COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION TO THE COUNCIL

on controls on cross-border cash movements

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the prevention of money laundering by means of customs co-operation

(presented by the Commission)

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1. INTRODUCTION

1. This document contains the Commission's final report in response to a request from the Council of Ministers (JHA/ECOFIN), which concluded at its meeting of 17 October 2000 that: "*The Council, recognising that the surveillance of cross-border cash flows can improve the effectiveness of the daily struggle against money laundering, calls on the Commission to examine, before 1 July 2001, the possibility of submitting a proposal aimed at rendering existing national provisions more consistent and strengthening them, enabling the Member States to institute such a system and providing for the exchange of information*".

2. The Commission made a preliminary oral report to the Council (JHA/ECOFIN) on 16 October 2001 and was asked to produce a final report by the end of the year. This document constitutes that final report.

2. RESULTS OF OPERATION MONEYPENNY

3. The Council's initial request was made in the light of the report on Operation Moneypenny.

4. Operation Moneypenny[1] was a joint operation carried out by the Member States' customs services in the period September 1999 to February 2000. The aim was to monitor cross-border cash movements in excess of EUR 10 000 and examine whether the scale of such movements posed a threat to the controls applied by financial institutions to prevent money laundering.

5. The results of Operation Moneypenny revealed, first and foremost, the scale of cross-border cash movements, movements likely to involve money laundering. The total means of payment recorded during the operation was EUR 1.6 billion, EUR 1.35 billion of it in cash.

6. The report also revealed substantial differences in the controls applied by Member States.

7. Although the report offers a useful starting point for examining the need for cash controls, the figures need to be viewed with caution because some Member States do not apply controls and were therefore unable to provide input, while others also provided information on intra-Community trade.

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[1] Document 9630/2/00 rev. 2 of the Council of 7.9.2000.

3. NEED FOR ACTION AT THE COMMUNITY LEVEL

8. To combat money laundering, Directive 91/308/EEC,[2] as last amended, lays down provisions, at Community level, governing controls on currency movements in excess of EUR 15 000 when the transactions are made via the financial institutions.

9. However, though some Member States have introduced controls on cash movements at their national borders, no provision has been made for controlling such movements along the entire length of the Community frontier.

10. Though it is not possible at this stage to gauge the exact scale of money laundering via cash movements, the volume of cash being transported is such that it presents a potential risk to Community and national interests.

11. The Moneypenny report did not distinguish between intra- and extra-Community cash movements, but the great majority of significant intra-Community movements are in all likelihood legal. This stems from the great volume of legitimate business under way in the Community, a volume further boosted by the ease of selling, transferring, purchasing, etc. in the single market. The introduction of the euro has accentuated this trend.

12. The Moneypenny report also showed that existing controls to prevent money laundering are undermined by the disparate nature of controls on cross-border cash movements. The highly divergent approaches adopted by the Member States undermine protection at Community level and leave open loopholes for criminals to exploit.

13. Since the events of 11 September 2001 controls on money movements via the financial institutions have necessarily been tightened. There could therefore be increasing recourse to cash as an alternative solution.

14. European economic integration, topped off by the introduction of the euro, demands a fresh take on the need for a Community approach in this matter. While the disparate nature of national controls may in the past have been a logical reflection of the segmentation of Europe's territory and the co-existence of different national currencies, the present interpenetration of the Member States' economies means that such disparities are destined to become exceptional and hard to justify. Tight controls in one Member State could well divert movements through a neighbouring Member State with few or no controls. The disparate nature of the control systems applied by the Member States is also questionable from the standpoint of the single market. Depending on the Member State whose borders they are crossing, travellers in the Union find themselves subject to rules that are divergent and thus difficult to understand. It would therefore make sense not just to harmonise the declarations required in this matter by national law at the external frontier by introducing a standard Community-wide declaration but to review the need for national declarations (see paragraph 23 below).

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[2] Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, (OJ L 166, 28.6.1991, p. 77), as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 (OJ L 344, 28.12.2001, p. 76).

15. The Commission therefore considers that the Money Laundering Directive should be complemented by a measure introducing controls on large sums of cash crossing the Community's external frontier.

