the European Parliament and of  
the Council of 26 October 2005 on controls of cash entering or leaving the Community  
pursuant to article 10 of this Regulation**

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

## On the application of Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community pursuant to article 10 of this Regulation

### 1. INTRODUCTION

Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community<sup>1</sup>, referred to in the rest of this report as "the Cash Control 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 (MS) and the Commission (COM), 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 COM sent out questionnaires to the MS in July 2008. The MS' replies to this questionnaire<sup>2</sup> followed by discussion in several meetings with the MS in the "Cash Control Working Group" provided the COM with sufficient information to draw up this report.

### 2. GENERAL BACKGROUND

#### 2.1. Context

##### 2.1.1. *European Union (EU) legislation*

The EU legal framework to prevent money laundering is composed of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing<sup>3</sup> as amended by Directives 2007/64/EC, 2008/20/EC and 2009/110/EC, and Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfer of funds<sup>4</sup>. Council Decision 2000/642/JHA concerning arrangements for

---

<sup>1</sup> OJ L 309, 25.11.2005, p. 9 - 12.

<sup>2</sup> Replies to all questionnaires were received by 25 February 2009, with the exception of Belgium that did not reply. The information in the report is therefore based on the information submitted by 26 Member States. For the cash statistics all Member States are included.

<sup>3</sup> OJ L 309, 25.11.2005, p. 15 - 36.

<sup>4</sup> OJ L 345, 8.12.2006, p. 1 - 9.

cooperation between financial intelligence units of the Member States in respect of exchanging information and Council Framework Decision 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime are equally relevant. Complementary to this framework the EU counter-terrorist financing strategy points at measures aiming to improve the results in the fight against terrorist financing.

Directive 2005/60/EC, which replaced Directive 1991/308/EEC, contains an EU mechanism to prevent money laundering by monitoring transactions through credit and financial institutions and certain types of professions. The risk that the application of that mechanism would be circumvented by cash movements for illicit purposes or for terrorist financing led to the need to complement this measure by a control requirement for cash entering/leaving the EU.

The Cash Control Regulation was adopted for this purpose and seeks to reconcile the fundamental principle of free movement of goods, persons, services and capital with the prevention of money laundering and terrorist financing in the context of the single market and an economic and monetary union.

### 2.1.2. *International aspects*

A major partner in ensuring the effectiveness of the Cash Control Regulation is the Financial Action Task Force (FATF) and its affiliated regional body Moneyval. This intergovernmental body, set up by the G7 Summit, held in Paris in 1989, supports governmental policies in anti-money laundering and terrorist financing. It does this by issuing recommendations and guidelines and by checking compliance with its recommendations via a mutual evaluation system so as to put a constant pressure on its members to ensure effective anti- money laundering and terrorist financing measures.

Special Recommendation (SR) IX of the FATF on cash couriers is transposed in the EU by the Cash Control Regulation. The discussion on SR IX procedures and the evaluation and progress reports prepared by FATF assessors have on numerous occasions been the accelerator for further improvements of cash controls in the MS.

The FATF has recently recognised the EU as a supra-national jurisdiction for the application of SR IX on cash couriers. This recognition implies specific criteria to comply with, such as an appropriate exchange of relevant information at supra-national level and comparable training, data collection, enforcement and targeting programmes developed and applied at supra-national level.

## 2.2. **Core elements of the Cash Control Regulation**

### 2.2.1. *The obligation to declare*

The Cash Control Regulation establishes a uniform EU approach towards cash controls based on a mandatory declaration system for amounts of cash entering or leaving the EU with a value of 10 000 € or more. Travellers have to submit information to the designated competent authority on declarant, owner and recipient as well as on the amount, nature, provenance, intended use and transport of the cash in the declaration. The Cash Control Regulation does neither prescribe the method, i.e. orally, written, electronic nor the format of this declaration.

### 2.2.2. *Designation of powers of the competent authorities*

In order to ensure compliance with the obligation to declare, the national competent authorities must be empowered to control natural persons, their baggage and their means of transport. In the event of failure to comply with the obligation to declare, cash may be detained and penalties shall be applied.

### 2.2.3. *Recording and processing of information*

The Cash Control Regulation obliges MS to record and process all information they obtain through the declaration and/or their controls and to make this information available to the national financial intelligence unit (FIU) of the MS through which the traveller is entering or leaving the EU.

### 2.2.4. *Exchange of information*

Where there are indications that the sums of cash are related to any illegal activity associated with the movement of cash, exchange of information may take place with authorities in other MS and the information shall be transmitted to the COM if adversely affecting the financial interest of the EU.

Under the framework of existing agreements on mutual administrative assistance, information obtained under the Cash Control Regulation may also be communicated to a third country subject to compliance with relevant national and EU provisions on the transfer of personal data to third countries.

### 2.2.5. *Confidentiality issues*

All information obtained through the Cash Control Regulation is confidential. All personal information shall be dealt with in accordance with the relevant data protection provisions. Where considered necessary, rules for the classification of the information to guarantee the security of the data shall apply.

## 2.3. **Control of cash movements within the European Union**

The Cash Control Regulation is without prejudice to national measures to control cash movements within the EU. However, such national measures must be in compliance with Article 65 of the Treaty on the functioning of the EU, which empowers MS to establish procedures for the declaration of capital movements for purposes of administrative or statistical information or to take measures which are justified on grounds of public policy or public security, provided the measures and procedures applied shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital.

The following MS<sup>5</sup> apply such intra-EU cash controls at the borders with other MS: BE, BG, CY, DE, DK, ES, FR, IT, MT, PL and PT. For that purpose they make use of a compulsory - with the exception of PT where the declaration is optional unless the natural person is controlled - declaration system with a threshold of 10 000 € AT

---

<sup>5</sup> The information provided in this report on the intra-EU cash controls does not prejudice any position of the Commission regarding the compatibility of these national measures with Article 65 of the Treaty on the functioning of the EU.

does not limit the controls on cash to its borders but applies controls on its entire territory. ES has introduced, similar to AT, national controls but for amounts not lower than 100 000 €. The UK has not introduced routine intra-EU cash controls but officers apply on UK territory (random) checks on passengers and their luggage in respect of any cash carried. IE applies a similar procedure as in the UK but with a cash threshold of 6438 EUR. CZ, EE, EL, FI, HU, LV, LT, LU, NL, RO, SL, SK, SE do not apply any form of intra-EU cash controls.

### **3. APPLICATION OF THE CASH CONTROL REGULATION**

#### **3.1. Context**

##### *3.1.1. Competent authorities*

The Cash Control Regulation does not specify which authority should be designated by the MS as the competent authorities. In practice 23 MS have empowered customs as the main authorities. DK and EE have empowered the tax and customs authority. Two other MS, PL and UK have empowered Customs and Border guards.

The specific national differences are further reflected in the wide variety of other authorities involved: Federal (criminal) Police, FIUs, Agency for the protection of Counter Terrorism, Border Guards, Provincial Governments, Treasury, anti-fraud Departments or investigation services and judicial authorities. Police authorities and the FIUs are most frequent partners in the enforcement of cash control. In 16 MS this cooperation amongst authorities is settled in written cooperation agreements. One third of the MS have set up intelligence cells or working groups between competent authorities.

