

## **Order EHA/1439/2006 of 3 May, regulating the declaration of movements of payment means in the sphere of the prevention of money laundering**

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Extracted from Order EHA/1439/2006 of 3 May, regulating the declaration of movements of payment means in the sphere of the prevention of money laundering.

Movements of anonymous payment means have recently been given renewed attention from the viewpoint of money laundering prevention. Evidence from operational experts in recurring typology exercises organised by the Financial Action Task Force (FATF) concerning the increasing use of large amounts of cash in criminal schemes is the reason why Law 19/2003 of 4 July, on the legal regime for the movement of capital and foreign economic transactions and specific measures to prevent money laundering, amends Law 19/1993 of 28 December, on certain measures to prevent money laundering, transferring to the sphere of money laundering prevention a matter that had traditionally been addressed from the perspective of exchange controls (Law 40/1979 of 10 December, on the legal regime of exchange controls).

The need to control cash movements has been reaffirmed by the recent adoption of Regulation (EC) 1889/2005 of the European Parliament and of the Council of 26 October, 2005 (published in the Official Journal of the European Union on 25 November 2005), regarding the control of cash coming in or going out of the Community. As noted by the Regulation (EC) 1889/2005 itself in its third Recital "said harmonisation should not affect the Member States' ability to apply, in accordance with the provisions in the Treaty, national controls on cash movements within the Community".

Consequently, once articles 2.3 and 17.4 of the Regulation approved by Royal Decree 925/1995 of 9 June, as amended by Royal Decree 54/2005 of 21 January, have developed the provisions of articles 2.4 and 3.9 of Law 19/1993 of December 28, as amended by Law

19/2003 of 4 July, the relevant Order regulating the prior declaration for means of payment movements in the field of prevention of money laundering should now be issued.

The first section establishes, in accordance with legal and regulatory provisions, the scope of the Order. At this point, the main novelty is that, under article 2.4 of Law 19/1993 of 28 December, the amounts that are subject to declaration are raised, being set at EUR 10,000 for entering or exiting through borders and EUR 100,000 for movements in national territory. The first figure is in line with the provisions of Regulation (EC) 1889/2005, still well below the ceiling set by the FATF (EUR 15,000, 9th Special Recommendation on Terrorist Financing). Regarding the internal movement, the amount of EUR 100,000 is expected to facilitate the knowledge of and therefore compliance with the obligation by the interested parties, while the increase over the original EUR 80,500 does not pose relevant risks from the perspective of the prevention of money laundering.

The second section, in accordance with the requirement of article 2.3 of the Regulation of Law 19/1993 of 28 December, regulates the declaration form. It specifies that such model annexed to this Order is unique, and must be carried and exhibited to the authorities in order that they may check full compliance with the declaration obligation. Electronic filing of the statement is also possible if the person filing the declaration holds a recognised electronic signature.

The third and fourth sections regulate, under the requirement contained in article 2.3 of the Regulation of Law 19/1993 of 28 December, the place and form of declaration submission in cases where no use is made of electronic signatures. The Order aims at this point to remedy the complex casuistry derived from the existence of border posts without permanent Customs Services, in any case trying to assist the interested parties in the fulfilling of their legal obligations. For this purpose, in certain circumstances and with due caution, registered credit institutions are allowed to receive the declarations submitted by their customers.

The fifth section, developing article 17.4 of Law 19/1993 of 28 December, addresses the seizure of all payment means in case of default or falsity of the declaration. It also establishes a maximum of EUR 1,000 as a survival amount that may be agreed by the acting authority based on the circumstances of the case, such as the need to continue travelling or the lack of alternative means.

The sixth section regulates information to travellers, a provision that, without prejudice to article 6.1 of the Civil Code, aims to prevent as far as possible seizures derived from mere ignorance or unawareness of the interested parties.

The seventh section provides, under the provision contained in article 7.2 (c) of the Regulation of Law 19/1993 of 28 December, the obligation of those bound under article 2.1 of Law 19/1993 of 28 December, to include in the monthly or systematic report to the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences all operations in which they are involved implying movements of means of payment subject to mandatory reporting. This provision shall be without prejudice to the other obligations of prevention and collaboration so, where there are

indications or certainty of money laundering, the operations must be further reported in the manner set forth in article 7.4 of the Regulations of the Law 19/1993 of 28 December.

The eighth section regulates the administrative cooperation in line with the provisions of article 16 of Law 19/1993 of 28 December. For this purpose the exchange of information between the Executive Service and the State Tax Administration Agency is particularly relevant, fully consistent with the provision contained in Articles 94.4 and 95.1 (i) of Law 58/2003 of 17 December, General Tax Law.