16. For the controls to be effective, a system is also needed whereby the Member States can exchange information on suspect movements. The complementary nature of mutual administrative assistance mechanisms in countering money laundering also needs to be underscored, and in particular the exchange of multidisciplinary information with other Member States and with the Commission, an exchange provided for in the proposal for a European Parliament and Council Regulation establishing a cooperation mechanism between the competent national authorities of the Member States in order to ensure the protection of the Communities' financial interests against illegal activities[3].

17. There should also be a sustained public relations effort to inform travellers of the rules and their obligations in the matter. That effort will be all the more effective if today's disparate arrangements are replaced by a uniform set of rules.

4. SCOPE OF ANY PROPOSAL

18. The obvious advantages of such an approach in terms of prevention and law enforcement have to be reconciled with the need to adhere to single market principles, and especially the free movement of capital.

19. Striking a balance between proper supervision and the free movement of capital demands careful consideration of the scope of any proposal, its possible impact on existing national measures and its specific form.

Threshold for intervention

20. Any proposal would have to complement the controls currently applied to money transfers via the financial institutions and so plug any loopholes created by the present lack of a uniform Community approach to cash movements. Accordingly, only significant cash movements should be controlled. The threshold for controls should be the same as that for transfers through financial institutions, namely EUR 15 000. This threshold ought to be high enough to save travellers and traders from additional administrative formalities and customs administrations from a disproportionate workload. There nevertheless remains the risk of frequent trips by travellers carrying sums below the threshold laid down. Any attempt to deter such traffic by lowering the threshold would inevitably create serious enforcement problems for the administration.

The Money Laundering Directive addresses this practice (commonly termed "smurfing") by obliging the operator involved to report any suspicious financial transaction. This is not a viable option for travellers carrying cash. Such movements can always be controlled by using the powers invested in customs administrations to control persons and their baggage, in particular through the use of risk analysis methods to identify high risk travellers. At any event, were it to emerge that risk

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[3] Commission Work Programme for 2001 (Programme No 2001/98).

analysis did not offer a suitable means of resolving the problem, thought would have to be given to reviewing and strengthening the Regulation.

Controls at the Community's external frontier

21. The Member States currently control a variety of movements (intra- and extra-Community) in a variety of different ways (for example, by declarations or risk analysis).

22. At Community level it is clear that controls could only be introduced at the external frontier. Quite apart from their political incompatibility with single market principles, controls at internal national frontiers are impracticable in a Community without internal frontiers (particularly in the Schengen area and the Eurozone).

23. In view of the free movement of capital guaranteed by the Treaty and the proposed Community action to deal more effectively with the potential increase in the risks associated with extra-Community cash movements, it is important that national measures should preserve the delicate balance between control and free movement. Any restriction, even the obligation to declare, should result in controls only where absolutely necessary.

24. No Community measure can restrict the scope of Article 58(1)(b) of the EC Treaty, which allows the Member States to take certain measures affecting the free movement of capital. However, logic dictates that such powers should be exercised with great restraint in the single market and the Eurozone. In particular, the introduction of a standard Community declaration for controlling cross-border cash movements should cause Member States which have brought in national declarations to ensure that their systems are compatible with the Community measure and to consider whether they need to maintain them.

25. Similarly, the introduction of controls along the entire external frontier should lead to the disappearance of controls on cash movements at internal frontiers. Member States which have such systems will obviously have to consider whether they need to maintain them.

Controls on inward and outward capital movements

26. Money laundering takes many forms. The bringing of cash into the Community for conversion into another currency is usually considered the classic money laundering scenario. It could therefore be argued that controls should be confined to operations of this kind.

27. The reality is somewhat different. Member States applying controls have found that it is often more important to control outward cash movements than inward ones. As a net importer of drugs, the Community exports cash in the form of profits and financing for further consignments. In some Member States, the same pattern is frequently observed with regard to highly taxed products like alcohol and tobacco.

28. The need to tackle terrorism also increases the need to control outward cash movements. Funds connected with the financing of terrorism are just as likely to enter the Community as they are to leave it. As other anti-terrorist measures, particularly the freezing of assets, take effect, terrorist groups will have to turn to alternative forms of financing to avoid the risks associated with bank transactions.

