



27.6.2018

PROVISIONAL AGREEMENT RESULTING FROM INTERINSTITUTIONAL NEGOTIATIONS

Subject: Proposal for a regulation of the European Parliament and of the Council on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005 (COM(2016)0825 – C8-0001/2017 – 2016/0413(COD))

The interinstitutional negotiations on the aforementioned proposal for a regulation have led to a compromise. In accordance with Rule 69f(4) of the Rules of Procedure, the provisional agreement, reproduced below, is submitted as a whole to the Committee on Economic and Monetary Affairs
Committee on Civil Liberties, Justice and Home Affairs for decision by way of a single vote.

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on
controls on cash entering or leaving the Union and repealing
Regulation (EC) No 1889/2005

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular
Articles 33 and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ,

Having regard to the opinion of the Committee of the Regions ,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The promotion of the harmonious, sustainable and inclusive development of the internal market as an area in which goods, persons, services and capital can freely and safely circulate is one of the priorities of the Union.
- (2) The re-introduction into the economy of illicit proceeds and the diversion of money to finance illicit activities create distortions and unfair competitive disadvantages to law abiding citizens and companies, and are therefore a threat to the functioning of the internal market. Moreover, it fosters criminal and terrorist activities which endanger the security of Union citizens. Accordingly, the Union has taken action to protect itself.
- (3) One of the main pillars of that action was Council Directive 91/308/EEC¹, which laid down a series of measures and obligations on financial institutions, legal persons and certain professions as regards inter alia transparency, record keeping and ‘know your customer’ provisions, and an obligation to report suspicious transactions to the national Financial Intelligence Units which are established as hubs to assess those transactions,

¹ Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ L 166, 28.6.1991, p. 77)

interact with their counterparts in other countries and, if required, contact judicial authorities. The Directive has since been amended and replaced by successive measures. Currently, provisions for the prevention of money laundering are laid down in Directive (EU) 2015/849 of the European Parliament and of the Council¹.

- (4) In order to improve the current situation in which there is limited access to statistical information and there are only some indications available on the extent of cash being smuggled across EU external borders by criminals, more effective cooperation via information exchange between competent authorities and with the Commission should be introduced. To guarantee that this exchange of information is effective and efficient, the Commission should review if the system established fulfils the purpose or whether there are obstacles to the timely and direct exchange of information. Furthermore, the Commission should publish statistical information on its website.
- (5) In view of the risk that the application of Directive 91/308/EEC would lead to an increase in cash movements for illicit purposes which could pose a threat to the financial system and the internal market, that Directive was complemented by Regulation (EC) No 1889/2005 of the European Parliament and of the Council² That Regulation aims at preventing and detecting money laundering and the financing of terrorism by laying down a system of controls applicable to natural persons who enter or leave the Union carrying amounts of cash or bearer-negotiable instruments equal to or greater than 10 000 EUR or its equivalent in other currencies. The term 'entering or leaving the Union' should be defined by reference to the territory of the Union as defined in Article 355 of the Treaty on the Functioning of the European Union in order to ensure that this Regulation has the broadest possible scope of application and that no areas would be exempt from its application and present opportunities to circumvent applicable controls.
- (6) Regulation (EC) No 1889/2005 implemented within the Community the international standards on combating money laundering and terrorism financing developed by the Financial Action Task Force (FATF).

¹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (OJ L 141, 5.6.2015, p. 73).

² Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community (OJ L 309, 25.11.2005, p. 9).

- (7) Directive (EU) 2015/849 identifies and describes a number of criminal activities the proceeds of which may be subject to money laundering or used for the financing of terrorism. Often, the proceeds of those criminal activities are, for the purpose of their being laundered or used for terrorism financing, transported across the external border of the Union. This Regulation should take this into account and lay down a system of rules that, apart from contributing to the prevention of money laundering, notably predicate offences such as tax crimes as defined in national law, and terrorism financing as such, facilitate the detection, prevention and investigation of the criminal activities identified in Directive (EU) 2015/849.
- (8) The FATF, which was established by the G7 summit in Paris in 1989, is an inter-governmental body that sets standards and promotes effective implementation of legal, regulatory and operational measures to combat money laundering, terrorist financing and other related threats to the integrity of the international financial system. Several Member States are members of the FATF or represented in the FATF through regional bodies. The Union is represented in the FATF by the Commission and has committed itself to the effective implementation of its recommendations. On FATF-level, Recommendation 32 on cash couriers specifies that rules should be in place with regard to adequate controls on cross-border movements of cash.
- (9) As a result of the advancing insights into the mechanisms used for transferring illicitly acquired value across borders and the resulting changes implemented in the FATF Recommendations, the changes to the legal framework introduced by Directive (EU) 2015/849 as well as the development of new best practices and on the basis of the evaluation of existing legislation, the provisions of Regulation (EC) No 1889/2005 should reflect those developments. Considering the extensive nature of the amendments that would be required, that Regulation should be repealed and replaced with a new Regulation.
- (10) This Regulation does not affect Member States' ability to provide, under their national law, for additional national controls on movements of cash within the Union, provided that these controls are in accordance with the Union's fundamental freedoms, in particular with Articles 63 and 65 of the Treaty on the Functioning of the European Union.
- (10a) A Union set of rules which would allow comparable controls of cash within the Union

would greatly facilitate efforts to prevent money laundering and terrorist financing.

