

Harmonisation of cash payments limits

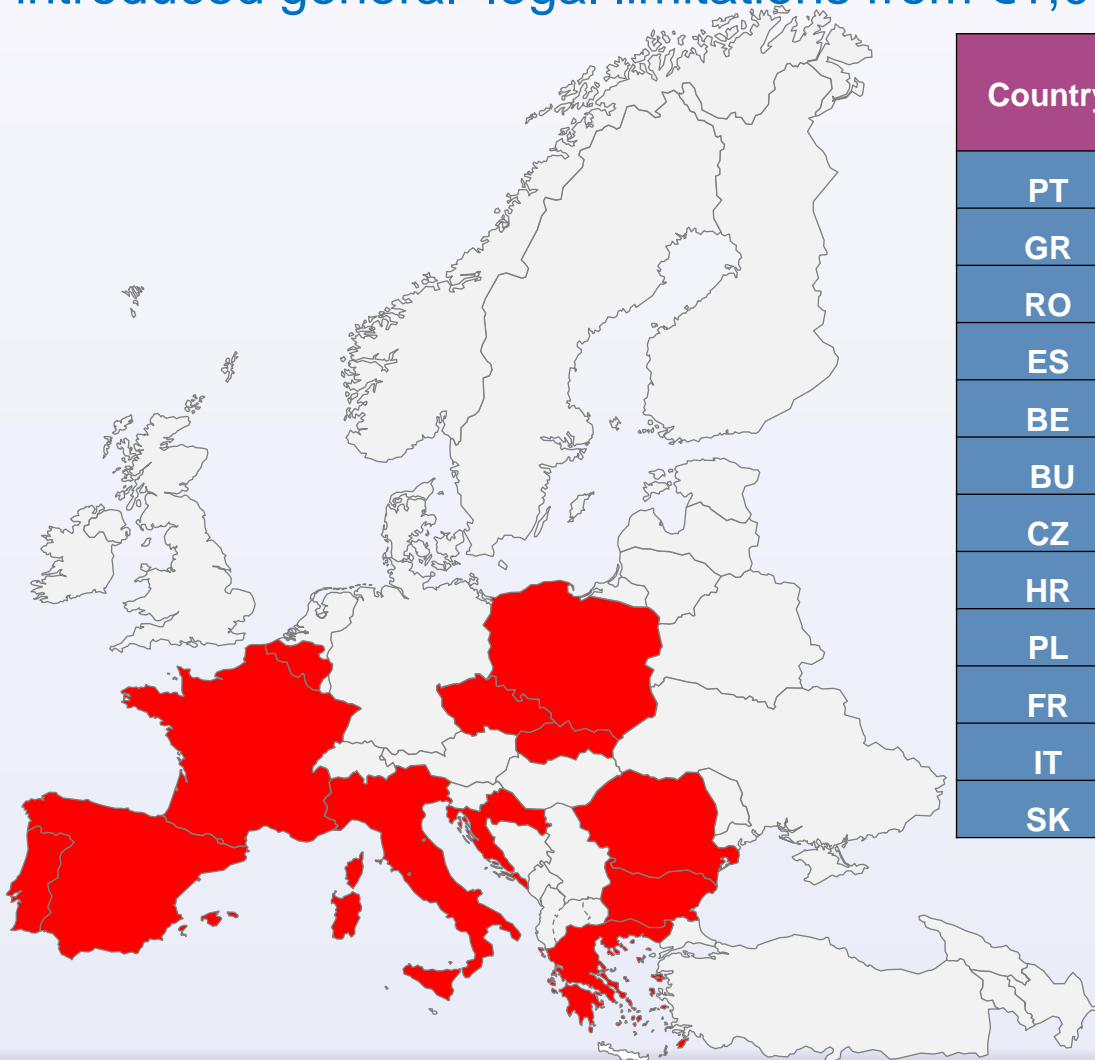
Why this may not be a good idea

**ESTA annual Conference Cascais
16 May 2017**

Thierry Lebeaux
Secretary General

Cash Payment limitations

12 MS have introduced general legal limitations from €1,000 to €15,000

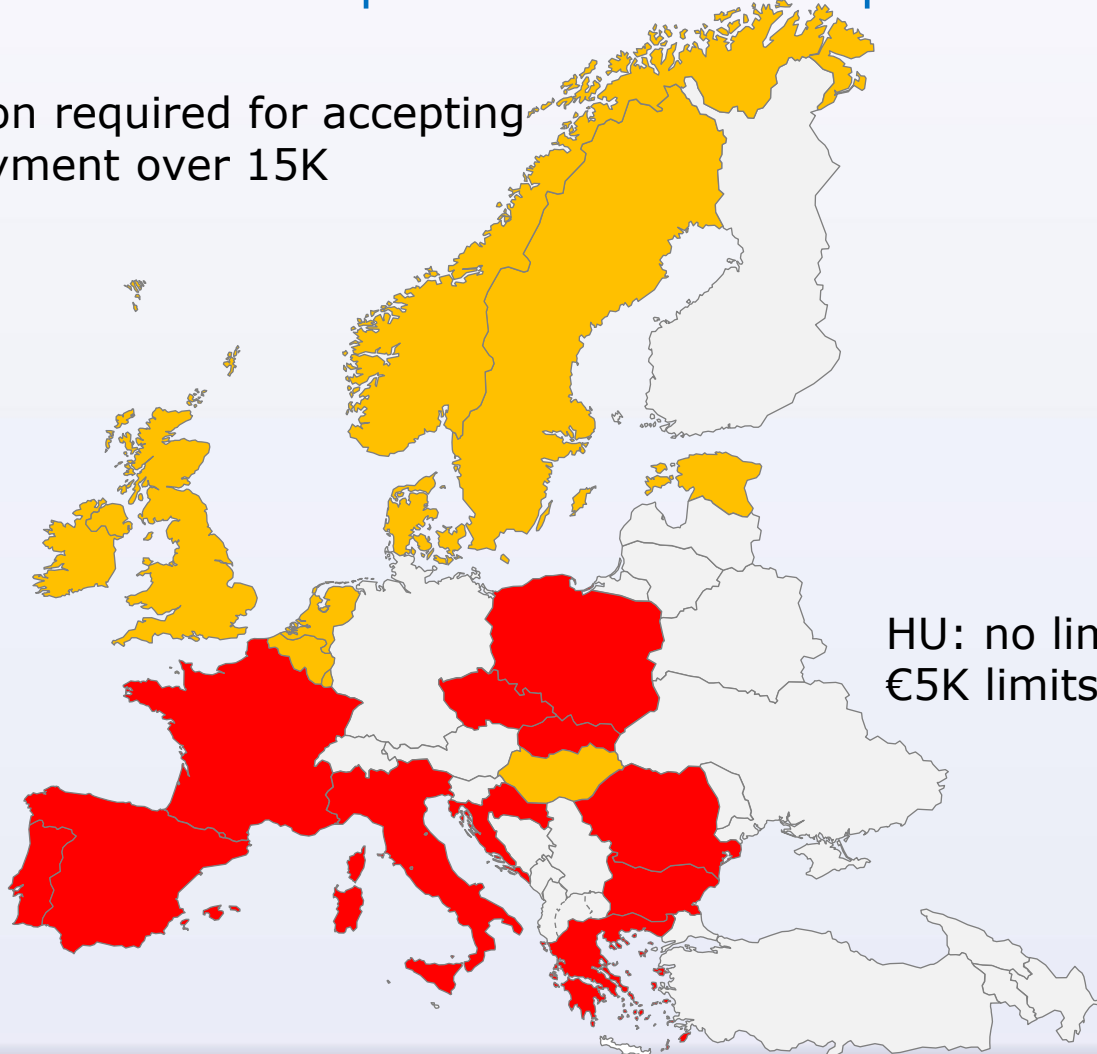


Country	Limits
PT	1.000 €
GR	1.500 €
RO	2.200 €
ES	2.500 €
BE	3.000 €
BU	5.000 €
CZ	14.000 €
HR	15.000 €
PL	15.000 €
FR	1,000€/15,000€
IT	2.999 €
SK	5000€/15000€

Cash Payment limitations

Some MS have introduced partial limitations or specific obligations

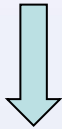
UK: registration required for accepting large cash payment over 15K



HU: no limit for consumers;
€5K limits for legal persons

Commission
proposal:

“Fight against
terrorism”



Small amounts matter
(e.g. Nice attacks <€2,500)

Member
States
regulations:

“Fight against
tax evasion”



Mostly big amounts matter

Action plan for the fight against terrorism financing (Com(2016)50)



EUROPEAN
COMMISSION

Strasbourg, 2.2.2016
COM(2016) 50 final

Action plan main focus: amending AMLD:

Virtual currency exchange,
prepaid instruments

Enhanced due diligence for
high risk countries

Financial intelligence and
exchange of information

- **It says very little about cash,** except:
"Payment in cash are widely used in the financing of terrorism" (P. 10)
- However, the section on *"targeting the sources of funding"* does not address cash !

Commission Inception impact assessment:

“The most relevant evidence : Europol’s “why is cash still king ?”

Flawed assumptions:

- *“All criminals use cash at some stage in the money laundering process”*
- Biggest crimes are not cash related (c.f. the “panama papers”)
- Large volumes of cash are a problem in themselves, irrespective of type of denominations
- Large volumes of cash are not anonymous, big denominations draw attention

Not a relevant “evidence”

- It focuses on criminality and hardly addresses terrorism
- Does anonymity matter for someone ready to give his/her life in a terrorist attack ? Isn’t the strategy of terrorists to generate as much media resonance as possible ?

