



Restrictions on Payments in Cash

Position paper on the consultation of the EU Commission¹

The Bavarian State Government supports the Commission's goal of further stepping up the fight against the financing of terrorism. However, the Commission's proposal of introducing EU-wide restrictions on payments in cash by means of mandatory declarations and upper limits to cash payments is neither a suitable nor a proportional response to the issue at hand. In fact, such restrictions severely infringe on citizens' rights, have negative repercussions on retail and consumers, and do not make an effective contribution to the fight against the financing of terrorism. The Bavarian State Government therefore asks the Commission to instead continue focusing on alternative measures for fighting the financing of terrorism, such as improved monitoring of cashless payments at the EU level.

Severe infringement on citizens' rights

Cash is minted freedom. This is especially true in Germany, seeing as a study conducted by the German Central Bank [*Deutsche Bundesbank*] shows that in 2014, nearly 80% of all payments were made in cash, equating to approx. 53% of turnovers. Introducing restrictions on payments in cash is tantamount to patronising citizens. Cash is the only legal tender in the euro area; its use therefore cannot be considered evidence of illegal activity per se. Currencies are based on the citizens' trust. This trust must not be met by mistrust on the part of the state. The anonymity of cash payments guarantees the protection of privacy and personal data as enshrined in the Charter of Fundamental Rights of the EU and as emphasised by the German Federal Constitutional Court [*Bundesverfassungsgericht*]. Introducing upper thresholds to cash payments entails the risk of potentially being the first step towards abolishing cash altogether.

Negative repercussions on retail and consumers

Cash creates trust and safety. For retailers and consumers, cash payments are simple and final. Cash payments, in particular, make it easier for consumers to control spending. Introducing an upper limit to cash payments to

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force retailers and consumers to use electronic payment methods instead burdens them with additional costs and risks. For example, a business partner could go bankrupt before payment is received. Furthermore, cash is safe from cyber-attacks and guarantees the continued existence of economic life in case of a crisis, seeing as it does not require any infrastructure and can therefore generally be used anywhere and by anyone. Introducing a standardised EU-wide upper limit to cash payments would result in distortion of competition due to the differences in purchasing power between the individual Member States. Last but not least, cash protects citizens' financial assets against the European Central Bank's negative interest rate.

Restrictions on cash payments lack effectiveness

From the point of view of the Bavarian State Government, an EU-wide introduction of restrictions on cash payments does not make an effective contribution to the fight against the financing of terrorism. Terrorists are increasingly resorting to virtual currencies and other alternative payment methods instead. Moreover, many terrorist attacks require only small sums of money and simple means. Particularly the terrorist attacks that were committed in the Bavarian cities of Würzburg and Ansbach in July 2016 made it clear that terrorists use the simplest of means to carry out their criminal acts. Mandatory declarations or upper limits to cash payments would not have prevented these attacks, nor would they have prevented the attacks that were later committed in Berlin, London, and Stockholm.

Alternative measures

The Bavarian State Government supports the measures put in place by the Fourth Anti-Money Laundering Directive to fight the financing of terrorism. According to this directive, persons who trade goods are already obligated to exercise due diligence if they make or receive cash payments of 10,000 euros or more. The Bavarian State Government is of the opinion that the efforts to further advance the Fourth Anti-Money Laundering Directive should be swiftly continued and brought to a successful conclusion. Instead of introducing restrictions on cash payments, it would be more expedient to monitor cashless payments more closely, improve the monitoring of virtual currencies and other alternative payment methods, as well as bolster Euro-pol's legal competencies and increase its staff.