Terrorist organisations which finance their activities from drugs (or smuggling highly taxed products or counterfeit goods) may well try to make good their loss of income with the profits from new transactions.

29. Any measure to introduce controls at Community level would therefore have to cover both inward and outward cash movements. No Community measure should encourage Member States to maintain intra-Community controls.

5. CONTROLS

30. The introduction of a control system would enable significant inward and outward cash movements to be monitored without excessively inconveniencing the public or unduly burdening administrations.

31. Those Member States which apply controls have followed a diversity of approaches. These range from a system based on a formal declaration backed up by intelligence to approaches based almost exclusively on intelligence. Some Member States require a written declaration, while in others a declaration is obligatory if customs ask for information. Still others impose no declaration. The variety of these rules make them difficult to grasp for travellers. This diversity militates against the retention of these rules after the entry into force of the Community act and against the simultaneous application of both sets of rules. This juxtaposition of rules poses awkward practical problems, especially for tourists from non-member countries wishing to visit a number of Member States during their trip. Furthermore, as pointed out above (paragraph 14), the introduction of the euro means there is no possible justification for having different levels of controls. From the standpoint of the internal market and the free movement of capital, logic demands a system whereby, with due regard for Article 58 of the EC Treaty, today's different and disparate national approaches are replaced by one requiring a single declaration at the external frontier. The Community instrument should make national declaration procedures concerning extra- and intra-Community transactions redundant (see paragraph 23 above).

Declaration-based system

32. Those Member States which apply declaration-based systems consider that obligatory declarations offer more clarity, more legal certainty and more legally usable information for the purposes of risk management.

33. Those Member States without declaration systems fear that a declaration-based system would generate a mass of paperwork and take up customs resources when almost all the information obtained will come from legitimate travellers (rather than the targeted criminals). Proponents of a declaration-based system argue that its effect as a deterrent should not be underestimated and that the resources required are very limited when compared with the results and benefits obtained, especially with a threshold for declaration as high as EUR 15 000.

34. At the Community level, the considerations are more complex still. Given the very divergent approaches applied and the fact that some Member States have very little experience of enforcing controls on cash movements, any system would have to be clear enough to allow uniform application throughout the Community.

35. A system based exclusively on intelligence would be difficult to set out in a legal act and would not necessarily guarantee a uniform approach.

36. In the interests of clarity, a uniform approach comprising fair warning to travellers, a universal obligation to declare, a common threshold and a simple standard form for use in all Member States can be considered the best way of introducing uniform controls. Logic dictates that the Member States draw the consequences of this harmonisation effort and review the need to continue imposing a national obligation on travellers to declare extra- and intra-Community cash movements.

Monitoring by customs

37. Any system introduced at Community level must guarantee the competent authorities of Member States which do not currently control such cash movements under national law the powers to apply effective controls.

38. This will require not only the powers to administer and monitor the declaration system but the introduction of penalties proportionate to the offence committed. The possibility of detaining cash for a limited period, usually where required to gather intelligence in doubtful cases (particularly if cash is on its way out of the territory), will be crucial.

39. However, any proposal must respect the principle of the free movement of capital, meaning that any measure adopted can only apply to suspicious movements. The system must therefore enable suspicious movements to be identified and dealt with under the relevant Community or national legislation.

40. It is logical that the customs administration should handle the declarations. Its services are located along the external border and process declarations as a routine part of their work. This solution would be the most convenient for the public and economise Member States' resources. Customs administrations not only have the requisite experience of exchanging such information, they have procedures in place to ensure secure and rapid exchanges.

41. Wherever possible, information should be exchanged using existing systems and legal provisions. This solution would limit the need for new legislation, keep formalities and administrative costs to a minimum and guarantee a high level of security. All these arguments militate in favour of using existing arrangements for mutual assistance in customs matters and their legal framework.

42. Relevant information gathered by a customs administration would be shared as appropriate with the national financial control body responsible for money laundering and with the customs administrations of any other Member States connected with the suspect movements. Sharing relevant information with the Commission would also help protect the Community's financial interests.

43. Consideration must also be given to the usefulness of exchanging information with third countries in serious cases, especially where terrorism might be involved. Suitable administrative arrangements in this field could be established with the Union's major partners.

