COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.2.2005
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2002/0132 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

common position of the Council on the adoption of a regulation of the European Parliament and the Council on controls of cash entering or leaving the Community

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1- BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2002) 328 final – 2002/0132 COD):	25 June 2002
Date of the opinion of the European Parliament, first reading:	15 May 2003
Date of transmission of the amended proposal (COM(2003)371 final – 2002/0132 COD)	1 July 2003
Date of adoption of common position:	17 February 2005

2- AIM OF THE COMMISSION PROPOSAL

The main objective of the Commission proposal is to supplement Directive 91/308/EEC, which establishes a system of supervision and information on monetary transactions by financial and credit institutions. For this reason the proposal aims to introduce a harmonised control and information procedure for large-scale movements of cash in or out of the Community and empowers the national authorities to take appropriate administrative actions, including the obligation to pronounce penalties.

The provisions of the proposals would therefore help to prevent money laundering or financing terrorism.

3- COMMENTS ON THE COMMON POSITION

3.1 GENERAL REMARKS

The Commission welcomes the Council's endorsement of the main principles of the Commission proposal.

3.2 CONSIDERATION OF THE AMENDMENTS PROPOSED BY PARLIAMENT AT FIRST READING

In its common position the Council took on board a number of the Parliament's amendments including the following key amendments:

Amendment 2 concerning the addition of Article 95 to the legal base

Amendment 13 extending the range of "cheques" covered by the proposal

Amendment 15 clarifying the roles of the respective competent authorities

The Council did not take on board all the other amendments including the following:

Amendment 1, 20, 21 and 23: to ensure a better and more uniform application of the cash control procedures, the Council and the Commission are in favour of a regulation instead of a directive, as proposed by the EP.

Amendment 3, 4 to 8, 12, 14 and 18: in order to ensure legal security and especially to have equal treatment of persons entering or leaving the Community with large sums of cash, the Council and the Commission prefer a single mandatory approach; rather than the EP amendments which offers Member States the possibility to use either a mandatory declaration or a system based on disclosure upon request of the competent authorities.

Amendment 16: Council and Commission are not in favour of a transmission of data obtained through the declaration procedure or during control activities to a central database which is co-managed by the Member States and EUROPOL. The Customs Information Systems (CIS) as foreseen in title V and VI of Regulation 515/97 (mutual assistance) constitute an equivalent instrument to that proposed by the EP.

3.3 NEW PROVISIONS INTRODUCED BY THE COUNCIL

The Council amended several provisions. The main amendments are as follows:

In addition to the initial legal base of the act - Article 135 of the Treaty (customs cooperation) - the Council also required Article 95 (harmonisation of internal market provisions) to make it clear that the envisaged uniform measures for controls at the external Community borders contribute also to the functioning of the internal market. The addition of Article 95 was also requested from the EP in its first reading. The Commission can accept this.

The geographical scope is amended to bring it into line with the geographical scope of Directive 91/308/EEC. The Commission can accept this.

To ensure effective controls with minimum bureaucracy, the declaration is mandatory but may be made in written, oral or electronic form. The Council shared Parliament's concerns over the risks of a heavy bureaucracy associated with a general requirement to present a written declaration, but preferred a single system based on a mandatory declaration requirement (with the burden for administrations and declarants being reduced via flexibility as to the form in which the declaration is

required). The Commission supports a mandatory declaration system and can accept this amendment.

As far as penalties for failure to declare are concerned, the relevant rule has been brought in line with the standard text used in other legal acts (effective, proportionate and dissuasive character of penalties). The Commission supports this.

There is no fixed time limit for the power to detain cash in case of failure to declare. The power to detain and the detention period for cash are based on an administrative decision under national law. The Commission can accept this.

The Commission is called upon to present an evaluation report to the EP and the Council four years after the entry into force of the regulation. This corresponds to a similar request made by Parliament in its Amendment 22. The Commission can accept this.

The threshold for making a declaration was lowered from € 15 000 to € 10 000. This differs from the original proposal of the Commission, which was identical to the threshold in Directive 91/308/EEC. However Council considered that a lower threshold is justified because cross border cash movements are easier to make than money transfers via financial institutions and because of the risk of lesser amounts of cash being used specifically for funding terrorist activities. The Commission can accept this.

In order to be able to fight money laundering and terrorist financing most effectively it is indicated that Member States may, in accordance with the Treaty, continue to apply national intra community cash controls. The Commission can accept this.

4. CONCLUSION

The Commission considers that the common position constitutes an acceptable compromise even if not all of the amendments of the EP have been taken on board.

The Commission is nevertheless convinced that the views of Council and Parliament are sufficiently close to suggest an agreed position is attainable in the near future, especially given the interest of all sides to improve controls to stop the flow of funds to terrorists and criminal organisations.

5. COUNCIL STATEMENT FOR THE MINUTES

The general statement, on the use of the word "penalties" in Community legal instruments, makes it clear that "penalties" is used in the text in the neutral sense to cover also administrative, financial and other types of sanctions. The Commission can accept this.