##### *3.1.2. The definition of cash*

The definition of cash in the Cash Control Regulation is taken over from the definition used by the FATF in SR IX and covers bearer negotiable instruments or currency. So far, MS have not reported major problems in applying this definition. Gold, precious metals or stones are not included in the definition. Some MS report national provisions similar to the obligation to declare cash for gold and/or precious metals and stones (BG, DE, AT (on AT territory), CY, CZ and PL). Multi purpose electronic cash cards are not included either in the definition. One MS (DE) reports national provisions to declare electronic money.

#### **3.2. Obligation to declare**

Any natural person entering or leaving the EU territory is legally required to declare any amount of 10 000 € or more he is carrying to the competent authorities of the MS through which he is entering or leaving the EU, i.e. at the first entry point into the EU and the last point of exit from the EU.

##### *3.2.1. Raising awareness on the obligation to declare*

To ensure that travellers are made aware of the obligation to declare, communication campaigns have been set up and are continuously renewed at national and EU level. At EU level a poster (10000 copies, in 22 languages), multilingual leaflets (401520

copies printed in 2007 with revised reprint in 1000000 copies in July 2009), advertorials in in-flight magazines (in 10 major airlines magazines in September 2009), web pages (2007, revised in August 2009) and an animation clip (in 2007, revised in November 2009, in 7 languages) have been developed and disseminated. Similar tools, such as posters, web pages, information to stakeholders or press releases on detections, were issued at national level.

The general impression is that the communication actions on cash controls have significantly contributed to the awareness of travellers to the obligation to declare cash, although only 4 Member States monitored the results of the communication campaign and in none of the cases monitoring tools were used to measure the efficiency or effectiveness of the communication campaigns.

There is no explicit obligation in the Cash Control Regulation to set up a communication campaign but nearly all MS have recognised that communication actions needed to be taken. 17 MS inform they make use of a permanent communication campaign on cash control to ensure a constant awareness raising. Some MS see the need for including an obligation to raise awareness on cash control in the Regulation as this would ease contacts with airport authorities to display the awareness raising material.

### 3.2.2. *Place to declare*

The Cash Control Regulation requires natural persons to declare cash to the competent authorities of the MS through which they are entering or leaving the EU. In general this requirement does not pose problems to the MS.

#### Transit

For air transit passengers the obligation to declare cash at the first point of entering or the last port of leaving the EU is difficult to comply with due to the variations in airport transit infrastructure. There are few or different facilities provided for declaring cash in transit zones and there is not enough time in-between flights.

For the competent authorities of the MS it is also difficult to ensure harmonised controls on transit passengers. Insufficient time, lack of appropriate control facilities due to differences in airport transit infrastructure and separate channels for hand and hold luggage hamper these controls.

*A specific project group of cash control experts* has worked on this issue and reached the conclusion that a revision of article 3 of the Cash Control Regulation appears to be necessary to align the procedures for controls on cash with those established for controls of passengers' baggage as set out in articles 192 to 194 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code<sup>6</sup>.

---

<sup>6</sup> OJ L 253, 11.10.1993 p. 1 – 766.

### 3.2.3. *Methods to declare*

The Cash Control Regulation allows for the information of the cash declaration to be provided for in writing, orally or electronically. Most Member States have opted for written declarations. Only DK, AT and ES allow for an oral declaration, which is transformed by customs into a written document. AT (for professional cash couriers only), ES and PL allow for electronic declarations to be lodged. For the second quarter 2009, 90 % of the cash declarations have been made in writing, 9.7 % electronically, 0.3 % orally. All MS have established forms that foresee the submission of all minimum data elements required under article 3.2 of the Cash Control Regulation.

The initial implementation phase showed that making use of a common declaration form would be an important contribution to improve the (electronic) exchange of information on cash declarations. Furthermore it would also enhance the understanding by international travellers on what is expected from them, thus improving compliance with the requirements.

For that purpose a European Common Declaration Form (CDF) was developed. 16 MS now make use of this form: AT, CY, DK, EE, EL, FI, HU, IE, LU, MT, NL, PL, PT, RO, SE and SI. Other MS are considering implementing the CDF in the future (BG, DE, LV, SK) or are already using forms that have strong similarities with the CDF: ES, FR, LT. In almost all MS cash declarations are accepted and can be completed in the official languages of the country in which one has to declare, and also in English. Some MS accept and allow the cash declaration form to be completed in other widely spoken EU languages.

### 3.2.4. *Statistics on the cash declarations*

There is no explicit requirement in the Cash Control Regulation to provide for statistics. MS have nevertheless agreed to send their statistics on cash declarations submitted and control results obtained to the COM<sup>7</sup>. Incorrect cash declarations or findings as the result of controls are referred to as "recordings" in the statistics (see details under 3.4.2.).

Annex 1 provides for statistics on cash declarations and recordings gathered by all MS between 15 June 2007 and 30 June 2009.

In this period the MS have received 178 351 cash declarations for a total amount equivalent to 79 922 million €. The cash declarations gathered on entering amounted to a number of 101 824, on leaving to a number of 76 527.

Annex 2 provides a graphical overview of the MS' reporting on the number of cash declarations gathered and shows important differences.

For the reported period DE, IT and FR counted for respectively 25 %, 22,5 % and 13 % of the total number of cash declarations received, followed by ES (9 %), LT (4,5 %), PL (4 %), UK (3,5 %) and BG (3 %).

---

<sup>7</sup> This agreement foresees that MS send cash statistics that do not include data regarding intra EU cash declarations and controls.

Continued monitoring of these statistics is necessary to enhance harmonised implementation of cash controls in the MS.

Annex 3 shows that the number of cash declarations made in the MS have rapidly grown up to the end of 2008 (from 13 196 cash declarations in the 3<sup>rd</sup> quarter of 2007 to 28 210 cash declarations in the last quarter of 2008). Figures dropped to 27 236 cash declarations in the 2<sup>nd</sup> quarter of 2009. The same pattern can be observed in Annex 4 for the amount in € equivalent covered by these cash declarations (5 432 million € in the 3<sup>rd</sup> quarter of 2007, 13 051 million € in the last quarter of 2008, 9 496 million € in the 2<sup>nd</sup> quarter of 2009). It is very likely that the number of cash declarations and amount of € covered by these cash declarations have followed the general decline in economic activity in 2009 related to the banking crisis.

In the second quarter of 2009, more than 63 % of the cash declarations were made at airports, 30 % at road borders, 5 % at ports and 2 % at rail crossings. 86,2 % of the cash declarations were declared by private cash couriers, 13,8 % by professional cash couriers.

### **3.3. Information on empowerment of national authorities for control**

#### *3.3.1. Control competences in the Member States*

Controls in MS focus on the submitted declarations, passengers, luggage and the means of transport. All MS report that they carry out physical verifications. Nearly all MS make use of scanning equipment. The use of trained sniffer dogs for cash controls is reported by 4 MS.