- (11) This Regulation does not concern measures taken by the Union or Member States which restrict capital movements in case of serious difficulties for the operation of economic or monetary union under Article 66 of the Treaty on the Functioning of the European Union or in case of a sudden crisis in the balance of payments under Articles 143 and 144 of the same Treaty.
- (12) Considering their presence at the external borders of the Union, their expertise in carrying out controls on passengers and freight crossing the external border and experience gained in the application of Regulation (EC) No 1889/2005, customs authorities should continue to act as the competent authorities for the purposes of this Regulation. At the same time, the Member States should continue to be able also to designate other national authorities present at the external border to act as competent authorities. Member States should continue to provide adequate training for the staff of these authorities and other national authorities to carry out these controls, including on cash-based money laundering.
- (13) One of the key concepts used by this Regulation is that of ‘cash’, which should be defined as comprising four categories: currency, bearer-negotiable instruments, commodities used as highly liquid stores of value and certain types of prepaid cards. Given their characteristics, certain bearer-negotiable instruments, commodities used as highly liquid stores of value, as well as prepaid cards which are not linked to a bank account are likely to be used in place of currency as anonymous means of transfer of value across the external borders which are not traceable using the classic system of supervision by the public authorities, and which might store an amount of money which is difficult to detect. This Regulation should therefore lay down the essential components of the definition of 'cash' while at the same time enabling the Commission to amend the non-essential components in response to the efforts by criminals and their associates to circumvent a measure which controls only one type of highly liquid store of value by bringing across external borders another type. If evidence of such behaviour on an appreciable scale is detected, it is essential that measures be taken swiftly to remedy the situation. Despite the high level of risk posed by virtual currencies as evidenced in the Commission’s report of 26 June 2017 on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to

cross-border activities¹, customs authorities do not have competence to monitor them.

- (14) Bearer negotiable instruments are financial instruments that enable the physical holder to claim a payment of a financial amount without being registered or mentioned by name. They can be easily used to transfer considerable amounts of value and present salient similarities with currency in terms of risks for abuse, liquidity and anonymity.
- (15) Commodities used as highly liquid stores of value are goods that represent a high ratio between their value and volume and for which an easily accessible international trading market exists which allows them to be converted into currency whilst incurring only modest transaction costs. Such commodities are mostly presented in a standardised way that allows for quick verification of their value.
- (16) Prepaid cards are non-nominal cards storing or providing access to monetary value or funds which can be used for payment transactions, for acquiring goods or services or for redemption of currency and which are not linked to a bank account. Prepaid cards as defined under this Regulation encompass anonymous prepaid cards as referred to in the Directive (EU) 2015/849. They are widely used for a variety of legitimate purposes and some of these instruments also present a clear social interest. As such prepaid cards are easily transferrable and can be used to transfer considerable value across external borders. It is therefore necessary to include prepaid cards in the definition of cash, in particular if they can be bought without customer due diligence procedures. This will allow for the possibility to extend the measures to certain types of prepaid cards if the evidence justifies it and with due regard to proportionality and practical enforceability, in accordance with the available technology.
- (17) For the prevention of money laundering and the financing of terrorism, an obligation to declare should be imposed on natural persons entering or leaving the Union. In order not to restrict free movement unduly or overburden citizens and authorities with administrative formalities, the obligation should be subject to a threshold of EUR 10 000 or its equivalent in commodities used as a highly liquid store of value, bearer-negotiable instruments, pre-paid cards' worth or other currencies. It should apply to natural persons carrying such amounts on their person, in their luggage or in the conveyance in which they cross the external border. They should be required to make

¹ (COM(2017)340 final and SWD(2017)241 final)

the cash available, and if necessary, to present it, to the competent authorities for control. The definition of "carrier" should be understood as excluding those carriers who undertake the professional conveyance of goods or people.

