



Plenary sitting

A8-0394/2017

8.12.2017

*****I**
REPORT

on 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
(COM(2016)0825 – C8-0001/2017 – 2016/0413(COD))

Committee on Economic and Monetary Affairs
Committee on Civil Liberties, Justice and Home Affairs

Rapporteurs: Mady Delvaux, Juan Fernando López Aguilar

(Joint committee procedure – Rule 55 of the Rules of Procedure)

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on 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

(COM(2016)0825 – C8-0001/2017 – 2016/0413(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0825),
 - having regard to Article 294(2) and Articles 33 and 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0001/2017),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the contributions submitted by the Czech Chamber of Deputies and the Spanish General Courts on the draft legislative act,
 - having regard to the opinion of the European Economic and Social Committee of 27 April 2017¹,
 - after consulting the Committee of the Regions,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the joint deliberations of the Committee on Economic and Monetary Affairs and the Committee on Civil Liberties, Justice and Home Affairs under Rule 55 of the Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the Committee on Civil Liberties, Justice and Home Affairs (A8-0394/2017),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 246, 28.7.2017, p. 22.

Amendment 1

Proposal for a regulation

Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Criminals smuggle cash to the Union but there are no clear estimates on the scale and value of sums smuggled across borders. Responsibility for detecting, recording and investigating cash movements is fragmented among Member States and national authorities may face legal barriers that prevent customs authorities from controlling or reporting on cash entering or leaving the Union. Some high value bearer instruments other than cash, such as gold, diamonds, pre-paid cards, digital wallets and bearer shares, are rarely reported on due to the difficulty of detecting them or because they currently fall outside of the scope of most Member States' cash regulations.

Amendment 2

Proposal for a regulation

Recital 4

Text proposed by the Commission

Amendment

(4) 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 Council²⁰. 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

(4) 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 Council²⁰. 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 equal to or greater than EUR 10 000 or its equivalent in other currencies. ***The term 'entering or***

currencies.

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, such as free zones, international transit areas and similar areas, would be exempt from its application and present opportunities to circumvent applicable controls.

²⁰ 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).

²⁰ 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).

Amendment 3

Proposal for a regulation

Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) The importance of controlling cash movements into and out of the Union is highlighted by the anomalies reported by Europol, namely that in spite of a steady increase of the use of non-cash payment methods and a moderate decline in the use of cash for payments, the total value of euro banknotes in circulation continues to rise beyond the rate of inflation and the demand for high denomination notes, not commonly associated with payments, has been sustained, which could indicate a link to criminal activities, as shown in Europol's 2015 report "Why is Cash still King?".

Amendment 4

Proposal for a regulation Recital 6

Text proposed by the Commission

(6) 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 and terrorism financing as such, facilitate the detection and investigation of the criminal activities identified in Directive (EU) 2015/849.

Amendment

(6) 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, ***including predicate offences such as tax crimes***, and terrorism financing as such, facilitate the detection and investigation of the criminal activities identified in Directive (EU) 2015/849 ***as well as those affecting the security of the Union and the Member States.***

Amendment 5

Proposal for a regulation Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) This Regulation does not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on the European Union and in the Charter of Fundamental Rights of the European Union ('the Charter').

Amendment 6

Proposal for a regulation Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) *A harmonised Union set of rules allowing controls on movements of cash within the Union would greatly facilitate efforts to prevent money laundering and terrorist financing.*

Amendment 7

Proposal for a regulation

Recital 11

Text proposed by the Commission

Amendment

(11) 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.

(11) 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. ***The staff of customs authorities and other national authorities should receive specific training on how to identify cash-based money laundering and Member States should allocate resources according to a risk analysis, and not disregard the necessary controls on private aircrafts and yachts entering and leaving their territory.***

Amendment 8

Proposal for a regulation

Recital 12

Text proposed by the Commission

Amendment

(12) One of the key concepts used by this Regulation is that of ‘cash’, which

(12) 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. This Regulation should 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.

should be defined as comprising four categories: currency, bearer-negotiable instruments, commodities used as highly liquid stores of value and certain types of *anonymous* prepaid cards. Given their characteristics, certain bearer-negotiable instruments, commodities used as highly liquid stores of value, as well as *anonymous* 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. ***Customs authorities currently face technical difficulties when required to check the amount of money stored on prepaid cards within a short timeframe.*** 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 activities^{1a}, customs authorities lack sufficient resources to monitor them.***

^{1a} (COM(2017)340 final and SWD(2017)241 final)

Amendment 9

Proposal for a regulation Recital 15

Text proposed by the Commission

(15) Prepaid cards are non-nominal cards storing 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. 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. 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.

Amendment

(15) ***Anonymous*** 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. They are widely used for a variety of legitimate purposes and some of these instruments also present a clear social interest. As such ***anonymous*** prepaid cards are easily transferrable and can be used to transfer considerable value across external borders. It is therefore necessary to include ***such*** 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 ***anonymous*** prepaid cards if the evidence justifies it and with due regard to proportionality and practical enforceability, ***in accordance with the available technology***.