Finally, the provisions of the exchange control regime remaining with regard to border cash movements are repealed, the Commission for the Prevention of Money Laundering and Monetary Offences is empowered to issue precise instructions for the implementation of the Order and a nine-month "vacatio legis" is set in order to allow the establishment of necessary technical procedures and mechanisms.

This Order is issued pursuant to the enabling legislation contained in the first final provision of Royal Decree 925/1995 of 9 June, according to which, the Minister of Economy and Finance, after complying with the formalities required by law, shall dictate the necessary provisions for the development of the Regulations of Law 19/1993 of 28 December, in relation to article 2.3 of the Regulation which states that an order of the Minister of Economy and Finance will regulate the location, form, models and terms of declaration and the amounts in paragraphs (a) and (b) of that section may be amended. In accordance with the provisions of Article 13.2 (e) of Law 19/1993 of 28 December, the Commission for the Prevention of Money Laundering and Monetary Offences issued a mandatory opinion at its meeting on 27 July 2005.

By virtue thereof, according to the Council of State, I stipulate as follows:

**First. Scope.**

1. This Order shall apply to individuals or private legal entities which, acting on their own behalf or on behalf of a third party, perform the following movement of means of payment:

a) exit from or entry into national territory of coins, bank notes and bearer cheques in local currency or any other currency or any physical means, including electronic means, designed to be used as a means of payment, in an amount equal to or greater than EUR 10,000 per person per journey.

b) Movement within national territory of means of payment in coins, bank notes and bearer cheques in local currency or any other currency or any physical means, including electronic means, designed to be used as means of payment, in an amount equal to or greater than EUR 100,000. For the purposes of this Order, the term "movement" refers to any change of place or position verified outside the residence of the holder of the payment means.

This Order shall not apply to personal cheques.

Reference to electronic payment does not include registered credit cards or debit cards.

2. Whenever due evidence of their status is submitted, those obligated entities referred to in paragraphs 1 and 2 of Article 2 of the Regulation of Law 19/1993 of 28 December, regarding certain measures for the prevention of money laundering, are not required to submit a declaration for movements directly related to their professional or business activity.

## **Second. Declaration form.**

1. Declaration Form S -1 contained in Annex I of this Order is approved; its completion and submission under the terms set out therein will imply that the obligation under article 3.9 of Law 19/1993 of 28 December is considered to be fulfilled.

The declaration form can be obtained from the Provincial Branch of Customs and Special Taxes or at the Customs Administrations of the State Tax Administration Agency and Delegations of Economy and Finance. Also, such form will be available through the Internet on the websites of the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (<http://www.sepblac.es>), of the State Tax Administration Agency (<http://www.aeat.es>) and the Directorate General of the Treasury and Financial Policy (<http://www.tesoro.es>). The model form, once fully completed and printed, shall be submitted at the place and in the manner specified in this Order.

2. There will be only one declaration model, regardless of the type of movement made and it will be valid for a single transport operation, subject to the exceptions set out in this Order.

Any variation in the reported data shall be declared prior to the movement of the means of payment by submitting a new S -1 form.

3. The declaration form, once fully completed, shall be signed and submitted by the person transporting the means of payment. Throughout the whole movement process the means of payment must be accompanied by an appropriate declaration and be transported by the person appointed as a carrier therein. Regardless of the place or form of submission, the statement shall be displayed without prior request for stamping at the permanent Customs Service of the border post, if any, or the Security Forces of the State, at the request of its officers.

4. In any of the cases included in this Order, prior to movement, the bearer of the means of payment may electronically submit the statement, signed with an electronic signature, on the website of the State Tax Administration Agency (<http://www.aeat.es>).

## **Third. Place and form of declaration submission in the case of movement exit from or entry into national territory.**

1. In case of means of payment exiting from or entering into national territory in an amount equal to or greater than EUR 10,000 or the equivalent in foreign currency per person per

journey through a border crossing where there are permanent Customs Services, the bearer shall declare, without the need of a request, those payment means transported by submitting the duly completed S-1 form to the said Customs Services, prior to any control activity by the Administration.

After verifying the identity of the person filing the declaration and that the declaration has been fully completed and, where necessary or appropriate, the accuracy of the reported data, the Customs Services shall stamp the declaration expressly indicating the date of submission and return it to the interested party, sending the information contained therein within one month to the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences.

