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Why Cash Payment Limitations Are Ineffective and Sending the Wrong Message

On July 2020, the European Commission launched its new Anti-Money Laundering Directive (AMLD), a key outcome of its action plan for a comprehensive Union policy on preventing money laundering and terrorism financing. Part of the package is a regulation limiting cash payments across Europe to a maximum of 10,000 euros.

The Cash Coalition fully supports the fight by the European Commission to eliminate fraud and money laundering, to curb illegal activities and to counter terrorism!

However, the introduction of mandatory cash payment limitations (CPL) in all EU Member States, an “EU-wide limit of €10,000 on large cash payments”, is misguided and a step in the wrong direction. The EC misidentifies the target, mistaking its valid fight against money laundering for the unwarranted fight against cash.

I. General Arguments

- 1 | *“Cash is neither the motivation nor the reason for shadow economies, crime or terrorist attacks.”*
Friedrich Schneider, Emeritus Professor of Economics at the Johannes-Kepler University of Linz, Austria, “Restricting or Abolishing Cash: An Effective Instrument for Fighting the Shadow Economy, Crime and Terrorism?”
- 2 | “Limiting cash will not reduce money laundering and other criminal activities, but will instead displace them, leading to increased use of digital payment platforms. Cash is often the only surface point for criminal activities, thus helping law enforcement.”
Prof. Dr. Ursula Dalinghaus, Ripon College Wisconsin, Affiliated Member of the IMTFI, University of Irvine California, “Keeping Cash: Assessing the Arguments about Cash and Crime”
- 3 | Placing limits on cash payments will contribute to preventing social and financial inclusion of Europe’s poorest. Looking at the large number of un- and under-banked people in the EU (the latest figure being 139 million from a Mastercard study in December 2016), cash payment limitations will hurt the

poorest the most. They save in cash, and use the money to also make bigger purchases in cash, e.g. buy used cars, farm machines or furniture. COVID-19 has already exacerbated the difficulties they face. For many living in poverty, cash is a lifeline.

- 4 | Cash Payment Limitations will criminalise all citizens who use cash legitimately. Moreover, at the “basis of the AML/CFT system” lies a “risk-based approach”. However, the approach by the European Commission to target one form of payment in particular is not “risk-based” and not specific.
- 5 | There is no correlation between CPL and the prevention of corruption. This is clearly demonstrated by the Corruption Perception Index CPI by Transparency International. If you take for example Denmark, Germany and Austria, all countries with no CPL: they rank 1, 9, and 15 respectively out of 179 countries in 2020 (1 being the country with the lowest corruption), whereas some countries with tight CPL rank far lower. No effect of CPL whatsoever can be detected.
- 6 | Singling out cash as the only platform for an actual limitation is random and not credible. Following this logic, the European Commission would have to limit for example all activities on eBay or ban all cars as they have been used in terrorist attacks.
 - All the big money-laundering and tax-evasion scandals in the last years (Lux Leaks, Panama Papers, Paradise Papers etc.), amounting to fraud and money-laundering of hundreds of billions of dollars, had nothing whatsoever to do with cash.
 - Already in 2010, the FBI released information according to which fake eBay shops were a popular method of money-laundering ([Organized Crime: An Evolving Challenge for U.S. Law Enforcement - Google Books](#)) and other criminal activities ([FBI — Five Arrested in Conspiracy to Sell Millions of Stolen Goods on eBay](#))
 - And in 2017, the FBI published a press release saying that “ISIS Used eBay to Send Terror Cash to U.S.” ([FBI Says ISIS Used eBay to Send Terror Cash to U.S. - WSJ](#))
- 7 | Looking at the scant data available, the amount of cash seized in the context of money-laundering, terrorist financing or criminal activities in general is but a drop in the ocean compared to the sums being moved and handled in crypto assets or through other digital channels. The flows of money investigated in the “Panama Papers”, “Lux Leaks”, “Swiss Leaks” or “Paradise Papers” show that cash is hardly an issue.
- 8 | The introduction of CPL would be implemented against the explicit vote of the citizens of Europe. In a 2017 EU-wide consultation on CPL, 94% of respondents were very clearly against any kind of CPL. If CPL are now being introduced through a backdoor in the context of the AMLD 6, the Commission would seem to be disregarding the will of its citizens.
- 9 | Cash is legal tender in the EU. Putting a restriction on legal tender erodes trust in currency. It also runs counter to the values the EU represents, given cash is one of the pillars of any democratic society, and is key to personal freedom

and independence.

Introducing CPL sends a strong signal against cash in general, as did the abolition of the 500 euro bill.

- 10 | CPL generate more bureaucracy and make lives generally harder for EU citizens when it would have sufficed to enforce existing legislation. EU cross-border transports of cash above 10,000 euros already require mandatory declaration. According to the 2017 supranational impact assessment, around 100,000 such declarations were made each year in the EU, for a total €60-70bn euros declared. Only 12,000 (12%) undeclared cash transports were detected each year by customs authorities, for a value of €300m, i.e. ~0.5% of the total in cash. The measures in place are obviously effective as they stand. No additional regulation required!
- 11 | The European Commission is contradicting itself and substantial findings..
- Commission documents actually reflect the low importance of cash in money laundering activities. Two critical Commission documents on money laundering make no reference to cash at all: the Commission Communication “Towards better implementation of the EU’s anti-money laundering and countering the financing of terrorism framework” and the so-called “post mortem report” on the assessment of recent cases of money laundering (com 2019 (373 final)).
 - With regard to terrorism financing, the Commission has already ruled out that cash payment limitations might have any meaningful impact (EUR-Lex - 52018DC0483 - EN - EUR-Lex (europa.eu)): “*The detailed analysis of a selection of recent terrorist attacks [...] also highlighted that restrictions on payments in cash would have had little impact on the capacity to prepare these attacks.*” The reason is that, empirically, payments made in a terrorist context are small and legal in nature. They become illegal only due to a change of purpose (i.e. renting a lorry to run it into a crowd), which no cash-related measure will ever be able to prevent.

II. General Legal Arguments

- 12 | TFEU §63
CPL infringe on TFEU §63 as they are “a clear restriction to the free movements of capital within the EU.”
TFEU §63 details the “general principle about free movement of capital” and stipulates that “...all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.”
- 13 | TFEU §114
The AML package is proposed under article §114 TFEU. Measures adopted under 114 must have the objective of improving the functioning of the internal market. Whilst the Commission alleges “distortions” between Member States, none has been demonstrated in the corresponding impact assessment.
- It is not credible that the Commission can use CPL as a measure to remove or prevent alleged market distortions when the much touted “harmonization” is anything but: all existing CPL remain in place while the

introduction in Member States without CPL will be 10,000 euros. That means a ratio of 20 between the lowest and the highest CPL in Member States.

One could probably safely say that CPL will generate market distortions, not remove them.

- In addition, the only point of reference for the alleged “internal market distortions” is the controversial CEPS / ECORYS report from 2017 (CEPS Publication). It employed a more than questionable methodology and cites, as the only proof for internal market distortion, one single Belgian jeweler who actually advocated for the abolition of CPL in his country and not an EU-wide introduction in every Member State.