Amendment 10

Proposal for a regulation Recital 16

Text proposed by the Commission

(16) 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

Amendment

(16) 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 the cash available to the competent authorities for control.

liquid store of value, bearer-negotiable instruments, *anonymous prepaid* cards' worth or other currencies. It should apply to *carriers, which should be defined for the purposes of this Regulation* as 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 the cash available to the competent authorities for control. *The definition of "carrier" should be understood as excluding professional carriers who undertake the professional conveyance of goods or people.*

Amendment 11

Proposal for a regulation Recital 17

Text proposed by the Commission

(17) As regards movements of cash that is not accompanied by its *owner, sender, intended recipient or their representative*, such as cash entering or leaving the Union in postal packages, courier shipments, unaccompanied luggage or containerised cargo, the competent authorities *at the external border* should have the power to require the sender or the recipient or their representative to make a disclosure declaration. 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. This will allow the competent authorities to carry out risk analysis and concentrate their efforts on those shipments which they deem to present the highest risk, while not imposing systematic additional formalities. The disclosure obligation should be subject to a threshold identical to that for cash

Amendment

(17) 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. 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. This will allow the competent authorities to carry out risk analysis and concentrate their efforts on those shipments which they deem to present the highest risk, while not imposing systematic additional formalities. The disclosure obligation should be subject to a threshold identical to that for cash carried by natural persons.

carried by natural persons.

Amendment 12

Proposal for a regulation

Recital 20

Text proposed by the Commission

(20) 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 *essential* information on the *persons carrying the cash*, such as their identity details and *nationality, and* details regarding the means of transport used, such as the type of the conveyance, its point of departure and destination.

Amendment

(20) 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 the intended recipient*, such as their identity *and contact* details and *nationalities, details concerning the economic provenance and intended use of the cash*, and details regarding the means of transport used, such as the type of the conveyance, its point of departure and destination. *In the case of unaccompanied cash, the competent authorities should be able to record such information on the sender, owner and intended recipient of the cash.*

Amendment 13

Proposal for a regulation

Recital 21

Text proposed by the Commission

(21) That information should be passed on to the Financial Intelligence Unit of the Member State in question. 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

Amendment

(21) That information should be passed on to the Financial Intelligence Unit of the Member State in question, *which should promptly make it available 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

declarations and perform controls under this Regulation.

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. ***For that purpose, an interconnection between the information exchange systems used by, respectively, competent authorities and Financial Investigations Units should be put in place.***

Amendment 14

Proposal for a regulation Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) In order to further strengthen the cooperation between the Financial Intelligence Units, the Commission should assess the appropriateness of establishing a Union Financial Intelligence Unit, and present a legislative proposal, if appropriate.

Amendment 15

Proposal for a regulation Recital 23

Text proposed by the Commission

Amendment

(23) 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 seize and 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***

(23) 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 seize and 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. In view of the nature of

amount or whether the cash is carried by a natural person or is unaccompanied. In view of the nature of such temporary seizure and 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. 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* to the *declarant*.

such temporary seizure and 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. *Natural persons impacted by the temporary seizure and retention of their cash should, insofar as it would represent undue hardship for them, be offered the possibility to keep a minimum amount of cash, where possible given the type of cash seized and retained, in order to be able to afford food, water and shelter.* 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. 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 *released* to the *relevant interested party*.

Amendment 16

Proposal for a regulation Recital 24

Text proposed by the Commission

(24) 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 *it* to further analyse and compare *them* with other data as *foreseen* in Directive 2015/849 [

Amendment

(24) 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, *which should swiftly make the information available to the Financial Intelligence Units of the other Member States*, 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.

Amendment 17

Proposal for a regulation

Recital 25

Text proposed by the Commission

(25) Where they register a failure to declare or disclose or have indications of criminal activity, competent authorities should ***be able to*** share the information through appropriate channels with authorities competent for the fight against the criminal activity in question. 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. 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.

Amendment

(25) 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 ***the authorities of other Member States*** competent for the fight against the criminal activity in question. 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***. 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***.

Amendment 18

Proposal for a regulation

Recital 25 a (new)

Text proposed by the Commission

Amendment

(25a) For the purpose of ensuring that the Financial Intelligence Units have prompt access to the information necessary for the conduct of their investigations, the interconnection of the Customs Information System and the decentralised computer network FIU.net should be encouraged.

Amendment 19

Proposal for a regulation Recital 26

Text proposed by the Commission

Amendment

(26) 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 obtained the information. The Commission should be informed of any exchange of information with third countries pursuant to this Regulation.

(26) 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 obtained the information. The Commission should be informed of any exchange of information with third countries pursuant to this Regulation ***and should report thereon on a yearly basis to the European Parliament***

Amendment 20

Proposal for a regulation Recital 27

Text proposed by the Commission

Amendment

(27) Given the nature of the information collected and the legitimate expectation of declarants that their personal data and information on the ***sums*** of cash that they

(27) 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

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 Directive 95/46/EC of the European Parliament and of the Council²¹ and Regulation (EC) No 45/2001 of the European Parliament and of the Council²² .

²¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

²² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

Amendment 21

Proposal for a regulation Recital 28

Text proposed by the Commission

(28) For the purposes of the analysis carried out by the Financial Intelligence

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 Directive 95/46/EC of the European Parliament and of the Council²¹ and Regulation (EC) No 45/2001 of the European Parliament and of the Council²² .

²¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

²² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

Amendment

(28) 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 *declarants* who have previously committed infractions against that obligation it is necessary that the declaration data is stored for a sufficiently long period so as to enable the competent authorities to effectively conduct investigations. Processing of personal data under this Regulation serves the same purposes as that under Directive (EU) 2015/849. Under this Directive, the Financial Intelligence Units retain data provided to them by "obliged entities" for five years. ***In order to control and enforce the obligation to declare effectively, the period of retention of declaration data should be aligned with that provided for under Directive (EU) 2015/849.***

Amendment 22

Proposal for a regulation Recital 29

Text proposed by the Commission

(29) 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.