In order to ensure efficient and effective controls, the use of an adequate risk management strategy is crucial. 12 MS report on the use of a specific national strategy related to cash controls. Other MS report on the use of risk analysis criteria for cash control in the main points of entrance and exit. 17 MS indicate they apply risk profiling for cash control and 18 MS make use of intelligence alerts on cash controls, either by receiving and/or issuing these kinds of alerts. 4 MS report to organise national joint targeting actions with other competent authorities.

#### *3.3.2. Control results*

The recordings registered by MS (see Annex 1) amount to 13 019 cases and account for 1 632 million €. The following MS account for the majority of recordings detected: DE (40 %), FR (20 %), IT (12 %), UK (10 %), NL (6 %), PT (4 %), ES (4 %). The graphical overview provided for in Annex 5 on the number of recordings show these important differences.

Several MS report none or few recordings. In some cases this reflects more the impossibility for MS to retrieve data centrally than an actual lack of controls carried out (see information under 3.4.2). Other MS report a very high proportion of recordings compared to the number of spontaneous cash declarations submitted (see Annex 6). Closely monitoring of the control results will allow for the detection and follow up of possible differences in control approach between MS, thus allowing for possible adjustments to ensure full harmonisation of this control approach by MS.

The number of recordings increased steadily from 552 cases for the 3<sup>rd</sup> quarter of 2007 to 2300 cases in the 2<sup>nd</sup> quarter of 2009 (see Annex 7). The amount in € equivalent involved in these recordings, detailed in Annex 8, was fairly stable over this period with the exception of the recordings in the last quarter of 2008 due to one finding of a non-declared bearer negotiable instrument with a high value in Germany (33 million € in the third quarter in 2007, 1 149 million € in the last quarter of 2008, 72,5 million € in the second quarter of 2009).

### **3.4. Information on the recording and processing**

#### *3.4.1. Registration and processing of cash declarations*

All MS report that they register information on the cash declarations. 14 MS register in an automated central database. In most cases this is a stand alone database at central level, sometimes directly accessible for the national FIU (for 2 MS the central database is held by the national FIU). In most cases the information registered is currently not directly retrievable by other competent authorities such as the national FIU.

The MS that have reported not to have automated the registration of cash declarations most commonly refer to the use of excel files or a local database.

#### *3.4.2. Registration and processing of non-voluntary cash declarations and information obtained as the result of controls*

25 MS notify that they register and process the information obtained from the controls of cash carried out. 1 MS notifies not to file this type of information although article 5 of the Cash Control Regulation explicitly requires MS to do so. 12 MS register in an automated central database. The other MS register in databases held in the local customs control posts. 1 MS notifies that only the irregularities detected are registered and another that only results of thorough controls are registered.

#### *3.4.3. Registration and processing of information on cash detained*

Procedures for the detention of cash are not compulsory as article 4 of the Cash Control Regulation indicates that cash MAY be detained by administrative decision. 23 MS report to register and process the information on cash detained. SE and FR inform they are not registering this type of information. No information is available for PL and BE.

15 MS (AT, BG, CY, DE, EE, ES, FI, IE, IT, LV, LT, NL, PT, SL and UK) register the cash detained in a central database. 7 MS (DK, EL, LU, HU, RO, SK and SE) refer to a database held in the local customs posts whereas CZ transmits this information directly to the national FIU.

MS currently do not provide statistics on cash detained to the COM. In the near future a new module of the OLAF Customs information system (CIS) will allow MS to introduce all information related to the detention of cash.

### **3.5. Information made available to the Financial Intelligence Units**

21 MS make all information on cash declarations spontaneously available to their national FIU. Only FI, IT and UK report to make this information available on demand, whereas CY and HU only provide information on suspicious cases to the national FIU. The information is made available to the FIU via mail, post, official letter or immediate access to the database of cash declarations. Periodicity of providing this information varies from immediate transmission via direct access to the databases, to daily, weekly or monthly or at a maximum periodicity of three monthly or quarterly bases (2 MS).

Some MS report faster procedures to inform national FIU's when the information relates to the detection of suspicious cash movement.

Most MS (AT, BG, CY, CZ, DE, DK, EE, EL, FI, HU, IE, IT, LU, MT, NL, RO, SK, SL, SE and UK) report to make available information on suspicious cash declarations to the national FIU (no information on BE, FR, PL and PT). Some MS (LV, DE, LT) make the information available to the national FIU by having organised direct access of the national FIU to the database with all information on the cash declarations. ES and the NL already maintain the central database on cash information at the national FIU.

The national differences in organisation of the FIU and relations with the other competent authorities make it difficult to suggest more harmonised procedures for information exchange between customs and FIU.

## Smurfing

16 MS report to apply specific controls on movements of sums of cash under the threshold of 10 000 € where there are indications of illegal activities associated with the movement of cash, commonly referred to as "smurfing". This possibility is provided for in article 5.2 of the Cash Control Regulation. Most MS also make this information available to the national FIU.

### **3.6. Exchange of information amongst Member States and with the Commission**

In the absence of a Committee that can assist the COM in the management of the Cash Control Regulation, the COM has set up a permanent working group with all Member States that meets 3 times a year. This working group is financed under the Customs 2013 framework programme which finances cooperation activities between MS and the COM. The working group focuses on enhancing the exchange of information, harmonising procedures, establishing best practices and creating an appropriate environment for MS authorities to exchange views on the implementation of the Cash Control Regulation. The handbook of Guidelines on cash controls, recently adopted by this working group, has been developed for this purpose.

MS and COM could benefit from a Committee procedure, to ensure a higher level of establishing harmonisation.

In addition, a specific virtual interest group was created in a secured extranet tool, allowing public administrations to share information and to participate in discussion forums. It contains also information on MS central contact points and 24 hour contact points to allow for a quick exchange of information amongst competent authorities. MS are responsible for updating this information.

#### *3.6.1. Exchange of information amongst Member States*

MS report to exchange information on cash controls using a wide range of means. This includes the OLAF Anti-Fraud Information System (AFIS), established by Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the MS and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters<sup>8</sup>. MS also exchange risk information through the electronic Risk Information System (RIF) established under the Community Customs Risk Management System under Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code<sup>9</sup>. Direct contacts via the central contact points for cash control, between operational customs offices, via intelligence departments, law enforcement contact points or the fiscal crime liaison officer network, and the use of specific Europol IT applications are also mentioned.

In the context of the Council Customs Cooperation Working Party, MS regularly organise joint targeting actions. A Joint Customs operation on cash controls on cash couriers called "Athena" was organised during the French presidency.

---

<sup>8</sup> OJ L. 82, 22.03.1997, p. 1 – 16.

<sup>9</sup> OJ L. 302, 19.10.1992, p. 1 – 50.

### 3.6.2. *Exchange of information with the Commission*

All MS provide statistics on the implementation of the Cash Control Regulation to the COM on a quarterly basis. These statistics are processed and made available to all MS.