- (18) As regards movements of cash that is not accompanied by its carrier, such as cash entering or leaving the Union in postal packages, courier shipments, unaccompanied luggage or containerised cargo, the competent authorities should have the power to require the sender or the recipient or their representative to make a disclosure declaration, systematically or on a case by case basis, in accordance with national procedures. Such disclosure should cover a number of elements, such as the origin, destination, economic provenance and intended use of the funds, which are not covered by the usual documentation submitted to customs, such as shipping documents and customs declarations. The disclosure obligation should be subject to a threshold identical to that for cash carried by natural persons.
- (19) Achieving the objectives of this Regulation requires that a number of standardised data elements regarding the movement of the cash such as the personal details of the declarant, the owner or the recipient, the economic provenance and the intended use of the cash be recorded. In particular, with regard to the declarant, the owner or the recipient, it is necessary that they provide their personal details as laid down in their identification documents, in order to reduce to the minimum possible the risk of errors on their identity and the delays due to the possible subsequent need of verification.
- (20) As regards the obligation to declare and the disclosure obligation, competent authorities should be vested with the power to carry out all requisite controls on persons, their luggage, the conveyance used to cross the external border and any unaccompanied consignment or receptacle crossing that border which may contain cash, or a means of transport carrying them. In the event of failure to comply with the obligations, the competent authorities should establish an ex officio declaration for subsequent communication of the relevant information to other authorities.
- (21) Where they detect amounts of cash below the threshold but there are indications that the cash may be linked to criminal activity as defined in this Regulation, competent authorities should be able to record in the case of accompanied cash, information on the carrier, the owner and where available the intended recipient of the cash, including full name, contact details, details concerning the nature and the amount or value of the cash,

its economic provenance and intended use. In the case of unaccompanied cash, competent authorities should be able to record information on the declarant, the owner and sender of the cash, and the recipient or intended recipient including full name, contact details, details concerning the nature and the amount or value of the cash, its economic provenance and intended use.

- (22) That information should be passed on to the Financial Intelligence Unit of the Member State in question, which should ensure that the Financial Intelligence Unit transmit any relevant information spontaneously or upon request to the Financial Intelligence Units of the other Member States. Those units are designated as the hub elements in the fight against money-laundering and terrorist financing who receive and process information from various sources such as financial institutions and analyse it in order to determine if there are grounds for further investigation that may not be apparent to the competent authorities who collect the declarations and perform controls under this Regulation. To guarantee effective flow of information, Financial Intelligence Units should all be connected to the Customs Information System referred to in article 15 para 1c and the data produced/exchanged by competent authorities and FIUs should be compatible and comparable.
- (22a) Recognising the importance for the successful follow-up of this regulation to have effective exchange of information between the relevant authorities, including FIUs within the legal framework covering those entities, and the need to strengthen the cooperation between FIUs within the Union in which context the Commission should assess by 1 June 2019 the possibility of establishing a common mechanism to fight money laundering and terrorist financing.
- (23) The detection of a sub-threshold amount in situations where there are indications of criminal activity is highly relevant in this context. Consequently, it should also be possible to share information relating to sub-threshold amounts with the competent authorities in other Member States if there are indications of criminal activity.
- (24) Considering that the movements of cash that are subject to controls under this Regulation take place across the external border, and given the difficulty of acting once the cash has left the point of entry or exit and the associated risk if even small amounts are used illicitly, the competent authorities should be able to retain cash temporarily in certain circumstances, subject to checks and balances: first, where the obligation to

declare or to disclose has not been met and, secondly, where there are indications of criminal activity, irrespective of the amount of cash. In view of the nature of such temporary retention and the impact that it may have on the freedom of movement and the right to property, the period of retention should be limited to the absolute minimum time that other competent authorities require to determine whether there are grounds for further intervention, such as investigations or seizure of the cash based on other legal instruments. A decision to retain cash temporarily under this Regulation should be accompanied by a statement of reasons and adequately describe the specific factors that have given rise to the action. An extension of the period of temporary retention of the cash may be decided in specific and duly assessed cases, for instance when competent authorities encounter difficulties in obtaining information on a potential criminal activity, inter alia when communication with a third country is required, when documents have to be translated or when it is difficult to identify and contact the sender or the recipient in case of unaccompanied cash. If at the end of the time limit no decision concerning the further intervention is taken or if the competent authority decides that there are no grounds to further retain the cash, it should immediately be made available, according to the situation, to the person from whom the cash was temporarily retained, the carrier or the owner.