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 so as to enable the competent authorities to effectively conduct investigations. Processing of personal data under this Regulation serves the same purposes as that under Directive (EU) 2015/849. Under this Directive, the Financial Intelligence Units retain data provided to them by "obliged entities" for five years.

Amendment

(29) 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. ***In order to be effective and avoid the situation whereby criminals choose the Member State of entry to or exit from the Union based on the level of penalties in force, this Regulation should introduce a convergence of national***

penalties.

Amendment 23

**Proposal for a regulation
Recital 30**

Text proposed by the Commission

(30) 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. This should include the establishment of appropriate electronic systems. The powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council²³ .

Amendment

(30) ***While most Member States already use a harmonised declaration form, the EU Currency Declaration From (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 establish the technical rules and modalities and the template of the forms to be used for the declarations, ***for the information exchange between competent authorities and for the interconnection between the information exchange systems used by, respectively, competent authorities and Financial Investigations Units, as well as*** to establish the rules and the format to be used for the provision of statistical information to the Commission. This should include the establishment of appropriate electronic systems. The powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

²³ ***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).***

Amendment 24

Proposal for a regulation Recital 30 a (new)

Text proposed by the Commission

Amendment

(30a) 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. The establishment of a risk management framework common to all Member States should not prevent them from carrying out controls on a random basis.

Amendment 25

Proposal for a regulation Recital 31

Text proposed by the Commission

Amendment

(31) 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 which are not covered by the definition of 'cash', 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 ***that definition***. 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

(31) 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 which are not covered by the definition of 'cash', 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 detailed rules for the carrying out of controls by competent authorities, taking into account the common risk management framework as defined in Regulation (EU) No 952/2013 of the European Parliament and of the Council^{23a} and the risk assessment analysis carried out under Directive (EU)***

Law-Making of 13 April 2016.²⁴ In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

2015/849, and in respect of modifications to **Annex I** to **this Regulation**. 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 2016.²⁴ In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

²⁴ Ref. to OJ [L 123/1]

^{23a} **Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).**

²⁴ Ref. to OJ [L 123/1]

Amendment 26

Proposal for a regulation Recital 31 a (new)

Text proposed by the Commission

Amendment

(31a) In order to remedy the current situation whereby many travellers are not aware of their obligation to declare cash, Member States should, in cooperation with the Commission, develop appropriate materials and launch regular awareness-raising campaigns aimed at Union citizens, third country nationals and legal persons. Those campaigns should be harmonised due to the fact that they should be designed for the external borders of the Union.

Amendment 27

Proposal for a regulation

Article 1 – paragraph 1

Text proposed by the Commission

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.

Amendment

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, **and for the prevention of any other criminal activity contrary to the security of the Union or the Member States.**

Amendment 28

Proposal for a regulation

Article 2 – paragraph 1 – point a – indent 2

Text proposed by the Commission

- bearer-negotiable instruments **referred to in Annex I;**

Amendment

- bearer-negotiable instruments;

Amendment 29

Proposal for a regulation

Article 2 – paragraph 1 – point a – indent 3

Text proposed by the Commission

- commodities used as highly liquid stores of value **referred to in Annex I;**

Amendment

- commodities used as highly liquid stores of value;

Amendment 30

Proposal for a regulation

Article 2 – paragraph 1 – point a – indent 4

Text proposed by the Commission

- prepaid cards **referred to in Annex I;**

Amendment

- **anonymous** prepaid cards;

Amendment 31

Proposal for a regulation

Article 2 – paragraph 1 – point d

Text proposed by the Commission

(d) 'bearer-negotiable instrument' means an instrument other than currency which entitles its holder to claim a financial amount upon presentation of the instrument without having to prove *his/her* identity or entitlement to that amount;

Amendment

(d) 'bearer-negotiable instrument' means an instrument other than currency which entitles its holder to claim a financial amount upon presentation of the instrument without having to prove *his or her* identity or entitlement to that amount. ***Such bearer-negotiable instruments are listed in Annex I;***

Amendment 32

Proposal for a regulation

Article 2 – paragraph 1 – point e

Text proposed by the Commission

(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;

Amendment

(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 listed in Annex I;***

Amendment 33

Proposal for a regulation

Article 2 – paragraph 1 – point f

Text proposed by the Commission

(f) 'prepaid card' means a non-nominal card storing 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;

Amendment

(f) '***anonymous*** 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 anonymous prepaid cards are listed in Annex I;*

Amendment 34

Proposal for a regulation

Article 2 – paragraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) ‘carrier’ means any natural person entering or leaving the Union carrying cash on his or her person, in his or her luggage or in the conveyance in which he or she cross the external border;

Amendment 35

Proposal for a regulation

Article 2 – paragraph 1 – point h

Text proposed by the Commission

Amendment

(h) ‘unaccompanied cash’ means cash making up part of a consignment *where the owner, sender or intended recipient of the cash does not travel with the consignment;*

(h) ‘unaccompanied cash’ means cash making up part of a consignment *without a carrier;*

Amendment 36

Proposal for a regulation

Article 2 – paragraph 2

Text proposed by the Commission

Amendment

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 bearer-

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 bearer-

negotiable instruments, commodities used as highly liquid stores of value or prepaid cards to circumvent the obligations laid down in Articles 3 and 4.

negotiable instruments, commodities used as highly liquid stores of value or **anonymous** prepaid cards to circumvent the obligations laid down in Articles 3 and 4.