2. Only in cases where means of payment going out of the national territory destined for a Member State of the European Union in an amount equal to or greater than EUR 10,000 or the equivalent in foreign currency per person per journey is to be made through a border without permanent Customs Services, the bearer shall previously declare the payment means transported by filing the fully completed S-1 form at the Provincial Branch of Customs and Special Taxes or Customs administrations of the State Tax Administration Agency .

The Provincial Branch of Customs and Special Taxes or Customs Administrations of the State Tax Administration Agency, after checking that the declaration has been fully completed and, where deemed necessary or appropriate, the accuracy of the data reported, shall stamp the declaration with explicit indication of the date of filing and return it to the interested party, submitting the information contained therein within one month to the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences.

3. In cases where the entry of means of payment into national territory from a Member State of the European Union in an amount equal to or greater than EUR 10,000 or the equivalent in foreign currency per person per journey is to be verified through a border crossing without permanent Customs Services, the bearer shall previously declare the payment means transported by submitting the duly completed S -1 form to the State Tax Administration Agency.

The State Tax Administration Agency will establish the technical procedures for electronic filing of the declaration. Once the person filing the declaration has successfully completed all the sections, the system will display the declaration on screen duly validated with an electronic code, also indicating the date and time of submission. Otherwise, a description of any errors or omissions identified shall be displayed on screen for the purposes of correction by the person filing the declaration. The validated declaration, once printed, shall be signed and carried by the person who filed the declaration, together with the means of payment, for display, when requested by officers of the Customs Service or the Security Forces of the State, who may verify the accuracy of the reported data. The State Tax Administration Agency shall forward the information contained in the declaration within one month to the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences.

4. Registered credit institutions may receive S-1 forms completed by their customers prior to means of payment going out of the national territory in an amount equal to or greater than EUR 10,000 or the equivalent in foreign currency per person per journey provided that said means of payment are subject to a direct debit, at least partially, to the customer's account. In these cases, the credit institution, after checking that it has been fully completed, shall stamp the declaration expressly indicating the date of receipt and return it to the interested party, sending via a standardised electronic format to the Executive Service of the Commission for the Prevention of Money laundering and Monetary Offences the information contained in the declaration as part of monthly transactions report.

5. In cases where the Customs Service has not verified the amount of the payment means transported and has not stamped the declaration to that effect at the time of entry into or exit from the national territory of the fund bearer, the mere declaration shall not evidence before the authorities or third parties the effective movement of the means of payment.

6. The Department of Customs and Special Taxes of the State Tax Administration Agency will establish the list of border crossings with permanent Customs Services. This list will be available through the website of the State Tax Administration Agency (<http://www.aeat.es>).

For the submission of declarations, the State Tax Administration Agency may establish additional offices or reception centres.

#### **Fourth. Place and form of declaration submission for domestic movements.**

1. For the domestic movement of means of payment in an amount equal to or greater than EUR 100,000 or the equivalent in foreign currency, the bearer shall previously declare the payment means transported by filing the fully completed S-1 form at the Provincial Branch of Customs and Special Taxes of the State Tax Administration Agency.

The Provincial Branch of Customs and Special Taxes or Customs Administrations of the State Tax Administration Agency, after checking that the declaration has been fully completed and, where deemed necessary or appropriate, the accuracy of the data reported, shall stamp the declaration with explicit indication of the date of filing and return it to the interested party, submitting the information contained therein within one month to the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences.

Registered credit institutions may receive S-1 forms completed by their customers prior to the domestic movement of means of payment in an amount equal to or greater than EUR 100,000 or the equivalent in foreign currency per person per journey provided that the said means of payment are subject to a direct debit, at least partially, to the customer's account. In these cases, the credit institution, after checking that it has been fully completed, shall stamp the declaration expressly indicating the date of receipt and return it to the interested party, sending in a standardised electronic format to the Executive

Service of the Commission for the Prevention of Money laundering and Monetary Offences the information contained in the declaration as part of monthly transactions report.

2. Only in the case of the domestic movement of means of payment in an amount equal to or greater than EUR 100,000 or the equivalent in foreign currency, followed by a movement exiting the country, and provided that the data to be declared does not vary, the bearer may file a single declaration in the form set out in paragraphs 2 and 4 of the third section.

3. Only in the case of the domestic movement of means of payment in an amount equal to or greater than EUR 100,000 or the equivalent in foreign currency, preceded by a movement entering the country, and provided that the data to be declared does not vary, the bearer may file a single declaration in the form set out in paragraphs 1 and 3 of the third section.

#### **Fifth. Seizure of means of payment.**

1. The omission of the declaration, when it is mandatory under this Order, or the lack of veracity of the reported data, provided it can be considered particularly relevant, will determine seizure by the Customs Service or the State Security Forces of all the means of payment found.