- (25) It is essential that competent authorities that collect information pursuant to this Regulation transmit it in a timely manner to the national Financial Intelligence Unit, in order to enable the Financial Intelligence Units to further analyse and compare the information with other data as provided for in Directive (EU) 2015/849.
- (26) Where they register a failure to declare or disclose or have indications of criminal activity, competent authorities should promptly share the information through appropriate channels with competent authorities of other Member States for the purpose of this Regulation. Such exchange of data is proportionate considering that offenders against the obligation to declare who have been apprehended in one Member State would be likely to select another Member State of entry or exit where the competent authorities would have no knowledge of their earlier infractions. The exchange of such information should be made mandatory, in order to ensure consistent application across Member States. Where there are indications that the cash is related to criminal activity which could adversely affect the financial interests of the Union that information should

also be made available to the Commission and the European Public Prosecutor's Office and to Europol. In order to achieve better the preventive and dissuasive objectives of this Regulation with regards to the circumvention of the obligation to declare, anonymised risk information and risk analysis results should also mandatorily be exchanged between Member States and with the Commission, in accordance with standards set out in implementing acts to be adopted pursuant to this Regulation.

- (27) It should be made possible to exchange information between a competent authority of a Member State or the Commission and the authorities of a third country given appropriate safeguards. Such exchange should only be permissible provided that relevant national and Union provisions on fundamental rights and the transfer of personal data are complied with and following an authorisation by the authorities which originally obtained the information. The Commission should be informed of any occurrence of information exchange with third countries pursuant to this Regulation and should report thereon to the European Parliament and to the Council.
- (28) Given the nature of the information collected and the legitimate expectation of carriers and declarants that their personal data and information on the value of cash that they have brought into or taken out of the Union will be treated confidentially, the competent authorities should provide sufficient safeguards as to the respect of professional secrecy by the agents who require access to the information, and adequately protect it against unauthorised access, use or communication. Unless otherwise provided for by this Regulation or national law, particularly in the context of legal proceedings, the information should not be disclosed without the permission of the authority which collected it. Any collection, disclosure, transmission, communication and other processing of personal data within the scope of this Regulation should be subject to the requirements of the Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. This Regulation provides for the processing of data. Such processing may also cover personal data and should be carried out in accordance with Union law. The processing of personal data for this Regulation should respect the fundamental rights to respect for private and family life recognised by Article 8 of the Convention for the protection of Human Rights and Fundamental Freedoms, as well as the respect for private and family life, and the right to the protection of personal data recognised, respectively, by Articles

7 and 8 of the Charter. Member States and the Commission should process personal data only in a manner compatible with the purposes of this Regulation.

- (29) For the purposes of the analysis carried out by the Financial Intelligence Units and in order to enable authorities in other Member States to control and enforce the obligation to declare, particularly with respect to persons who have previously committed infractions against that obligation it is necessary that the declaration data is stored for a sufficiently long period. In order for the FIU to effectively carry out their analysis, and for the competent authorities to control and enforce the obligation to declare effectively, the period of retention of declaration data should not exceed five years with a possible further extension, after a thorough assessment of the necessity and proportionality of such further retention, which should not exceed three additional years.
- (30) In order to encourage compliance and deter circumvention, Member States should introduce penalties for non-compliance with the obligations to declare or disclose. The penalties should apply only to the failure to declare or disclose under this Regulation and should not take into account the criminal activity potentially associated with the cash, which may be the object of further investigation and measures falling outside the scope of this Regulation. They should be effective, proportionate and dissuasive, and not go beyond what is required to encourage compliance. Penalties introduced by Member States should constitute a comparable deterrent effect across the Union to the infringement of this Regulation.
- (31) While most Member States already use a harmonised declaration form, the EU Currency Declaration Form (EU-CDF), on a voluntary basis, in order to ensure uniform application of controls and the efficient processing, transmission and analysis of the declarations by competent authorities, implementing powers should be conferred on the Commission to adopt the template of declaration and disclosure forms, to determine the criteria of a common risk management framework, to establish the technical rules and modalities and the template of the forms to be used for the declarations, the information exchange and to establish the rules and the format to be used for the provision of statistical information to the Commission. The powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the

Council¹.

- (31a) In order to ensure their uniform application by competent authorities, controls should be based primarily on a risk analysis, with the purpose of identifying and evaluating the risks and developing the necessary countermeasures.
- (31aa) The establishment of a common risk management framework should not prevent competent authorities from performing random checks or spontaneous controls whenever they deem necessary.
- (32) In order to be able to quickly take account of future modifications of international standards such as established by the Financial Action Task Force or to address circumvention of this Regulation through reliance on liquid stores of value or on prepaid cards, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of modifications to this Annex. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016². In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts should systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (32a) In order to raise awareness about this Regulation, Member States should, in cooperation with the Commission, develop appropriate materials regarding the obligation to declare cash.
- (33) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States, but, because of the transnational scale of money laundering and terrorism financing, and the specificities of the internal market and its fundamental freedoms, which can only be fully implemented by ensuring that no excessively disparate treatment based on national legislation is imposed on cash crossing the external border

¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

² OJ L 123, 12.5.2016, p.1

of the Union, can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.