MS provide the COM with the information of cases where there are indications that the sums of cash involve the proceeds of crime or any other illegal activity adversely affecting the financial interests of the EU via AFIS. The CIS module that is part of the AFIS system will allow MS to include information on cash detained, seized or confiscated. In the Customs Files Identification Database (FIDE) of the AFIS system information related to investigations launched by customs enforcement authorities has to be introduced allowing for verifications whether a person (or business) has been subject to a criminal investigation in one of the MS. Few cases have been uploaded in FIDE whereas the CIS module is not yet operational.

### 3.6.3. *Statistics on information exchange*

For cases where there are indications that the sums of cash declared or detected are related to any illegal activity associated with the movement of cash, MS can exchange information according to article 6 of the Cash Control Regulation. MS have notified few cases and indicate that their quantification is difficult because information is generally exchanged on an ad hoc basis via direct contacts between enforcement officers on which the central services are not informed. The COM, recognising the importance of adequate information exchange, has set up a project group with MS to enhance the exchange of information.

## 3.7. **Exchange of information with third countries**

The Cash Control Regulation does not impose exchanging information with third countries. MS have done so via international mutual assistance agreements, bilateral agreements, direct contact with central contact points in third countries, the customs enforcement network and via the fiscal crime liaison officer network. Exchange of information via the national FIU is also mentioned.

The COM communicated general information on the systems in place in the framework of the FATF.

Best practices and experiences were exchanged with the US in a special EU/US meeting of the Customs 2013 Cash Control Working Group in April 2008.

## 3.8. **Confidentiality/data protection issues / security issues**

In all MS the following legislation is applicable:

Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>10</sup>, and

---

<sup>10</sup> OJ L. 281, 23.11.95, p. 31 – 39.

Commission Decision of 29 November 2001 (2001/844/EC, ECSC, Euratom). This decision sets down the rules for the classification of information with the objective to guarantee the security of information<sup>11</sup>.

---

<sup>11</sup> OJ L 317, 3.12.2001, p. 1.

General confidentiality provisions / Professional Secrecy provisions.

Most MS (AT, BG, CY, CZ, DE, EL, ES, FI, FR, EE, HU, IE, IT, LV, MT, PL, RO, SE, SL and UK) report on specific data protection measures taken for data exchange related to cash controls. No information is available for BE, LU, PT. In reality, most MS apply general measures on the protection of personal data. Furthermore, very few MS report on measures taken on data classification to guarantee the security of the information. Four MS (DK, LT, NL and SK) indicate that the general data protection, data security and confidentiality measures also apply to cash control data.

It can be concluded that most MS ensure a general minimum of confidentiality or protection of the personal data of the cash control information. Few MS have adopted specific measures for cash control to ensure the protection of the personal data included or have classified cash control information to ensure the security of the information.

### **3.9. Penalties**

All MS have introduced requirements that establish penalties in the event of failure to comply with the obligation to declare. The penalties of most MS can be considered proportionate, dissuasive and effective, except for a few MS where the amount of the administrative penalty seems too low to be dissuasive. The COM has asked these MS to quickly rectify this situation.

18 MS can apply further penalties than the strict administrative penalties as stipulated by article 9 of the Cash Control Regulation. These sanctions include seizure or retention of cash in case of suspicion of illegal activity, (higher) fines, imprisonment or confiscation of the cash.

MS are not required to send statistics on penalties imposed to the COM. However the ad hoc information that is available confirms that most MS have actually imposed penalties.

## **4. CONCLUSIONS**

The contributions received by the MS show that the recent implementation of the Cash Control Regulation is generally satisfactory. MS 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. MS 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 MS, COM and third countries, whilst complying with confidentiality and data protection standards. Considering the differences between MS in cash declarations gathered and controls performed, a close monitoring of MS is necessary to enhance the harmonisation of the implementation of the Cash Control Regulation by the MS. Where necessary, MS 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 COM is taking the necessary action to ensure that the EU legislation on cash controls is appropriately implemented in all MS.

## 5. 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 MS 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 MS to allow for further harmonisation of the data gathered, travellers' awareness and possible computerization;

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.

## ANNEX 1:

Summary statistics of cash declarations and cash recordings  
- all Member States -  
Q3 2007 – Q2 2009