Amendment 37

Proposal for a regulation Article 3 – title

Text proposed by the Commission

Obligation to declare

Amendment

Obligation to declare **accompanied cash**

Amendment 38

Proposal for a regulation Article 3 – paragraph 1

Text proposed by the Commission

1. Any **natural person entering or leaving the Union and** carrying cash of a value of EUR 10 000 or more on **their** person, in **their** luggage or in **their** means of transport shall declare that cash to the competent authorities of the Member State through which **he 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.

Amendment

1. Any **carrier** carrying cash of a value of EUR 10 000 or more on **his or her** person, in **his or her** luggage or in **his or her** means of transport shall declare that cash to the competent authorities of the Member State through which **he or she enter or leave** 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.

Amendment 39

Proposal for a regulation Article 3 – paragraph 2 – point a

Text proposed by the Commission

(a) the **declarant**, including full name, address, date and place of birth, **and** nationality;

Amendment

(a) the **carrier**, including full name, **contact details (including** address), date and place of birth, nationality **and**

identification document number;

Amendment 40

Proposal for a regulation

Article 3 – paragraph 2 – point b

Text proposed by the Commission

(b) the owner of the cash, including full name, address, date and place of birth, **and** nationality;

Amendment

(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 or Value Added Tax registration number for legal persons;**

Amendment 41

Proposal for a regulation

Article 3 – paragraph 2 – point c

Text proposed by the Commission

(c) the intended recipient of the cash, including full name, address, date and place of birth, **and** nationality;

Amendment

(c) 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 or Value Added Tax registration number for legal persons;**

Amendment 42

Proposal for a regulation

Article 3 – paragraph 2 – point d

Text proposed by the Commission

(d) the amount **and nature** of the cash;

Amendment

(d) **the nature and** the amount **or value** of the cash;

Amendment 43

Proposal for a regulation

Article 3 – paragraph 2 – point e

Text proposed by the Commission

(e) the provenance ***and intended use of the cash***;

Amendment

(e) the ***economic*** provenance;

Amendment 44

Proposal for a regulation

Article 3 – paragraph 2 – point e a (new)

Text proposed by the Commission

(ea) the intended use of the cash;

Amendment

Amendment 45

Proposal for a regulation

Article 3 – paragraph 3

Text proposed by the Commission

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***.

Amendment

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.

Justification

Declarants should always be able to obtain a written copy, as they may not always be in the position to request one (e.g. not knowing they are entitled to, not speaking the language of the country)

Amendment 46

Proposal for a regulation

Article 4 – title

Text proposed by the Commission

Disclosure obligation

Amendment

Disclosure obligation ***for unaccompanied***

Amendment 47

Proposal for a regulation Article 4 – paragraph 1

Text proposed by the Commission

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, following a risk analysis, require the sender or the recipient or their representative to make a disclosure declaration. 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.

Amendment

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, following a risk analysis, require the sender or the recipient or their representative 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.***

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.

Amendment 48

Proposal for a regulation Article 4 – paragraph 2 – point a

Text proposed by the Commission

(a) the declarant, including full name, address, date and place of birth, ***and*** nationality;

Amendment

(a) the declarant, including full name, ***contact details (including address)***, date and place of birth, nationality ***and identification document number***;

Amendment 49

Proposal for a regulation Article 4 – paragraph 2 – point b

Text proposed by the Commission

(b) the owner of the cash, including the full name, address, date and place of birth **and** nationality;

Amendment

(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 of Value Added Tax number for legal persons.**

Amendment 50

Proposal for a regulation

Article 4 – paragraph 2 – point c

Text proposed by the Commission

(c) the sender of the cash, including the full name, address, date and place of birth **and** nationality;

Amendment

(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 of Value Added Tax for legal persons;**

Amendment 51

Proposal for a regulation

Article 4 – paragraph 2 – point d

Text proposed by the Commission

(d) the recipient or intended recipient of the cash, including the full name, address, date and place of birth **and** nationality;

Amendment

(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 of Value Added Tax for legal persons;**

Amendment 52

Proposal for a regulation

Article 4 – paragraph 2 – point e

Text proposed by the Commission

(e) the amount **and nature** of the cash;

Amendment

(e) **the nature and** the amount **or value** of the cash;

Amendment 53

Proposal for a regulation

Article 4 – paragraph 2 – point f

Text proposed by the Commission

(f) the provenance **and intended use of the cash.**

Amendment

(f) the **economic** provenance;

Amendment 54

Proposal for a regulation

Article 4 – paragraph 2 – point f a (new)

Text proposed by the Commission

Amendment

(fa) **the intended use of the cash.**

Amendment 55

Proposal for a regulation

Article 4 – paragraph 3

Text proposed by the Commission

Amendment

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.**

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.

Justification

Declarants should always be able to obtain a written copy, as they may not always be in the position to request one (e.g. not knowing they are entitled to, not speaking the language of the

country)

Amendment 56

Proposal for a regulation Article 5 – paragraph 3

Text proposed by the Commission

3. If the **obligation** 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.

Amendment

3. If the **declaration** 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.

Amendment 57

Proposal for a regulation Article 5 – paragraph 4

Text proposed by the Commission

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)**.