- (34) This Regulation respects the fundamental rights and observes the principles recognised in Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, in particular Title II thereof.
- (35) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion.

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

1. This Regulation provides for a system of controls with respect to cash entering or leaving the Union, to complement the legal framework for the prevention of money laundering and terrorist financing laid down in Directive (EU) 2015/849.

Article 2

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:
 - (a) ‘cash’ means:
 - (i) currency;
 - (ii) bearer-negotiable instruments;
 - (iii) commodities used as highly- liquid stores of value;
 - (iv) prepaid cards;
 - (b) ‘entering or leaving the Union’ means coming from a territory which is outside the territory covered by Article 355 of the Treaty on the Functioning of the European Union to the territory which is covered by Article 355 of that Treaty, or departing that territory;

- (c) 'currency' means banknotes and coins that are in circulation as a medium of exchange or that have been in circulation as a medium of exchange and can still be exchanged through financial institutions or central banks for banknotes and coins that are in circulation as a medium of exchange;
- (d) 'bearer-negotiable instruments' means instruments other than currency which entitles their holder to claim a financial amount upon presentation of the instrument without having to prove their identity or entitlement to that amount. These instruments are:
- (i) traveller's cheques;
 - (ii) cheques, promissory notes or money orders that are either in bearer form, signed but with the payee's name omitted, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery;
- (e) 'commodities used as highly liquid stores of value' means goods that present a high ratio between their value and their volume and that can easily be converted into currency through accessible trading markets whilst incurring only modest transaction costs. Such commodities are referred to in Annex I;
- (f) 'prepaid card' means a non-nominal card storing or providing access to monetary value or funds which can be used for payment transactions, for acquiring goods or services or for redemption of currency and which is not linked to a bank account. Such prepaid cards are referred to in Annex I;
- (g) 'competent authorities' means the customs authorities of the Member States as well as any other authorities empowered by the Member States to apply this Regulation;
- (ga) 'carrier' means any natural person entering or leaving the Union carrying cash on their person, in their luggage or in their means of transport;
- (h) 'unaccompanied cash' means cash making up part of a consignment without a

carrier;

- (i) ‘criminal activity’ means any of the activities listed in Article 3(4) of Directive (EU) 2015/849;
 - (j) ‘Financial Intelligence Unit’ means the entity established in the Member State for the purposes of implementing Article 32 of Directive (EU) 2015/849.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 14 in order to amend Annex I to take account of new trends in money laundering or terrorist financing, as defined in paragraphs 3, 4 and 5 of Article 1 of Directive (EU) 2015/849, or best practices in preventing money laundering or terrorist financing or to prevent the use by criminals of commodities used as highly liquid stores of value and of prepaid cards to circumvent the obligations laid down in Articles 3 and 4.

Article 3

Obligation to declare accompanied cash

1. Any carrier carrying cash of a value of EUR 10 000 or more shall declare that cash to the competent authorities of the Member State through which he or she is entering or leaving the Union and make it available to them for control. The obligation to declare shall not be deemed to be fulfilled if the information provided is incorrect or incomplete or the cash is not made available for control.
2. The declaration referred to in paragraph 1 shall provide the details of:
- (a) the carrier, including full name, contact details, including address, date and place of birth, nationality and identification document number;
 - (b) the owner of the cash, including full name, contact details, including address, date and place of birth, nationality and identification document number for natural persons, or full name, contact details, including address, registration number and, where available, Value Added Tax registration number for legal persons;
 - (c) where available, the intended recipient of the cash, including full name, contact

details including address, date and place of birth, nationality and identification document number for natural persons, or full name, contact details, including address, registration number and, where available, Value Added Tax registration number for legal persons;

- (d) the nature and the amount or value of the cash;
 - (e) the economic provenance of the cash;
 - (ea) the intended use of the cash;
 - (f) the transport route;
 - (g) the means of transport.
3. The information shall be provided in writing or electronically using the form laid down pursuant to Article 15(a). An endorsed copy shall be delivered to the declarant upon request.

Article 4

Disclosure obligation for unaccompanied cash

1. Where unaccompanied cash of a value of EUR 10 000 or more is entering or leaving the Union, the competent authorities of the Member State through which the cash is entering or leaving may require the sender or the recipient or their representative, as the case may be, to make a disclosure declaration, within a set deadline of no more than 30 days. The competent authorities may retain the cash until the sender, recipient or its representative makes the disclosure declaration.

The obligation to declare shall not be deemed to be fulfilled if the declaration is not made before the deadline expires, if the information provided is incorrect or incomplete or the cash is not made available for control.