6. CONCLUSIONS

44. At a time of increasing concern over money laundering, and in particular its role in financing international crime and terrorism, the adoption of a Community approach to controlling cash movements has much to commend it.

45. Given the differing levels of experience in the Member States, any approach will need to be reinforced by pooling experience, intelligence and risk management techniques used in this area.

46. Any system established would have to be reviewed at a suitable date to make sure that it is still relevant.

47. The Commission is forwarding a proposal for a Regulation to the Council for this purpose.

EXPLANATORY MEMORANDUM

1. INTRODUCTION

1.1 General

In March 1999 the Council's Customs Cooperation Group agreed to organise a joint customs surveillance operation to identify cross-border cash movements and gather statistics, which had so far been patchy in this field. All Member States took part in Operation Moneypenny, which ran from 1 September 1999 to 29 February 2000.

It revealed a considerable number of cross-border movements of currency and other liquid assets. Connected with organised crime, these movements were particularly significant in Member States with legislation controlling cash flows. To permit effective and coordinated action against organised crime, the Moneypenny report concluded that, in the interests of the Union, a number of legal loopholes should be plugged and that those Member States which had yet to do so should be invited to adopt the relevant legislation.

At its meeting on 17 October 2000 the Jumbo Council called on the Commission to examine whether a Community act instituting more widespread controls on cash flows and providing for the Member States to exchange information with each other and with the Commission could actually increase the effectiveness of the daily struggle in the Union against money laundering.

At its meeting on 16 October 2001 the Jumbo Council asked the Commission to continue preparing an analytical report. This document examines whether, and in what circumstances, Community-level controls are feasible and desirable in the field in question. Its conclusions suggest that such controls could usefully complement the battery of money laundering legislation currently applicable in the Union. The main thrust of the report is summarised below.

1.2 Advisability of a Community policy

To combat money laundering, Directive 91/308/EEC,[1] as amended, provides for Community-wide controls on currency movements in excess of EUR 15 000 when the transactions are made via the financial institutions.

However, though some Member States have introduced controls on cash movements at their national borders, others have not. Yet the amount of cash being transported is sufficient to present a potential risk to Community and national interests. The Moneypenny report shows that the present controls to prevent money laundering could be undermined by the disparate nature of controls on cross-border cash movements. The highly divergent approaches adopted by the Member States undermine protection at Community level. Since the events of 11 September 2001 controls on money movements via the financial institutions have necessarily been tightened. Cash could increasingly be carried as an alternative solution.

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[1] Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, (OJ L 166, 28.6.1991, p. 77), as amended by Directive 2001/97/EC of the European Parliament and of the Council of 28.12.2001 (OJ L 344, 28.12.2001, p. 76).

The Commission therefore considers that the Money Laundering Directive should be complemented by a measure introducing controls on large sums of cash crossing the Community's external frontier. For the controls to be effective, a system is also needed whereby the Member States can exchange information on suspicious movements with each other and with the Commission.

1.3 Operational issues

The obvious advantages of such an approach in terms of prevention and law enforcement have to be reconciled with the need to adhere to single market principles, and especially the free movement of capital.

1.3.1. Any proposal would have to complement the controls applied to money transfers via the financial institutions and so plug any loopholes created by the present lack of a uniform Community approach to cash movements. Accordingly, only significant cash movements should be controlled. The threshold for controls should therefore be the same as that applicable to transfers through financial institutions, namely EUR 15 000.

1.3.2. The introduction of a control system will enable significant inward and outward cash movements to be monitored without excessively inconveniencing the public or increasing the administrative burden. Those Member States which apply controls have followed a diversity of approaches. These range from a system based on a formal declaration backed up by intelligence to approaches based almost exclusively on intelligence. Some Member States require a written declaration, while in others a declaration is obligatory if customs ask for information. Still others require no declaration.

Those Member States which apply declaration-based systems consider that obligatory declarations offer more clarity, greater legal certainty and more legally usable information for the purposes of risk management.

Those Member States without declaration systems, which in many cases favour risk analysis, fear that a declaration-based system would generate a mass of paperwork and take up customs resources when almost all the information obtained will come from legitimate travellers (rather than the targeted criminals). Proponents of a declaration-based system argue that its effect as a deterrent should not be underestimated and that the resources required are relatively limited when compared with the results and benefits obtained, especially if the threshold is high.