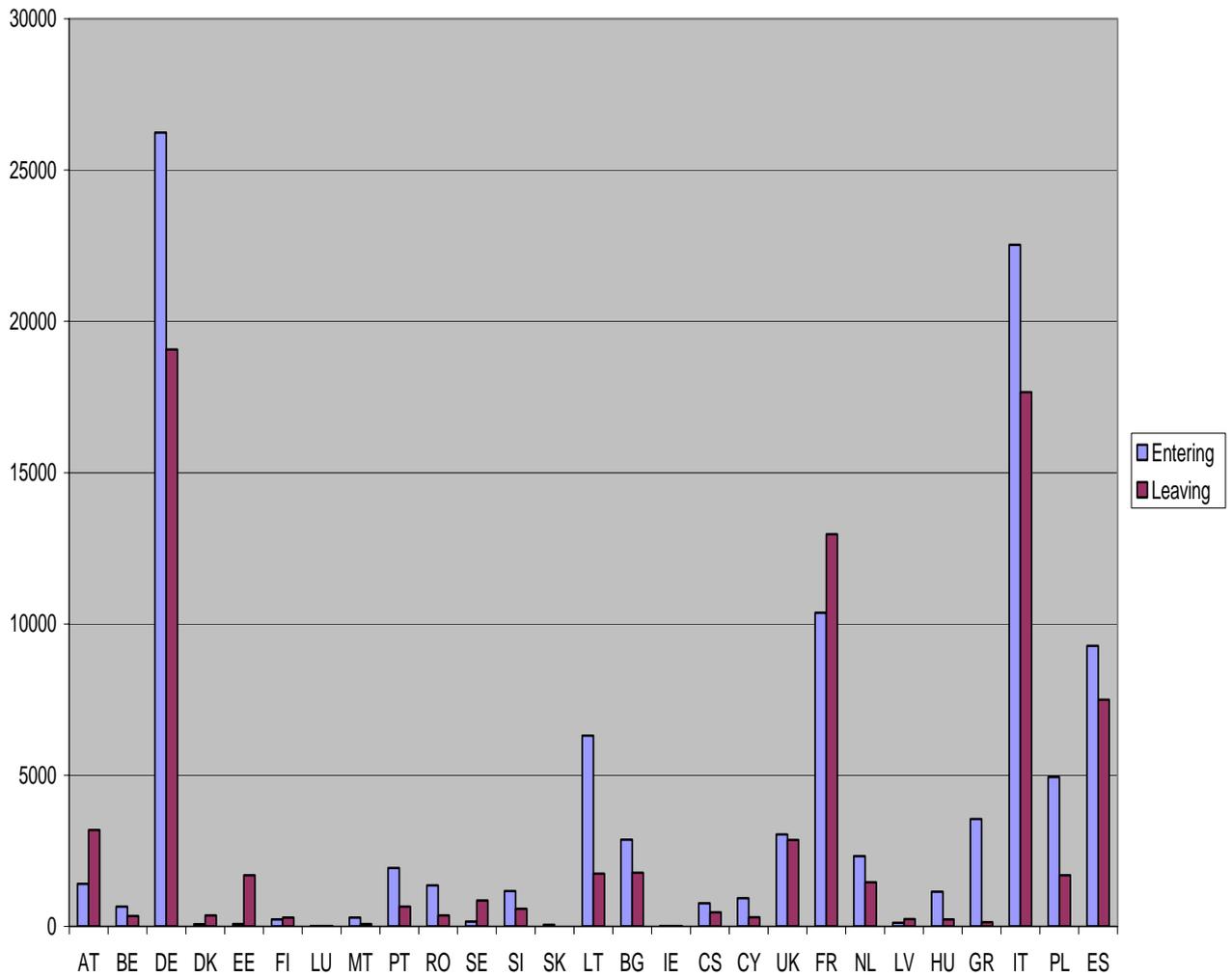
Voluntary Cash Declarations					Recordings			
Country	No of declar.	Entering	Leaving	Sum in Euro	Entering	Leaving	Total	Sum in Euro
AT	4589	1404	3185	5.631.564.366	4	12	16	1.394.484
BE	995	653	342	53.470.113	23	13	36	2.751.764
DE	45303	26239	19064	55.775.450.005	3272	1938	5210	996.985.476
DK	435	70	365	16.811.874	3	276	279	7.580.171
EE	1769	79	1690	1.091.682.756	5	3	8	225.823
FI	520	233	287	81.599.560	36	12	48	1.252.599
LU	15	7	8	1.150.540	0	0	0	0
MT	369	291	78	17.116.042	2	0	2	57.140
PT	2588	1932	656	212.936.525	324	179	503	31.511.113
RO	1729	1362	367	160.856.092	0	5	5	26.079
SE	1015	158	857	33.050.252	11	0	11	428.802
SI	1750	1167	583	3.027.662.737	50	10	60	3.604.333
SK	51	50	1	1.663.601	0	0	0	0
LT	8046	6302	1744	214.153.403	0	2	2	16.199
BG	4636	2870	1766	304.051.835	12	41	53	5.377.271
IE	24	9	15	680.755	4	12	16	336.430
CS	1227	762	465	420.463.999	2	0	2	36.655
CY	1240	935	305	47.741.670	14	20	34	870.916
UK	5895	3042	2853	203.555.076	341	926	1267	31.848.240
FR	23339	10373	12966	1.936.488.129	1572	984	2556	221.041.774
NL	3776	2321	1455	161.789.026	264	453	717	23.039.467
LV	369	123	246	84.639.062	4	0	4	942.263
HU	1380	1145	235	78.083.925	11	10	21	490.359
GR	3695	3550	145	123.303.936	2	8	10	1.243.525
IT	40194	22531	17663	8.745.018.735	796	801	1597	258.241.296
PL	6636	4943	1693	242.940.502	40	35	75	5.209.018
ES	16766	9273	7493	1.253.528.580	33	454	487	37.828.899
<b>TOTAL</b>	<b>178.351</b>	<b>101.824</b>	<b>76.527</b>	<b>79.921.453.095</b>	<b>6.825</b>	<b>6.194</b>	<b>13.019</b>	<b>1.632.340.096</b>

IT, PL and GR did not submit data for cash controls for Q3 and Q4 2007.

BE did not submit data for Q3 2007

**ANNEX 2:**

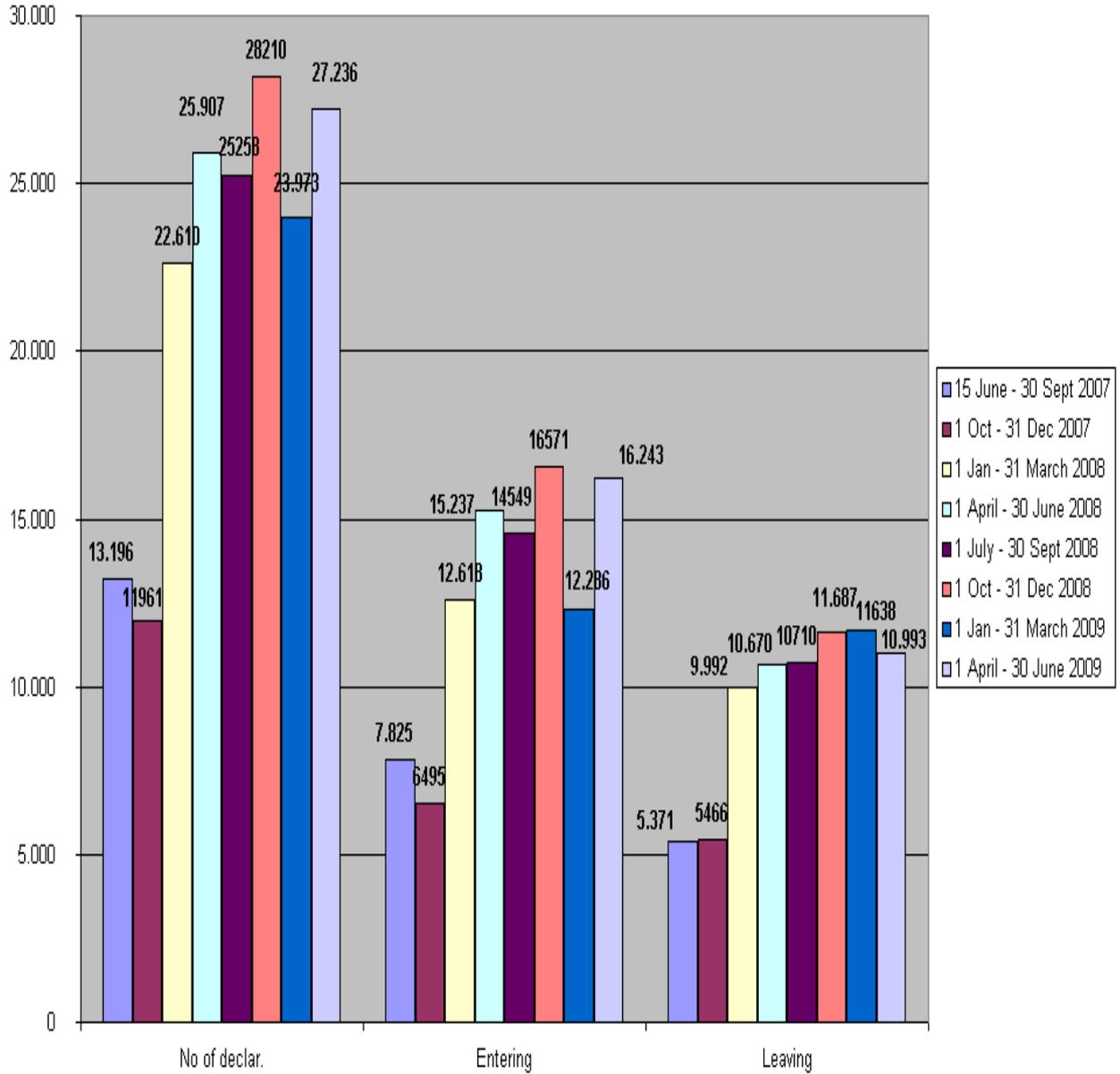
Number of Cash declarations  
– all Member States -  
Q3 2007 to Q2 2009



IT, PL and GR did not submit data for cash controls for Q3 and Q4 2007.  
BE did not submit data for Q3 2007.

