

Ms Marianne Carrubba,
Company Law Unit
DG JUST
European Commission
200, Rue de la Loi
B-1049 Brussels
(by email)

Brussels, 28 November 2017

Dear Ms Carrubba,

Re: follow up of our meeting of 22 November

Many thanks for your time for meeting ICA and ESTA on 22nd November for discussing the follow up to the Inception Impact Assessment on Cash Payments Limitations (CPLs).

ESTA has taken good note that nothing is yet decided on the matter. However, the direction of EU initiatives is often taken early on and difficult to change.

We fully agree with the views that seems to now prevail in the Commission that the link between cash and terrorism funding is complex and lacks evidence, particularly in the context of 'low cost' terrorism: funding is not the core issue. In terms of prevention, which is what DG JUST is focusing on, payments concern low amounts paid for transactions which are legal in essence (only the change of purpose make them criminal as we have explained). CPLs would offer virtually no help to enforcement authorities and no improved security to targeted populations.

We heard your views that cash is 'risky' and we have argued that the anonymity of cash is only relative: there are many other ways to hide, even when not using cash, whilst large amounts of cash are conspicuous. Public reports from the *Centre d'Analyse du Terrorisme* (CAT) also show that cash used in specific attacks in France all derived from non-cash sources directly connected to the perpetrators¹ – which also includes a declined consumer loan which, despite being identified as fraudulent, failed to attract attention.

¹ This is also confirmed in the Europol "TE-SAT report 2016" available at: https://www.europol.europa.eu/sites/default/files/documents/europol_tesat_2016.pdf; - see particularly "Funding of terrorism" under section 1.2, page 11 and 12.

A number of experts on terrorism funding argue that contemporary terrorism cannot be tracked, nor prevented, through their financial means as they would be, for most of them, “below the radar”.² The focus given to CPLs probably diverts attention and resources from more effective actions.

These are not the only reasons why ESTA forcefully argues for a very robust assessment of proportionality. Measuring the (very abstract) impact on internal market for *bona fide* users of cash, as per the objectives of the 10 October CEPS workshops is only one part of the proportionality assessment. The other critical part needs to assess what the measure would deliver with regard to the purported objectives.

Concerning other aspects now included in the objectives, tax evasion and organised crime, the measure would also be ineffective. Cash was never mentioned in the recent news coverage of the consortium of the investigative journalists’ enquiry which led to the disclosure of the “Panama” and “Paradise papers”, probably because the magnitude of tax evasion or avoidance at stake is in amounts that makes cash very unsuited to the purpose.³ Cash does not play a critical role in terrorism funding, and very little in ‘white collar’ criminality: large amounts of cash are a problem in themselves, not an asset, for criminal organisations.

ESTA would argue that a declaration obligation and due diligence procedure as they already exists is a more effective course of action (and due diligence is required when a suspicious transaction is suspected below the threshold anyway). ESTA considers that developing reporting obligations/declarations would be more effective and proportionate to the objectives as it would allow targeting more adequately suspicious transactions, while a cap in cash payments would affect all transactions without flagging those which would deserve a specific attention.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Thierry Lebeaux', with a long horizontal stroke extending to the right.

Thierry Lebeaux
Secretary General

CC: Mr. A. Stefanuc, DG JUST
Ms Andrea Nitsche, ICA

² Out of 1,100 arrests of potential terrorists between 2013 and 2016 reported by Europol, none seems to be related to the funding of their activities (cf ESTA’s submission to the public consultation at page 11 for more details).

³ Also, a simple click can move billions of e-money instantaneously worldwide, which is not possible for cash.