Amendment

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.

Amendment 58

Proposal for a regulation Article 5 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The risk analysis referred to in paragraph 4 shall not prevent competent authorities from proceeding with spontaneous controls or controls based on specific information obtained by another

authority. Competent authorities shall be equipped with adequate tools for the purposes of the controls.

Amendment 59

Proposal for a regulation Article 5 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. *The Commission is empowered to adopt delegated acts in accordance with Article 14 concerning the detailed rules for the carrying out of controls by competent authorities, taking into account the common risk management framework as defined in Regulation (EU) No 952/2013 and the risk assessment analysis carried out under Articles 6 and 7 of Directive (EU) 2015/849;*

Amendment 60

Proposal for a regulation Article 5 – paragraph 4 c (new)

Text proposed by the Commission

Amendment

4c. *The powers conferred on the competent authorities by this Article shall also extend to Article 6.*

Amendment 61

Proposal for a regulation Article 6 – title

Text proposed by the Commission

Amendment

Sub-threshold amounts

Sub-threshold amounts *suspected to be related to criminal activity*

Amendment 62

Proposal for a regulation

Article 6 – paragraph 1

Text proposed by the Commission

1. Where the competent authorities ***detect*** that a ***natural person*** is entering or leaving the Union with an amount of cash below the threshold referred to in Article 3 and that, ***following a risk analysis***, there are indications that the cash is related to criminal activity, they shall record that information, ***the full name, address, date and place of birth, and nationality of that person***, and the ***information on the means of transport used***.

Amendment

1. Where the competent authorities ***find*** that a ***carrier*** is entering or leaving the Union 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)***.

Amendment 63

Proposal for a regulation

Article 6 – paragraph 2

Text proposed by the Commission

2. Where the competent authorities ***detect*** that a shipment of unaccompanied cash of an amount below the threshold referred to in Article 4 is entering or leaving the Union and that, ***following a risk analysis***, there are indications that the cash is related to criminal activity, they shall record that information, ***the full name, address, date and place of birth, and nationality of the sender, the intended recipient or their representative***, and the ***information on the means of shipment used***.

Amendment

2. Where the competent authorities ***find*** that a shipment of unaccompanied cash of an amount 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)***.

Amendment 64

Proposal for a regulation

Article 7 – paragraph 1 – point b

Text proposed by the Commission

(b) there are indications that the cash is related to criminal activity, ***irrespective of whether it is carried by a natural person or is unaccompanied cash.***

Amendment

(b) there are indications that the cash is related to criminal activity.

Amendment 65

Proposal for a regulation Article 7 – paragraph 2

Text proposed by the Commission

2. The administrative decision referred to in paragraph 1 shall be accompanied by a statement of reasons, ***be*** communicated ***to the person affected*** at the time it is issued, ***and shall be subject to effective remedy in accordance with procedures provided for in national law.***

Amendment

2. The administrative decision referred to in paragraph 1 shall be accompanied by a statement of reasons ***and*** communicated at the time it is issued ***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) the carrier and the owner in the situations referred to in Article 6(1) or the owner, the intended recipient and the sender in the situations referred to in Article 6(2).

Amendment 66

Proposal for a regulation Article 7 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The administrative decision referred to in paragraph 1 shall be subject to an effective remedy in accordance with procedures provided for in national law.

Amendment 67

Proposal for a regulation

Article 7 – paragraph 3

Text proposed by the Commission

3. The period of temporary retention shall be strictly limited to the time required for competent authorities to determine whether the circumstances of the case warrant further retention. The maximum period of temporary retention shall be laid down by national law; it **may** not be longer than 30 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 the declarant**.

Amendment

3. The period of temporary retention shall be strictly limited to the time required for competent authorities to determine whether the circumstances of the case warrant further retention. The maximum period of temporary retention shall be laid down by national law; it **shall** not be longer than 30 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 **released to:**

(a) the declarant or the carrier in the situations referred to in Articles 3 and 4; or

(b) the carrier or the owner in the situations referred to in Article 6(1) or the owner, intended recipient or the sender in the situations referred to in Article 6(2).

Amendment 68

Proposal for a regulation

Article 8 – paragraph 1

Text proposed by the Commission

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).

Amendment

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, **which shall swiftly transmit the information to the Financial Intelligence Units of the other Member States**, in accordance with the technical rules laid down pursuant to Article 15(c).

Amendment 69

Proposal for a regulation Article 8 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. *For the purpose of this Regulation, without prejudice to Union data protection rules, in particular as regards purpose limitation and access rights, an interconnection between the system used by competent authorities for the exchange information pursuant to Council Regulation (EC) No 515/97^{1a} and the system used by Financial Intelligence Units for the exchange information pursuant to Council Decision 2000/642/JHA^{1b} shall be put in place in accordance with the technical rules laid down by the Commission pursuant to Article 15(ca).*

^{1a} *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 of 22.3.1997, p. 1, lastly amended by Regulation (EU) No 2015/1525 of the European Parliament and of the Council of 9 September 2015, OJ L 243 of 18.9.2015, p. 1.*

^{1b} *Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information. OJ L 271 of 24.10.2000, p. 4.*

Amendment 70

Proposal for a regulation Article 8 – paragraph 2

Text proposed by the Commission

2. The information referred to in paragraph 1 shall be communicated as soon as possible, and no later than ***one month*** after the date on which it was collected.