At Community level, the considerations are more complex still. Given the very divergent approaches applied and the fact that some Member States have very little experience of enforcing controls on cash movements, any system must be clear and uniformly applicable throughout the Union. However, a system based exclusively on intelligence would, since it admits divergent practices by customs administrations, offer little guarantee of a uniform approach.

In the interests of clarity, a uniform approach comprising fair warning to travellers, a universal obligation to declare, a common threshold and a clear standard form for use in all Member States seems the best way of introducing uniform controls.

1.3.3. In the past Member States applying controls at their national frontiers did so by virtue of Article 58 of the EC Treaty. However, uniform protection of the Community's external frontiers and the strengthening of Community instruments against money laundering will inevitably deprive such controls of their legitimacy or, at the very least, render them incidental. They are, moreover, hard to reconcile with the spirit and principles of the internal market, especially since the introduction of a single currency.

1.4. Role of customs

Any system introduced at Community level must guarantee the competent authorities of Member States which do not currently control such cash movements under national law the powers to apply effective controls.

This entails not only the power to administer and monitor the declaration system but the power to create penalties proportionate to the offence committed. The possibility of detaining cash for a limited period, a possibility usually intended to allow intelligence to be gathered in doubtful cases (particularly where funds are being channelled to a non-member country), will be crucial.

However, any proposal must respect the principle of the free movement of capital, meaning that any measure adopted must be confined to suspicious movements. The system must therefore be designed to enable suspicious movements to be identified and dealt with under the relevant Community or national legislation.

It is therefore logical that the customs administration should handle declarations. Its services are located along the external border and process declarations as a routine part of their work. Their powers include controlling valuables (gold, diamonds, etc.) that can be used as an alternative to cash. Using customs would be the most practical solution for the public and economise the Member States' resources. Customs administrations not only have the requisite experience of exchanging such information, they also have the procedures necesary for secure and rapid communications. Relevant information gathered by a customs administration would be shared as appropriate with the national financial control body responsible for money laundering. Special attention must also be given to exchanging information with third countries in serious cases, especially where terrorism might be involved. Provision must be made for the conclusion of special administrative arrangements in this field with the Union's major partners.

2. COMMENTARY ON DRAFT REGULATION

Article 1 establishes the principle of an obligatory declaration on entering or leaving the Community customs territory and defines the scope of that obligation. It states that only cash movements of EUR 15 000 or more have to be declared.

The Article also defines the geographical scope of the obligation, which is basically that of the Community customs territory. To ensure complementarity with Directive 91/308/EEC, specific provision has been made with regard to those parts of the Community customs territory to which that Directive does not apply. In both these areas and the Community customs territory, cash movements must normally be declared. This obligation applies on entry and exit. In these circumstances, the customs administration is both geographically and operationally best placed to enforce this obligation.

The form of the obligatory declaration has also been laid down, otherwise it would be void. Imposing the use of a standard form will help the customs administrations maximise synergies and exchange information more easily.

In order to dispel any doubt the declaration, though it can be lodged on crossing the border, cannot be lodged at a later date. This rule is necessary for controls to be effective.

The obligation to declare is imposed on the person carrying the sum, whether or not they are the owner.

Article 2 contains the definitions necessary for the uniform interpretation of the Regulation. The definition of "competent authorities" is intended to include the customs services, which are most directly concerned, but also non-customs services (police, etc.) which may, according to their remit, be called on to help implement the Regulation by receiving and controlling declarations. As for the definition of "cash", the aim is to encompass all fungible assets.

Article 3 governs exchanges of information. It establishes the automatic right to transmit information gathered in the course of controls. Such information will in all cases be accessible both to the customs services (Member State of residence and, as the case may be, the Member State of origin or destination) and the money laundering authorities of the Member States concerned. Where money laundering appears to involve the proceeds of fraud or other illegal activities affecting the Community's financial interests, the information gathered will be transmitted to the Commission.

Article 4 invests customs officials with the powers needed to exercise effective control.