**ANNEX 3:**

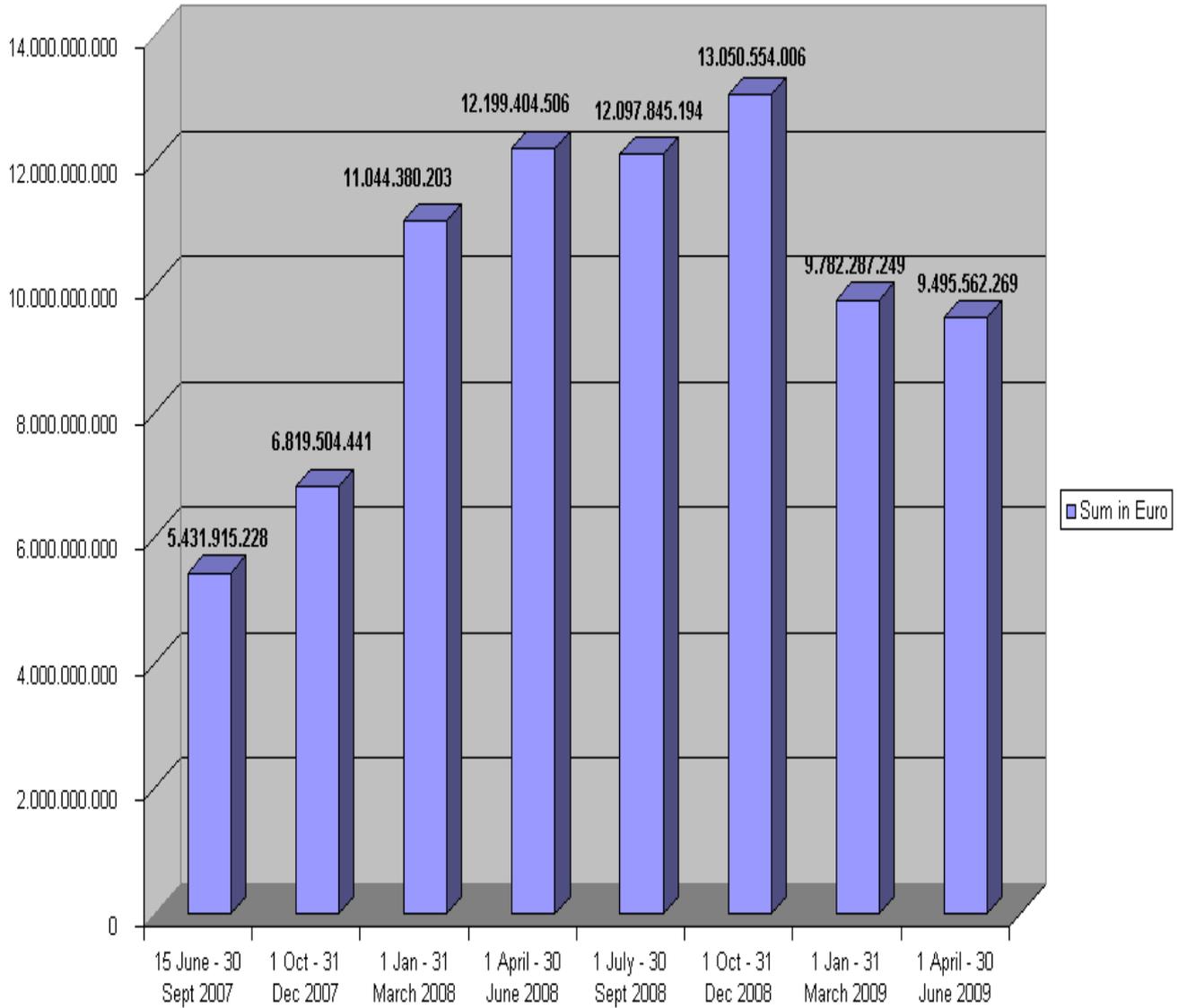
The evolution of the number of cash declarations  
 – totals –  
 Q3 2007 to Q2 2009



IT, PL and GR did not submit data for cash controls for Q3 and Q4 2007.  
 BE did not submit data for Q3 2007.

**ANNEX 4:**

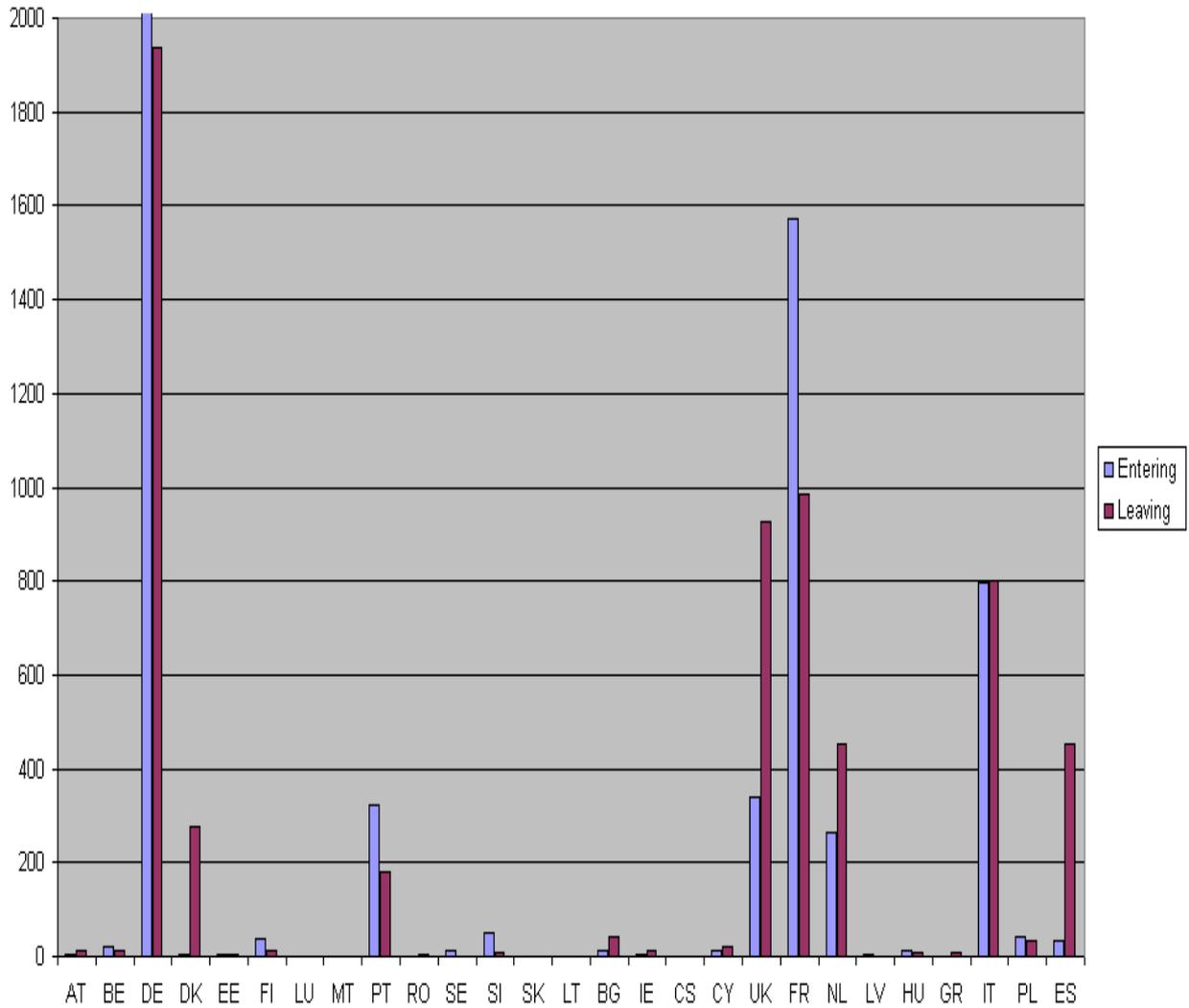
The evolution of cash declarations in €equivalent  
– totals –  
Q3 2007 to Q2 2009