Amendment

2. The information referred to in paragraph 1 shall be communicated as soon as possible, and no later than ***four working days*** after the date on which it was collected.

Amendment 71

Proposal for a regulation

Article 8 – paragraph 2 a (new)

Text proposed by the Commission

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.

Amendment

2a. By 1 January 2019, the Commission shall assess the appropriateness of establishing a Union Financial Intelligence Unit and shall, if appropriate, present a legislative proposal.

Amendment 72

Proposal for a regulation

Article 9 – paragraph 2

Text proposed by the Commission

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.

Amendment

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, Eurojust and Europol. The Commission shall carry out a statistical analysis of the information received and make this available to the public.***

Amendment 73

Proposal for a regulation

Article 9 – paragraph 3

Text proposed by the Commission

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).

Amendment

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(ca)** and using the form laid down pursuant to Article 15(d).

Amendment 74

**Proposal for a regulation
Article 9 – paragraph 4**

Text proposed by the Commission

4. The information referred to in **paragraphs** 1 and 2 shall be communicated as soon as possible, and no later than **one month** after the date on which it was collected.

Amendment

4. The information referred to in **points (a), (b) and (c) of** paragraph 1 and **paragraph** 2 shall be communicated as soon as possible, and no later than **four working days** after the date on which it was collected;

Amendment 75

**Proposal for a regulation
Article 9 – paragraph 4 a (new)**

Text proposed by the Commission

Amendment

4a. The information and results referred to in point (d) of paragraph 1 shall be communicated every six months or upon request to all Member States and the Commission.

Amendment 76

**Proposal for a regulation
Article 10 – paragraph 1 – introductory part**

Text proposed by the Commission

1. Member States or the Commission may communicate within the framework of

Amendment

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 authorisation of the competent authority which obtained the information from the declarant *or his representative* and provided that such communication complies with the relevant national and Union provisions on the transfer of personal data to third countries:

mutual administrative assistance the following information to a third country, subject to the authorisation of the competent authority which obtained the information from the *carrier or the* declarant and provided that such communication complies with the relevant national and Union provisions on the transfer of personal data to third countries:

Amendment 77

Proposal for a regulation Article 10 – paragraph 2

Text proposed by the Commission

2. Member States shall notify the Commission of any communication of information pursuant to paragraph 1.

Amendment

2. Member States shall notify the Commission of any communication of information pursuant to paragraph 1 *and the Commission shall report on a yearly basis to the European Parliament on the information communicated.*

Amendment 78

Proposal for a regulation Article 12 – paragraph 1

Text proposed by the Commission

1. The competent authorities shall act as controllers of the personal data they obtained in accordance with Articles 3, 4 and 6.

Amendment

1. The competent authorities shall act as controllers of the personal data they obtained in accordance with Articles 3, 4, *5(3)* and 6.

Amendment 79

Proposal for a regulation Article 12 – paragraph 2

Text proposed by the Commission

2. The processing of personal data on the basis of this Regulation shall take place only for the purposes of the prevention *and*

Amendment

2. The processing of personal data on the basis of this Regulation shall take place only for the purposes of the prevention,

fight against criminal activities. .

investigation, detection or prosecution of criminal offences or the execution of criminal penalties. This processing falls under the scope of Directive (EU) 2016/680 of the European Parliament and of the Council^{1a}.

^{1a} Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

Justification

Aligning the wording with the Data Protection Directive 2016/680.

Amendment 80

Proposal for a regulation Article 12 – paragraph 3

Text proposed by the Commission

3. The personal data obtained in accordance with Articles 3, 4 and 6 shall be accessed only by duly authorised staff of the competent authorities and be adequately protected against unauthorized 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

Amendment

3. The personal data obtained in accordance with Article 3, 4, **5(3)** and 6 shall be accessed only by duly authorised staff of the competent authorities and be adequately protected against unauthorized 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.

State in question, particularly in connection with legal proceedings.

Amendment 81

Proposal for a regulation Article 12 – paragraph 4

Text proposed by the Commission

4. Personal data obtained in accordance with Articles 3, 4 and 6 shall be stored by the competent authorities and the Financial Intelligence Unit ***for a period of five years after the date on which it was collected. At the expiry of this period it shall be deleted or rendered anonymous.***

Amendment

4. Personal data obtained in accordance with Articles 3, 4, **5(3)** and 6 shall be stored by the competent authorities and the Financial Intelligence Unit ***only for as long as is necessary and proportionate for the purposes for which the data are processed but for no longer than three years from the date on which they were collected. If there are indications that the cash is related to a criminal activity, personal data obtained in accordance with Articles 3, 4, 5(3) and 6 shall be stored by the competent authorities and the Financial Intelligence Unit for no longer than five years. In such case the reasons for this longer storage shall be justified and recorded. If no decision is taken on the continued storage that data shall be erased automatically after three years.***

Amendment 82

Proposal for a regulation Article 13 – paragraph 1

Text proposed by the Commission

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

Amendment

Each Member State shall introduce penalties to apply in the event of failure to comply with the obligation to declare laid down in Articles 3 and 4. Such penalties shall be effective, proportionate and dissuasive. ***Member States shall aim at introducing a coordinated set of penalties across the Union. To achieve this aim, the Commission shall, if appropriate, present***

Amendment 83

Proposal for a regulation Article 14 – paragraph 2

Text proposed by the Commission

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 ...²⁶

²⁶ *Date of entry into force of the basic legislative act or any other date set by the legislator.