2. The disclosure declaration referred to in paragraph 1 shall provide the details of:

- a) the declarant, including full name, contact details, including address, date and place of birth, nationality and identification document number;
 - (b) the owner of the cash, including the full name, contact details, including address, date and place of birth, nationality and identification document number for natural persons or full name, contact details including address, registration number and, where available, the Value Added Tax registration number for legal persons;
 - (c) the sender of the cash, including the full name, contact details, including address, date and place of birth, nationality and identification document number for natural persons or full name, contact details including address, registration number and where available, Value Added Tax registration number for legal persons;
 - (d) the recipient or intended recipient of the cash, including the full name, contact details, including address, date and place of birth, nationality and identification document number for natural persons or full name, contact details, including address, registration number and, where available, Value Added Tax registration number for legal persons;
 - (e) the nature and the amount or value of the cash
 - (f) the economic provenance of the cash;
 - (fa) the intended use of the cash;
3. The information shall be provided in writing or electronically using the form laid down pursuant to Article 15(a). An endorsed copy shall be delivered to the declarant upon request.

Article 5

Powers of the competent authorities

1. In order to verify compliance with the obligation laid down in Article 3, the competent authorities shall have the power to carry out, in accordance with the conditions laid down in national legislation, controls on natural persons, their baggage and means of

transport.

2. For the purposes of implementing the disclosure obligation laid down in Article 4, the competent authorities shall have the power to carry out, in accordance with the conditions laid down in national legislation, controls on any consignments, receptacles or means of transport which may contain unaccompanied cash.
3. If the obligation to declare under Article 3 or the disclosure obligation under Article 4 has not been fulfilled, the competent authorities shall establish in writing or in an electronic form an ex officio declaration which shall contain to the extent possible the details listed in Article 3(2) or Article 4(2), as the case may be.
4. The controls shall be based primarily on risk analysis, with the purpose of identifying and evaluating the risks and developing the necessary counter-measures, and shall be performed within a common risk management framework in accordance with the criteria laid down pursuant to Article 15(b) which shall also take into account the risks assessment established by the Commission and FIUs in the framework of the Directive (EU) 2015/849.
- 4c. The powers conferred on the competent authorities by this Article shall also extend to Article 6.

Article 6

Sub-threshold amounts suspected to be related to criminal activity

1. Where the competent authorities detect a carrier with an amount of cash below the threshold referred to in Article 3 and that there are indications that the cash is related to criminal activity, they shall record that information and the details laid down in Article 3(2).
2. Where the competent authorities find that unaccompanied cash below the threshold referred to in Article 4 is entering or leaving the Union and that there are indications that the cash is related to criminal activity, they shall record that information and the

details laid down in Article 4 (2).

Article 7

Temporary retention of cash by competent authorities

1. The competent authorities may temporarily retain cash by an administrative decision in accordance with the conditions laid down in national legislation where:
 - (a) the obligation in Article 3 or 4 is not complied with; or
 - (b) there are indications that the cash, irrespective of the amount, is related to criminal activity.

2. The administrative decision referred to in paragraph 1 shall be subject to effective remedy in accordance with procedures provided for in national law and shall be accompanied by a statement of reasons, be communicated to:
 - (a) the person required to make the declaration in accordance with Article 3 or the disclosure declaration in accordance with Article 4; or
 - (b) person required to provide the data in accordance with Article 6(1) or with Article 6(2).

3. The period of temporary retention shall be strictly limited under national law to the time required for competent authorities to determine whether the circumstances of the case warrant further retention. The period of temporary retention shall not be longer than 30 days. After having carried out a thorough assessment of the necessity and proportionality of a further temporary retention, the competent authorities may decide to extend the period of temporary retention to a maximum of 90 days. If no determination is made regarding further retention of the cash within that period or if a determination is made that the circumstances of the case do not warrant further retention, the cash shall immediately be made available to:
 - (a) the person from whom the cash was temporarily retained in the situations referred

to in Article 3 or in Article 4; or

- (b) the person from whom the cash was temporally retained in the situations referred to in Article 6(1) or in Article 6(2).

Article 8

Provision of information to the Financial Intelligence Unit

1. The competent authorities shall record the information obtained under Articles 3, 4, 5(3) or 6 and transmit it to the Financial Intelligence Unit of the Member State in which it was obtained, in accordance with the technical rules laid down pursuant to Article 15(c).
 - 1a. The Member States shall ensure that the financial Intelligence Unit of the Member State in question exchange such information with the relevant Financial Intelligence Units of the other Member States in accordance with Article 53 (1) of Directive (EU) 2015/849.
2. The information referred to in paragraph 1 shall be communicated by competent authorities as soon as possible, and no later than 15 working days after the date on which it was collected.