Article 5 supplements these powers by providing for penalties to be imposed. This Article refers only to penalties for failure to lodge a declaration. It does not address the penalties for any money laundering activities that might be detected by the customs controls provided for in this Regulation. Such offences are punishable under a specific body of legislation, which is quite separate from Community customs law. This legislation covers, for example, the penalties already provided for by Community law[2] and the legislation under preparation in this area (e.g. the draft Regulation on the integration of administrative measures and penalties in the field of direct expenditure[3]).

This text places a cap on penalties. Otherwise Member States could impose fines so high as to undermine or indeed negate the principle of the free movement of capital.

Article 6 specifically addresses cash movements in connection with terrorism. It provides for information gathered through the declaration referred to in Article 1 to be transmitted, under certain conditions, to non-member countries.

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2 See Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ L 312, 23.12.1995, p. 1).

3 See Objective 1.2.2 of 2001-2003 Action Plan for protecting the Communities' financial interests - fight against fraud (COM(2001) 254 final).

2002/0132 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the prevention of money laundering by means of customs co-operation

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 135 thereof,

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the Economic and Social Committee[2],

Acting in accordance with the procedure referred to in Article 251 of the Treaty[3],

Whereas:

(1) 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 the customs administrations. Customs officials are present at the borders, where controls are most effective. Indeed, some have built up practical experience in the matter. They are, moreover, able to control both cash and the valuables that are substitutes for it.

(2) Furthermore, customs administrations are already familiar with international co-operation, and in particular the exchange of information pursuant to Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters[4], and to the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations[5].

(3) Account should also be taken of complementary activities carried out in other international forums. In particular, Recommendation No 22 of the OECD's Financial Action Task Force calls on governments to take measures to detect cash movements.

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1 OJ C …
2 OJ C …
3 OJ C …
4 OJ L 82, 22.3.1997, p. 1.
5 OJ C 24, 23.1.1998, p. 2.

(4) Recourse to customs co-operation is necessary because the machinery introduced by Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering[6] covers only money laundering operations conducted through credit institutions, financial institutions and certain professions.

(5) The consequence is that large sums of money of dubious origin are entering and leaving the Community which cannot be detected by this mechanism. Some Member States have nevertheless taken initiatives outside the framework of the Community and introduced legislation allowing their customs services to perform controls on such sums. Other Member States, however, have no such legislation. The probability of detecting money laundering therefore depends on the Member State through which cash is brought in or taken out. This diminishes the protection afforded by the external frontiers against money laundering.

(6) The existing legislation should therefore be supplemented by having recourse to customs co-operation arrangements under Article 135 of the Treaty, which now gives formal expression to customs co-operation. This should serve to harmonise the control methods instituted by national law and enable all the Community's customs administrations to gather information on cash entering or leaving the Community customs territory in sums equal to those covered by Directive 91/308/EEC. In these circumstances, the most appropriate way to gather such information is by imposing an obligatory declaration. In case of suspicion, the information is designed to be transmitted to the authorities which, by virtue of Directive 91/308/EEC, co-ordinate action against money laundering.

(7) Accordingly, cash movements should be subject to the principle of obligatory declaration at the external frontiers. This is the most expedient way to control acts by which Community and national rules on laundering might be circumvented. However, in order to focus the authorities' action on significant instances of laundering, only movements of EUR 15 000 or more should be subject to an obligatory declaration.

(8) The form of the obligatory declaration should also be laid down, otherwise it should be void. Imposing the use of a standard pre-printed declaration form will enable customs administrations to improve synergies and to exchange information more easily. In view of the preventive purpose and dissuasive character of the declaration, it may not be lodged after the external frontier has been crossed. The moment at which this formality has to be accomplished must therefore be determined. Lastly, it must be specifically laid down that the obligation to declare applies to the person carrying the cash, regardless of whether that person is the owner.

(9) It is desirable to establish the definitions needed for a uniform interpretation of this Regulation. The term "competent authorities' must cover not only the customs administrations, which bear primary responsibility for these rules, but any non-customs services which, subject to their remit and to each Member State's specific administrative arrangements, contribute to this Regulation's implementation. This definition will cover cases in which departments other than customs, such as

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[6] OJ L 166, 28.6.1991, p. 77; Directive as amended by Directive 2001/97/EC of the European Parliament and of the Council (OJ L 344, 28.12.2001, p. 76).

police and border guards, are authorised to receive and check such declarations. In addition, "cash" should encompass the whole range of fungible assets.