IT, PL and GR did not submit data for cash controls for Q3 and Q4 2007.  
BE did not submit data for Q3 2007.

**ANNEX 5:**

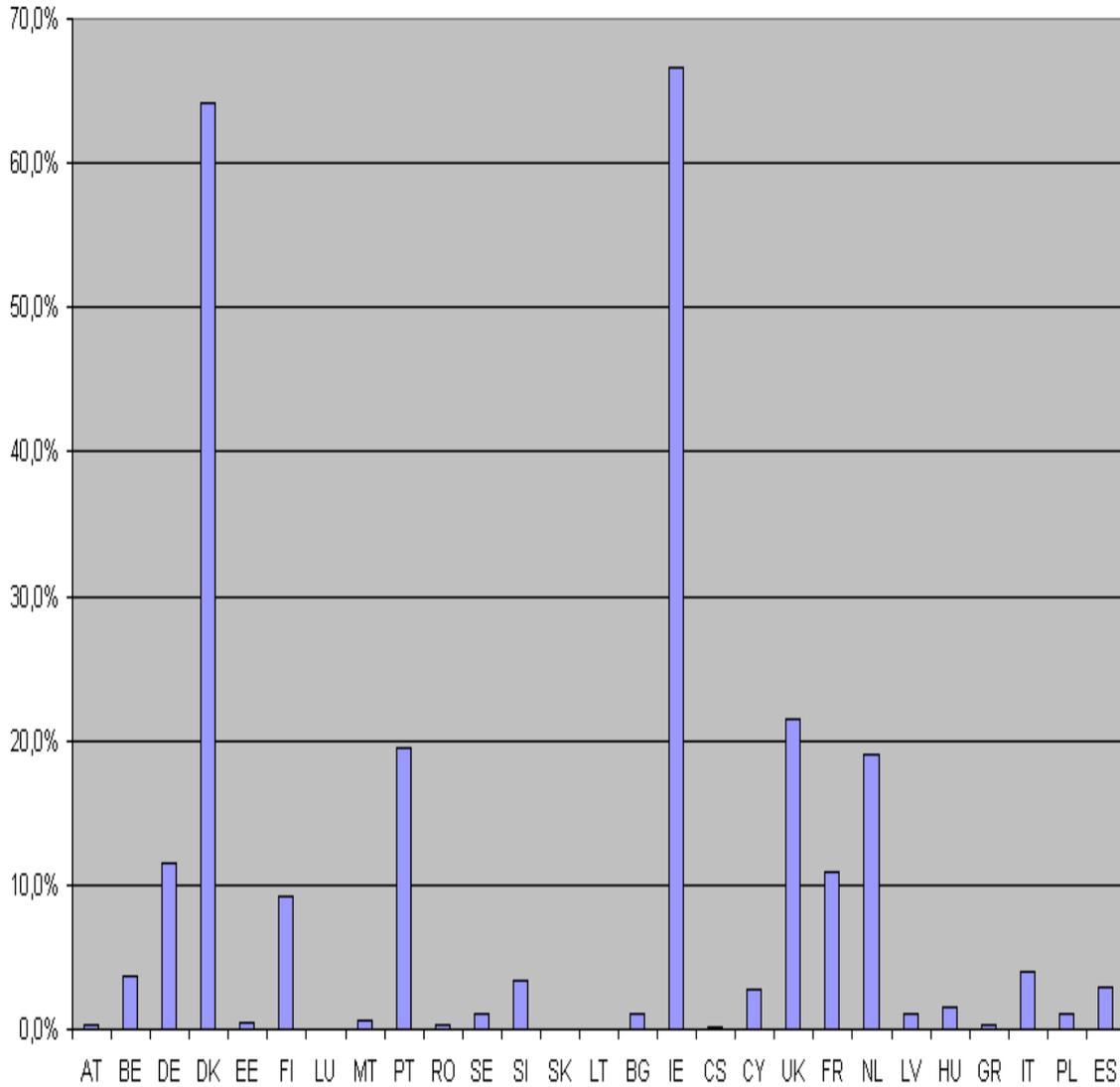
Number of cash recordings  
– all Member States –  
Q3 2007 to Q2 2009



IT, PL and GR did not submit data for cash controls for Q3 and Q4 2007.  
BE did not submit data for Q3 2007.