Article 9

Exchange of information between competent authorities and with the Commission

1. The competent authority of each Member State shall, by electronic means, communicate the following information to the competent authorities of all the other Member States:
 - (a) ex officio declarations established under Article 5(3);
 - (b) information collected under Article 6;
 - (c) declarations obtained under Article 3 or 4, where there are indications that the cash is related to criminal activity activities;
 - (d) anonymised risk information and risk analysis results.

2. Where there are indications that the cash is related to criminal activity which could adversely affect the financial interests of the Union, the information referred to in paragraph 1 shall also be transmitted to the Commission, the European Public Prosecutor's Office in accordance with its competence as established in Article 22 of Council Regulation (EU) 2017/1939, and Europol in accordance with its competence as established in Article 3 of Regulation (EU) 2016/794 of the European Parliament and of the Council.
3. The competent authority shall communicate the information referred to in paragraph 1 and 2 in accordance with the technical rules laid down pursuant to Article 15(c) and using the form laid down pursuant to Article 15(d).
4. The information referred to in paragraphs 1, letters (a), (b), and (c) and 2 shall be communicated as soon as possible, and no later than 15 working days after the date on which it was collected.

Article 10

Exchange of information with third countries

1. For the purpose of this Regulation as laid down in Article 1, Member States or the Commission may communicate within the framework of mutual administrative assistance the following information to a third country, subject to the written authorisation of the competent authority which originally obtained the information and provided that such communication complies with the relevant national and Union provisions on the transfer of personal data to third countries:
 - (a) ex officio declarations established under Article 5(3);
 - (b) information collected under Article 6;
 - (c) declarations obtained under Article 3 or 4, where there are indications that the cash is related to money laundering or terrorist financing.
2. Member States shall notify the Commission of any communication of information

pursuant to paragraph 1.

Article 11

Professional secrecy and confidentiality and data security

1. The competent authorities shall ensure the security of the data they obtained in accordance with Articles 3, 4, 5(3), and 6.
2. All information obtained by competent authorities shall be covered by the duty of professional secrecy.

Article 12

Personal data protection and Retention periods

1. The competent authorities shall act as controllers of the personal data they obtained in accordance with Articles 3, 4, 5(3), and 6.
2. The processing of personal data on the basis of this Regulation shall take place only for the purposes of the prevention and fight against criminal activities.
3. The personal data obtained in accordance with Articles 3, 4, 5(3), and 6 shall be accessed only by duly authorised staff of the competent authorities and be adequately protected against unauthorised access or communication. Unless otherwise provided for in Articles 8, 9, and 10, it may not be disclosed or communicated without the express authorisation of the competent authority which originally obtained the information. However, that authorisation shall not be necessary where the competent authorities are required to disclose or communicate that information pursuant to legal provisions in force in the Member State in question, particularly in connection with legal proceedings.
4. The competent authorities and the Financial Intelligence Unit shall store personal data obtained in accordance with Articles 3 and 4, Article 5(3), and Article 6 for a period of five years from the date on which they were collected. On expiry of that period, those personal data shall be erased.

5. The period of retention may be extended once with another period which shall not exceed three additional years if:
 - after they have carried out a thorough assessment of the necessity and proportionality of such further retention, and consider it to be justified for the fulfilment of their tasks with respect to the fight against money laundering or terrorist financing, the Financial Intelligence Unit determines that further retention is required, or;
 - after they have carried out a thorough assessment of the necessity and proportionality of such further retention, and consider it to be justified for the fulfilment of their tasks with respect to providing effective controls as regards the obligation to declare as laid down under this Regulation, competent authorities determine that further retention is required.

Article 13

Penalties for non-compliance

1. Each Member State shall introduce penalties to apply in the event of failure to comply with the obligation to declare or to disclose as laid down in Articles 3 and 4. Such penalties shall be effective, proportionate and dissuasive.

Article 14

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 2(2) shall be conferred on the Commission for an indeterminate period of time from*

* Date of entry into force of the basic legislative act or any other date set by the legislator.

3. The delegation of power referred to in Article 2(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the

delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 2(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 15

Conferral of implementing powers

1. The Commission shall adopt, by means of implementing acts, measures to ensure the uniform application of controls by competent authorities, as follows:
 - (a) the template of the declaration and disclosure forms referred to in Articles 3(3) and 4(3);
 - (b) the criteria of the common risk management framework referred to in Article 5(4), and more specifically, the establishment of risk criteria, standards, and priority control areas, based on the information exchanged pursuant to Article 9(1)(d), and Union and international policies and best practices;
 - (c) the technical rules for the effective exchange of information under

Articles 8(1)(2) and 9 via the Customs Information System, as laid down in Article 23 of Council Regulation (EC) No 515/97¹;

- (d) the template of the form for the communication of information referred to in Article 9 (3);
- (e) the rules and the format to be used by Member States for providing to the Commission anonymous statistical information on declarations and infractions pursuant to Article 17.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 16(2).