Amendment

2 The power to adopt delegated acts referred to in Article 2(2) **and Article 5(4a)** shall be conferred on the Commission for an indeterminate period of time from ...²⁶

²⁶ *Date of entry into force of the basic legislative act or any other date set by the legislator.

Amendment 84

Proposal for a regulation Article 14 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. The delegation of power referred to in Article 2(2) **and Article 5(4a)** 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.

Amendment 85

Proposal for a regulation Article 14 – paragraph 6

Text proposed by the Commission

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.

Amendment

6. A delegated act adopted pursuant to Article 2(2) **and Article 5(4a)** 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.

Amendment 86

**Proposal for a regulation
Article 15 – paragraph 1 – point b**

Text proposed by the Commission

(b) the criteria of the common risk management framework referred to in Article 5(4);

Amendment

deleted

Amendment 87

**Proposal for a regulation
Article 15 – paragraph 1 – point c**

Text proposed by the Commission

(c) the technical rules for the exchange of information under Articles 8 and 9, including the establishment of an appropriate electronic system;

Amendment

(c) the technical rules for the 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 515/97^{1a};

^{1a} 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).

Amendment 88

Proposal for a regulation

Article 15 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) The technical rules for the interconnection referred to in Article 8(1a).

Amendment 89

Proposal for a regulation

Article 17 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

The information referred to in point (c) of paragraph 1 shall be provided to the Commission at least every six months.

The information referred to in point (c) of paragraph 1 shall be provided to the Commission at least every six months. ***The Commission shall publish an annual report on the statistical information to estimate the scale and sums of smuggled cash.***

Amendment 90

Proposal for a regulation

Article 17 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The Commission shall publish the information referred to in paragraph 1(a) and 1(b) on its website and inform readers, in a clear way, about the controls with respect to cash entering or leaving the Union.

Justification

Citizens and travellers who wish to be informed about their obligations should have the possibility to find information about cash controls and the list of competent authorities on a website hosted by the Commission.

Amendment 91

Proposal for a regulation Article 17 a (new)

Text proposed by the Commission

Amendment

Article 17a

Information campaigns

At the start of application of this Regulation, the Commission, in cooperation with the Member States and the European Data Protection Supervisor, shall carry out a campaign informing EU citizens and third-country nationals, as well as legal persons, about the objectives of this Regulation, the obligations under Articles 3 and 4, the data stored, the list of competent authorities, the possibility for temporary retention under Article 7, the penalties introduced pursuant to Article 13 and the rights to an effective remedy. The Commission and Member States shall repeat such campaigns regularly. Member States shall devise and implement the necessary policies to inform their citizens and residents about this Regulation. Member States shall ensure that sufficient funding is made available for such information policies.

Justification

In order to inform citizens and travellers about the obligation to declare cash when crossing borders, and thus make it more effective, the Commission should launch information campaigns about this Regulation.

Amendment 92

Proposal for a regulation Article 18 – paragraph 1

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Text proposed by the Commission

The Commission shall submit to the European Parliament and to the Council a report on the application of this Regulation **five** years after its entry into force and every **five** years thereafter.

Amendment

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 ***three*** years thereafter. ***That report shall, in particular, evaluate whether other assets should be included within the scope of this Regulation, whether the disclosure procedure for unaccompanied cash fits the purpose and whether the threshold for unaccompanied cash should be reviewed.***

Amendment 93

**Proposal for a regulation
Article 20 – paragraph 2 a (new)**

Text proposed by the Commission

Amendment

Article 5(4a) and Article 15(a), (b), (d) and (e) shall apply from ... [the date of entry into force of this Regulation].

Amendment 94

**Proposal for a regulation
Annex I – heading 1**

Text proposed by the Commission

Amendment

Bearer-negotiable instruments, commodities used as highly liquid stores of value and prepaid cards which are considered cash in accordance with points (ii), (iii) and (iv) of Article 2(1)(a)

Bearer-negotiable instruments, commodities used as highly liquid stores of value and ***anonymous*** prepaid cards which are considered cash in accordance with points (ii), (iii) and (iv) of Article 2(1)(a)

Amendment 95

**Proposal for a regulation
Annex I – point 3**

Text proposed by the Commission

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

Amendment

3. The following *anonymous* prepaid cards shall be considered cash in accordance with Article 2(1)(a)(iv):

EXPLANATORY STATEMENT

I – Context of the proposal

In the context of the fight against terrorism and organised crime, measures must be taken at the European level in order to stop the financing of these criminal activities, and therefore to put an end to the exploitation by criminals of different national rules related to cash controls. An EU-wide approach to controlling cash movements, into or out of, the European Union is necessary - not only to guarantee the proper functioning of the internal market, but also to protect Union citizens and companies

Customs administrations are on the front line for the achievement of this goal, since they are in charge of controls on passenger traffic as well as external cross-border movements of consignments. The cooperation between national customs administrations must be enhanced, to prevent criminals from circumventing cash controls at the EU's external borders.

On 21 December 2016, the European Commission adopted a package of measures to complete and reinforce the EU's legal framework in the areas of money laundering, illicit cash flows and the freezing and confiscation of assets. These proposals take place in the context of the commitments made in the Action Plan against terrorist financing from February 2016.