**ANNEX 6:**

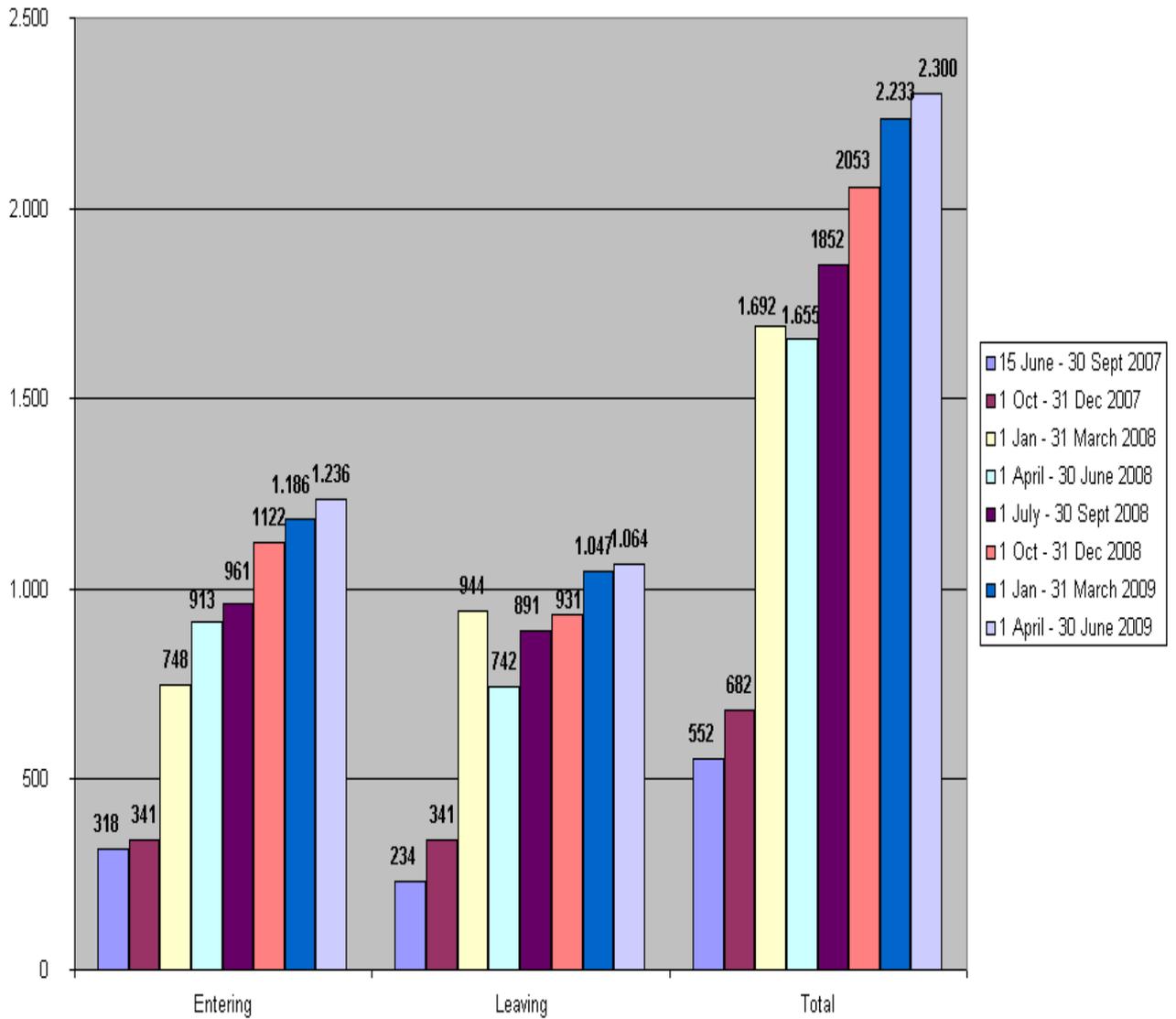
The proportion between cash recordings and the total number of cash declarations  
– all Member States –  
Q3 2007 to Q2 2009



IT, PL and GR did not submit data for cash controls for Q3 and Q4 2007.  
BE did not submit data for Q3 2007.

**ANNEX 7:**

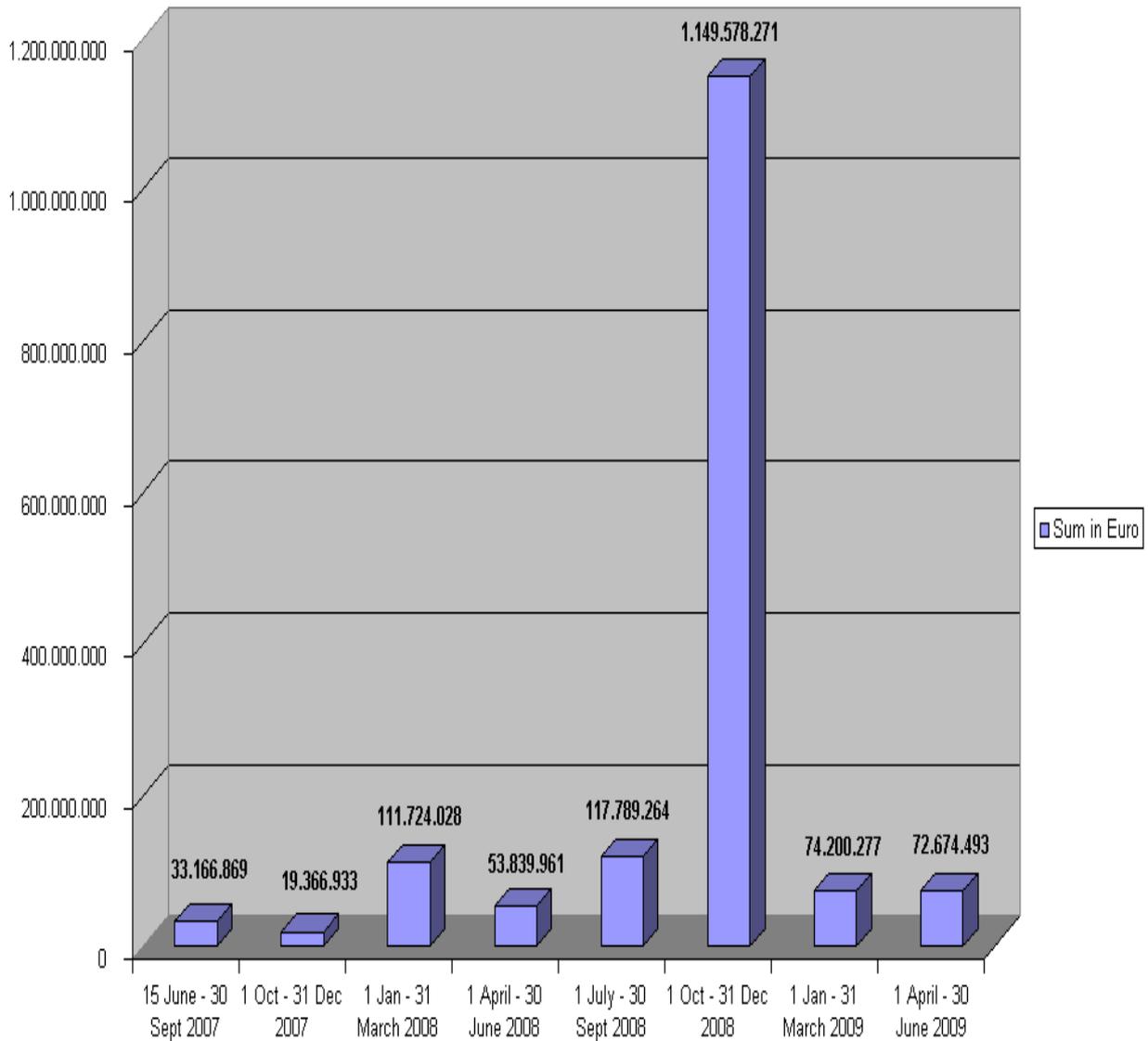
The evolution of the number of cash recordings  
 – totals –  
 Q3 2007 – Q2 2009



IT, PL and GR did not submit data for cash controls for Q3 and Q4 2007.  
 BE did not submit data for Q3 2007.

**ANNEX 8:**

The evolution of cash recordings in €equivalent  
– totals –  
Q3 2007 – Q2 2009



IT, PL and GR did not submit data for cash controls for Q3 and Q4 2007.  
BE did not submit data for Q3 2007.