Article 16

Committee Procedure

1. The Commission shall be assisted by the Cash Controls Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 17

Communication of information relating to the implementation of this Regulation

1. No later than six months after the date of application of this Regulation, Member States shall communicate to the Commission:
 - (a) the list of competent authorities under Article 2(1);
 - (b) the details of the penalties introduced pursuant to Article 13;
 - (c) anonymised statistical information regarding declarations, controls and

¹ Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997, p. 1).

infractions, using the format laid down pursuant to Article 15(e).

2. Member States shall notify the Commission of any subsequent changes to the information referred to in points (a) and (b) of paragraph 1 at the latest one month after those changes take effect. The information referred to in point (c) of paragraph 1 shall be provided to the Commission at least every six months.
3. The Commission shall make the information referred to in paragraph 1(a) and any subsequent changes to that information pursuant to paragraph 2 available to all the other Member States.
- 3a. The Commission shall annually publish the information referred to in Article 17, paragraph 1(a) and 1(c) and any subsequent changes to that information pursuant to paragraph 2 of Article 17 on its website and inform readers, in a clear way, about the controls with respect to cash entering or leaving the Union.

Article 17a

Information campaigns

The Member States shall ensure that persons entering or exiting the Union or persons sending unaccompanied cash from the Union or receiving unaccompanied cash in the Union are informed of their rights and obligations under this Regulation and shall, in cooperation with the Commission, develop appropriate materials aimed at those persons. Member States shall ensure that sufficient funding is made available for such information campaigns.

Article 18

Evaluation

1. The Commission shall, on the basis of the information regularly received from the Member States, submit to the European Parliament and to the Council a report on the application of this Regulation three years after its entry into force and every five years thereafter.

That report shall, in particular, evaluate:

- a) whether other assets should be included within the scope of this Regulation,

- b) whether the disclosure procedure for unaccompanied cash fits the purpose,
 - c) whether the threshold for unaccompanied cash should be reviewed,
 - d) whether the information flows in accordance with Article 8 and Article 9 and the use of CIS in particular fits the purpose or whether there are obstacles to the timely and direct exchange of compatible and comparable information between competent authorities and with FIUs,
 - e) whether the penalties by Member States are effective, proportionate and dissuasive and in line with the established jurisprudence by the Court of Justice of the EU and whether they constitute an equivalent deterrent across the EU for the infringements to this Regulation.
2. The report shall include, if available:
- a) compiled information received from MS regarding cash related to criminal activities which adversely affect the financial interests of the Union;
 - b) information on exchange of information with third countries.

Article 19

Repeal of Regulation (EC) No 1889/2005

1. Regulation (EC) No 1889/2005 is repealed.
2. References to the repealed Regulation shall be construed as references to this Regulation in accordance with the correlation table in Annex II.

Article 20

Entry into Force and Application

1. This Regulation shall enter into force on the 20th day following that of its publication in the Official Journal of the European Union.

2. Article 15 shall apply from the date of entry into force of this Regulation. All the other Articles shall apply from [...].*

* 30 months after the date of entry into force.

3. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

ANNEXES

to the

Proposal for a Regulation of the European Parliament and of the Council on Controls on Cash Entering or Leaving the Union and Repealing Regulation (EC) No 1889/2005

ANNEX I

Commodities used as highly liquid stores of value and prepaid cards which are considered cash in accordance with points (ii) of Article 2(1)(a)

1. The following commodities used as highly liquid stores of value *shall be considered cash in accordance with Article 2(1)(a)(iii)*:

(a) coins with a gold content of at least 90 %;

(b) bullion such as bars, nuggets or clumps with a gold content of at least 99,5 %.

2. The following prepaid cards shall be considered cash in accordance with Article 2(1)(f):

[*]

* The content of this Annex shall be set out in a Delegated Act to be adopted in accordance with Article 14.

ANNEX II

Correlation Table

Regulation (EC) No 1889/2005	This Regulation
Article 1	Article. 1
Article 2	Article. 2
Article 3	Article. 3
-	Article. 4
Article 4(1)	Article. 5
Article 5(2)	Article. 6
Article 4(2)	Article. 7
Article 5(1)	Article. 8
Article 6	Article. 9
Article 7	Article. 10
Article 8	Article. 11
-	Article. 12
Article 12	Article. 13
-	Article. 14
-	Article. 15
-	Article. 16
-	Article. 17
Article 10	Article. 18
-	Article. 19
Article 11	Article. 20
-	Annex I
-	Annex II