Most attacks are in countries with upper cash payment limits



- Social media instrumental for raising and moving funds
- Small cells/individual terrorists:
 - self funding
 - consumer loan
 - sales of personal property (cars)
 - proceeds from criminal activities (e.g. sale of counterfeit goods)
- VAT fraud
- *"Serious risks linked to electronic, online payment, methods and anonymous prepaid card"*

Figure 2: Terrorist attacks and arrests in the EU in 2015

Source: Europol 2016 "TE-SAT 2016".

Analysis of funding of three terrorist attacks in France:*

Charlie Hebdo/Hypercashier, (January 2015)

- Estimated cost: €25,800, of which
 - 21,000 for the weapons
 - Use of prepaid cards
 - Cofidis consumer loan of €6,000

Bataclan and related attacks, (Nov 2015)

- Estimated cost: €82,000 of which:
 - €27,000 for transportation across Europe
 - €20,000 for renting of flats (FR and BE)
 - €16,000 for weapons
 - €11,000 for a dozen car rentals

Nice, (July 2016)

- Estimated cost: < €2,500
- Rental of a 19t lorry for 3 days and purchase of a gun

Cash limitations in FR: €3,000 and €1,000 after 1.09.15

* Source: Centre d'Analyse du Terrorisme, reported by Journal du Dimanche, 16/10/2016



Commission Inception impact assessment:

- *“Preventing the anonymity linked to cash payment is the key driver”*
- *“Forcing payments through means that are not anonymous – bank transfers, checks etc.)”*

Typical means of getting funds:

In the preparation of a terrorist attack:

- Cash is used...
- But there is in most case a non-cash part in the funding

- Consumer credit
- Prepaid card
- Personal bank accounts
- Cash collection/donations among specific communities
- International cash transfers
- Counterfeit and other trafficking

“Better regulation principles need to be maintained throughout the legislative process”

(EU governance key principle)

- Clear evidence base to support the proposal
- Regulatory Impact Assessment
- Necessity (needs for new tools)
- Proportionality
- Clear problem definition
- Subsidiarity
- Legal basis

Key issue
raised in IIA

“Cash is
anonymous”

Privacy is a fundamental right of the EU

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8

Protection of personal data

*“There are valid privacy
reasons for
maintaining cash”*

(Yves Mersch, Member of the Executive
Board of the ECB, Tokyo, 8 May 2017)

Problem definition

"Cash = anonymity"

Limited cash is needed, particularly for "low-cost" terrorism

Other means to remain anonymous (prepaid instruments, forged documents)

Cash restrictions:

- "Would hamper terrorist operations"
- "Would have a preventive effect"

They did not in countries which have restrictions in place

A number of transactions are legal in essence – cash or non-cash does not matter

Other are clearly illegal and cash restrictions won't help

At best, will help traceability post attack

“Subsidiarity”

The principle requires to assess whether a measure is better taken at MS or EU level

1)
Risk of
“**bypassing** the
restrictions in one
country by
conducting
transactions
in less strict
countries”.

Evidence that this has
had an impact on terrorist
attacks ?

2)
Diverging rules “create
an uneven playing field
which **creates**
distortions of
competition in the
internal market, with
some activities moving
across to elude cash
restrictions”

Can the choice between payment
instruments really distort
competition ?

Single threshold or multiple thresholds ?

“issue with
purchasing
power parity”

Country	Limits (€ or € equivalent)
BE	3,000
FR	1,000
IT	3,000
PL	15,000
CZ	14,000
BU	5,000

Cash payment
limits
seems inversely
proportional to
Purchasing power

“take account
of purchasing
power parity”

How to avoid
the alleged risk of
displacement ?

Article 114 TFEU

*“Measures for approximation of the provisions [...] in Member States which have as their object **the establishment or the functioning of the internal market**”*

ECJ case law

1. MS must have taken divergent measures
2. The divergent measures must constitute an obstacle to trade (or be likely to constitute one)
3. The effect of the obstacle on the internal market must be appreciable – (not just an abstract risk)
4. Measures under Art. 114 must genuinely have as their object the improvement of the conditions for the establishment and functioning of the IM
5. Harmonisation must be an appropriate response

Existing limits have no impact on the internal market.
Article 114 is not a relevant legal basis.