(10) As far as geographical scope is concerned, in conformity with the requirements of the Treaty, and in particular Article 299(3), (4) and (6)(c) thereof, Directive 91/308/EEC does not apply to certain European countries and territories, including Monaco, the Channel Islands and the Isle of Man. Attention should therefore be paid to the risk of money laundering attaching to such countries and territories, and special arrangements should be made in their regard. The declaration should be given on demand, on entering or leaving such countries and territories, regardless of whether the movement is within the Community or to a non-member country.

(11) In order to combine this Regulation with the national law governing money laundering, provision should be made for the automatic transmission of information gathered by controls. Such information must be accessible to the customs services of the Member State of residence and, as the case may be, the Member State of origin or destination, and also to the money laundering authorities of the Member States concerned. Where relevant, the information must also be transmitted to the Commission. Similarly, provision should be made for certain information to be transmitted whenever there are suspicions over repeated cash movements involving sums lower than the threshold laid down.

(12) Customs officials should be vested with the powers needed to exercise effective control.

(13) The powers of the customs authorities should be supplemented by the Member States' obligation to lay down penalties. However, penalties should only be imposed for failure to make a declaration, not for money laundering offences disclosed by the customs controls set out in this Regulation. Though genuinely dissuasive penalties are called for, fines should nevertheless be restricted as to their amount. The absence of any limit would enable Member States to impose fines so high as unduly to compromise the principle of the free movement of capital, or even to negate it altogether.

(14) Provision should be made, in the event of cash movements connected with terrorism, for information gathered to be transmitted, under certain conditions, to non-member countries.

(15) This Regulation in no way affects the application of general or specific Community rules on administrative co-operation, especially in the matter of customs or in the protection of the Community's financial interests, in particular where those rules might improve or strengthen the current machinery for administrative co-operation.

(16) Since the objective of the Regulation, namely strengthening customs co-operation in the fight against money laundering, cannot be sufficiently achieved by the Member States acting in isolation and can therefore, by reason of the transnational scale of money laundering in the internal market, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity enshrined in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(17) This act respects the fundamental rights and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union,

HAVE ADOPTED THIS REGULATION:

Article 1

Obligation to declare

1. Any natural person entering or leaving the Community customs territory and carrying a sum of EUR 15 000 or more in cash shall be obliged to declare that sum in accordance with this Regulation.

   Any natural person entering or leaving those parts of the Community customs territory to which Directive 91/308/EEC does not apply and carrying a sum of EUR 15000 or more in cash shall also be obliged to declare that sum in accordance with this Regulation.

2. The obligation to declare shall not have been fulfilled unless the person referred to in paragraph 1 has completed the declaration form corresponding to the specimen in the Annex and handed it in to the customs office of the Member State through which he is entering or leaving the Community customs territory or parts of the Community customs territory to which Directive 91/308/EEC does not apply.

   Moreover, the obligation to declare is not fulfilled if the information given is incorrect or incomplete.

Article 2

Definitions

For the purposes of this Regulation:

(1) "Community customs territory' shall mean the territory of the Member States referred to in Article 3(1) of Council Regulation (EEC) No 2913/92[7] establishing the Community customs code.

(2) "Competent authorities' shall mean the customs authorities of the Member States and the other authorities responsible for applying this Regulation.

(3) "Cash" shall mean:

   (a) currency (banknotes, coins);

   (b) traveller's cheques or postal cheques;

   (c) any anonymous or bearer certificate of a financial or monetary character which is convertible into cash, irrespective of the issuer, and in particular negotiable securities and other bonds.

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7 OJ L 302, 19.10.1992, p. 2.

Article 3

Reporting

1. Where there is material or circumstantial evidence that cash is being carried for the purposes of money laundering operations, information obtained through the declaration provided for in Article 1 or subsequent controls shall automatically be transmitted to the competent authorities of, respectively, the Member State of residence of the person referred to in Article 1(1) and the Member State through which that person entered or left the Community customs territory.

   It shall also be transmitted to the national authorities responsible under Article 6 of Directive 91/308/EEC for combating money laundering in the country through which the person concerned entered or left the Community customs territory.