Notwithstanding the preceding paragraph, the acting authority, based on the circumstances of the case, may agree to the non-seizure of a maximum of EUR 1,000 Euros per person and journey as a survival amount.

2. For the purposes of this section, the following are considered in any case to be particularly relevant: the full or partial lack of veracity regarding the identity data of the bearer or owner of the means of payment, origin and destination thereof, the concept that justifies the movement as well as the variation in excess or defect of the amount declared of more than 10% with regard to the real amount or EUR 3,000.

3. The record of seizure of means of payment subject to declaration shall contain the minimum data to be included in Annex II of this Order and shall be immediately forwarded to the Executive Service and the Secretariat of the Commission for the Prevention of Money Laundering and Monetary Offences.

#### **Sixth. Information to travellers.**

The Department of Customs and Special Taxes of the State Tax Administration Agency will establish in its dependencies information systems that make travellers aware of the obligation to file a declaration in the terms set forth in this Order.

The collaboration of international travelling agencies may also be required for such purposes.

## **Seventh. Monthly transactions report.**

The entities listed in article 2.1 of Law 19/1993 of 28 December, on certain measures to prevent money laundering, shall report on a monthly basis to the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences any operations involving movements regarding payment methods subject to mandatory declaration in accordance herewith.

In the event that the bearer of the means of payment, being bound to do so, were not to submit or display the properly stamped declaration, obliged subjects must indicate that fact in their report to the Executive Service.

The reporting obligation prescribed in this paragraph shall be without prejudice to the other obligations imposed on those subject to the laws on prevention of money laundering, especially the obligation of analysis and reporting of transactions that, by their nature, may be particularly related to money laundering.

## **Eighth. Administrative assistance.**

1. All authority or officer, including customs duties officers, shall ensure compliance with this Order and shall report any possible breaches to the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences.

2. The information obtained as a result of this Order shall be centralised at the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences, being sent by electronic, computer or telematic media using a standardised computer support. Pursuant to article 94.4 of Law 58/2003 of 17 December, General Tax Law, the State Tax Administration Agency will have access to such information for the exercise of its powers.

3. The information relating to seizures due to non-compliance with the provisions of this Order shall be centralised in the Secretariat of the Commission for the Prevention of Money Laundering and Monetary Offences.

Pursuant to article 94.4 of Law 58/2003 of 17 December, General Tax Law, the State Tax Administration Agency will have access to such information for the exercise of its powers. The Secretariat, in compliance with the collaboration obligation and in accordance with the provisions of article 4 of Organic Law 2/1986 of 13 March, on the Security Forces, and article 13.2 (b) of Law 19 /1993 of 28 December, on certain measures to prevent money laundering, shall respond to requests for information made by the Security Forces in the cases provided for in article 22.2 of Organic Law 15/1999, of 13 December, on the protection of personal data.

## **Sole transitory provision. Fulfilling the declaration obligation.**

Until the entry into force of this Order the declaration requirement provided in article 3.9 of Law 19/1993 of 28 December, on certain measures to prevent money laundering, must be



accomplished by submitting the B1 form to the bodies referred to in article 4 of the Order of the Minister of Economy and Finance of 27 December, 1991, implementing Royal Decree 1816/1991 of 27 December, on foreign economic transactions. For domestic movements, the person filing the declaration shall indicate in the section on 'country of origin or destination' the origin and destination locations of the movement.

**Sole derogation provision. Legal repeal.**

Upon entry into force of this Order the following are hereby repealed: paragraphs 1 , 2 and 3 of article 4 of the Order of the Minister of Economy and Finance of 27 December, 1991, implementing Royal Decree 1816/1991 of 27 December on foreign economic transactions, as amended by Order of 9 July, 1996, and Instructions 1, first paragraph, 2 and 3 of the Resolution of the Directorate General of Foreign Trade and Investment Policy of 9 July 1996, which lays down rules for the application of articles 4 , 5, 7 and 10 of the Order of the Minister of Economy and Finance of 27 December 1991.

**First final provision. Empowerment of the Commission for the Prevention of Money Laundering and Monetary Offences.**

The Commission for the Prevention of Money Laundering and Monetary Offences, through its Standing Committee, may issue instructions for the implementation of this Order.

**Second final provision. Entry into force.**

This Order shall come into force nine months after its publication in the "Official Gazette".

Madrid, 3 May 2006.

SOLBES MIRA

Director General of the Treasury and Financial Policy and Director General of the State Tax Administration Agency.