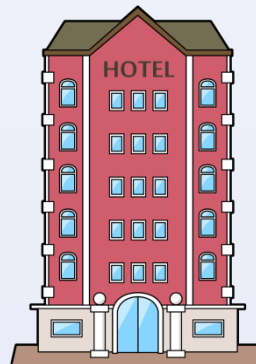
2)
Diverging rules
"create an uneven
playing field which
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competition **in the
internal market**,
with some activities
moving across to
elude cash
restrictions"

Is the addition of this internal market
provision (with no relation to terrorism)
aimed at *justifying* the use of Art 114
as a legal basis ?

The slippery slope of unintended consequences-driven policies

Cash is used by terrorists as well as by millions of *bona fide* citizens.

And so are:...



and



Etc...

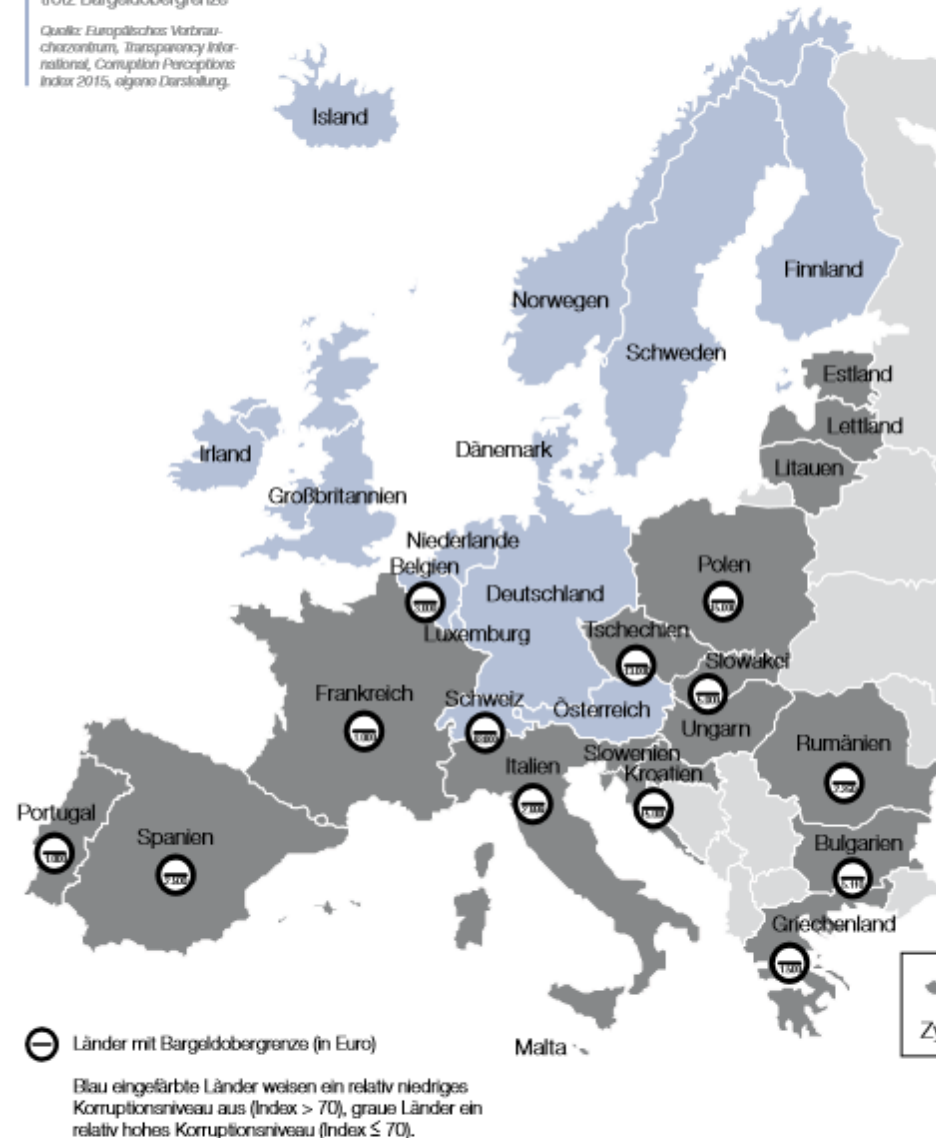
Precedent of cash limitations ineffectiveness

There is an obvious overlap between the map of corruption and that of cash limits :

Cash payment limitations have been unable to address corruption

Abbildung 2:
Hohe Korruption
trotz Bargeldobergrenze

Quelle: Europäisches Verbraucherzentrum, Transparency International, Corruption Perceptions Index 2015, eigene Darstellung.



- Do cash payment limitations hinder transactions between two terrorists ?
- Do card transactions make legal transactions more visible than cash in an environment of more than 110 billions card payments per year ?
- Have countries with cash payment limits been safer than countries with no such limits ?
- Out of the many recent arrests of persons suspected of willing to commit terrorist action, as a single of them been made possible a due to payment in cash ?
- Are there more effective tools to address the prevention of terrorist actions ?

Thank you !