   Where the money laundering operations appear to involve the proceeds of fraud or any other illegal activity adversely affecting the financial interests of the Community, the information shall also be transmitted to the Commission.

2. Where there is material or circumstantial evidence that a natural person is repeatedly entering or leaving the Community customs territory or parts of the Community customs territory to which Directive 91/308/EEC does not apply with sums of cash lower than the threshold fixed in Article 1, the name of that person, his nationality and the registration number of the means of transport used may also be transmitted, with the material or circumstantial evidence, to the competent authorities and, in the circumstances described in paragraph 1, to the Commission.

3. The provisions of Titles V and VI of Regulation (EC) No 515/97 shall apply *mutatis mutandis* to the transmission of information gathered pursuant to this Regulation.

Article 4

Powers of the competent authorities

In order to check compliance with the obligation under Article 1 to declare, officials of the competent authorities shall be empowered, even where there is no prior evidence that an offence is being committed, to control persons and their baggage, to question persons about the provenance of cash found in the course of such controls and to detain such cash by administrative decision.

Cash may be detained for up to three working days; that period may, however, be extended in accordance with national law. The period shall, in any event, be no longer than is necessary for the investigation.

Article 5

Penalties

1. Without prejudice to the penalties applicable in the event of money laundering, the Member States shall, in accordance with their national legislation, make sure that

proceedings are initiated against those responsible where controls or inspections carried out under this Regulation establish that the obligation to declare laid down in Article 1 has not been fulfilled.

Those proceedings shall, in accordance with the relevant provisions of national law, be such as to produce effects proportionate to the seriousness of the offence constituted by the failure to make a declaration or the lodging of an inaccurate or incomplete declaration, and thereby deter others from committing offences of a similar nature.

2. The level of fines resulting from the procedures referred to in paragraph 1 may not exceed a quarter of the sum carried.

3. Member States shall notify to the Commission, at the latest by 31 December 2003, the applicable penalties in the event of non-compliance with the obligation to declare.

Article 6

Relations with non-member countries

1. Where there is material or circumstantial evidence that cash is being carried for the purposes of money laundering operations by or for terrorist groups, the information obtained under this Regulation may be divulged to a non-member country, with the consent of the competent authorities having provided the information and subject to compliance with their internal provisions on the transfer of personal data to non-member countries.

2. Member States shall notify the Commission of exchanges of information with non-member countries in the course of mutual administrative assistance where particularly relevant to the effectiveness of action against money laundering under this Regulation and where such information falls within the scope of this Regulation.

Article 7

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX

DECLARATION FORM

I hereby declare that I am carrying a total of EUR 15 000 or more in the form of the sums, bonds or securities listed below.

TYPE OF DECLARATION	ENTERING THE COMMUNITY	Yes/No (*)		
	LEAVING THE COMMUNITY	Yes/No (*)		
DECLARANT	SURNAME, FIRST NAME			
	Address (main residence)			
	Nationality			
	Date of birth			
	Place of birth			
IDENTITY OF THE OWNER OF THE FUNDS (if they are being carried for another person)	SURNAME, FIRST NAME			
	Address (main residence)			
	Nationality			
INTENDED RECIPIENT OF THE FUNDS	SURNAME, FIRST NAME			
	Address (main residence)			
	Nationality			
		(*)	**AMOUNT**	**CURRENCY**
NATURE OF THE SUMS, BONDS OR SECURITIES:	Banknotes, coins	Yes/No		
	Traveller's cheques/postal cheques	Yes/No		
	Any other anonymous or bearer certificates of a financial or monetary character, such as negotiable securities and other bonds	Yes/No		
		TOTAL	**(in €)**	
PURPOSE OF THE FUNDS		. . .		
ROUTE	Country of origin/Member State of departure			
	Country of provenance/Member State of exit			
	Member State/Country of final destination			
MEANS OF TRANSPORT	AIR	Yes/No		
	SEA	Yes/No		
	ROAD	Yes/No		
	RAIL	Yes/No		

(*) Delete as applicable.

In the event of inaccurate or incomplete information, the signatory will be considered not to have fulfilled the obligation to declare.

Place, Date and Signature