Among these measures, the European Commission proposes to improve the existing Regulation on cash controls adopted in 2005 to control cash movements entering or leaving the Union. The legal base for this proposal is both Article 114 of the Treaty on the Functioning of the European Union which establishes the principle of approximation of the national provisions of Member States which have as their object the establishment and functioning of the internal market, and Article 33, which provides for the strengthening of customs cooperation between Member States and between the latter and the Commission.

The changes proposed by the Commission aim at tightening controls on people entering or leaving the EU with €10,000 or more in cash or precious commodities, or which are sent through postal parcels or in freight consignments. The changes will also enable authorities to act on amounts lower than the customs declaration threshold of €10,000 where there are suspicions of criminal activity, and to improve the exchange of information between authorities and Member States.

In particular, the proposal extends the definition of 'cash' to gold and other high-value commodities, as well as prepaid payment cards which are not linked to a financial account and which are currently not covered by the standard customs declaration. The case of unaccompanied cash is also included in the proposal.

The proposal also allows competent authorities to detain cash temporarily when they detect movements of sub-thresholds amounts which seem to be related to illegal activities, which is not the case in the current Regulation.

Finally, the proposal aims at ensuring a uniform application of controls, through implementing powers conferred to the Commission regarding criteria on risk management,

rules for exchange of information, templates for communication and the system for data exchange as well as the provision of information by Member States to the Commission.

II – Rapporteurs’ positions

The Rapporteurs welcome the overall objective of the proposal to update and improve the current Regulation. In light of recent events, it has become clear that money launderers and terrorist financiers have managed to find ways to circumvent the European rules on cash controls.

The main changes proposed by the Rapporteurs aim at making the Regulation even stronger by clarifying some key provisions, notably the definition and differentiation of “accompanied cash” and “unaccompanied cash”, as well as the designation of the person responsible for the declaration of accompanied cash. The latter has been defined to encompass any natural person entering or leaving the Union and carrying cash on their person, in their luggage or in the conveyance in which this person crosses the external border, irrespective of the link between that person and the cash (owner or intended recipient).

Furthermore, in order to facilitate the investigations of the competent authorities and to ensure clear identification of the persons involved, the data to be included in a declaration has been extended and specified for natural and legal persons.

In order to make the concept of “risk management” clearer, references to the existing definition in Regulation 952/2013 and the provision entailing the developments on “risk assessment” included in Directive 205/849 have been added. As an important point, the Rapporteurs see it necessary to apply Article 290 of the TFEU instead of Article 291 of the TFEU for reasons of efficiency, and the appropriate change is proposed in the draft report.

The rapporteurs are convinced that the achievement of the objective pursued by this proposal implies both a harmonisation at the European level of the implementation of controls by the national competent authorities, as well as an approximation of national penalties for non-compliance. Measures should be adopted by the Commission to ensure the uniform application of controls by the competent authorities, and Member States should take into account the case-law of the European Court of Justice and the European Court of Human rights, as regard custom penalties, which should be based on the principle of proportionality.

One of the key improvements in the Regulation is on the data exchange. The Rapporteurs in this regard would prefer swift action and suggest after consultation with experts in the area, to directly apply the IT data exchange system CIS+ to be used by all Member States. This system is an easy and efficient system to use, and in order to prevent crime in the most efficient way, the Rapporteurs also propose that Member States are to communicate the information no later than 3 working days after the date on which it was collected, instead of one month as it currently stands in the Regulation.

In the same perspective, the Rapporteurs propose the creation of a European Financial Intelligence Unit, in order to improve the cooperation on coordination of the investigative authorities and which would allow for transmission of information gathered by the national units without delay. Given the dynamic and changing nature of the issues addressed in this Regulation, the Rapporteurs have also proposed a strong review clause, which allows for a

regular update of the Regulation every three years so as to keep up with the technical capacities and development and of the fraudsters.

At last, the Rapporteurs share the views expressed by the European Data Protection Supervisor, who welcomes the provision of a maximum retention period for the personal data stored by the competent authorities and the Financial Intelligence Units.

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Controls on cash entering or leaving the Union	
References	COM(2016)0825 – C8-0001/2017 – 2016/0413(COD)	
Date submitted to Parliament	22.12.2016	
Committees responsible Date announced in plenary	ECON 19.1.2017	LIBE 19.1.2017
Committees asked for opinions Date announced in plenary	JURI 19.1.2017	
Not delivering opinions Date of decision	JURI 25.1.2017	
Rapporteurs Date appointed	Mady Delvaux 29.6.2017	Juan Fernando López Aguilar 29.6.2017
Rule 55 – Joint committee procedure Date announced in plenary	6.7.2017	
Discussed in committee	21.11.2017	
Date adopted	4.12.2017	
Result of final vote	+: 55 –: 3 0: 4	
Members present for the final vote	Asim Ademov, Jan Philipp Albrecht, Martina Anderson, Gerolf Annemans, Hugues Bayet, Monika Beňová, Pervenche Berès, David Coburn, Thierry Cornillet, Agustín Díaz de Mera García Consuegra, Jonás Fernández, Kinga Gál, Sven Giegold, Brian Hayes, Petr Ježek, Barbara Kudrycka, Cécile Kashetu Kyenge, Georgios Kyrtos, Werner Langen, Juan Fernando López Aguilar, Olle Ludvigsson, Ivana Maletić, Gabriel Mato, Costas Mavrides, Roberta Metsola, Claude Moraes, Caroline Nagtegaal, Luděk Niedermayer, Sirpa Pietikäinen, Dariusz Rosati, Anne Sander, Judith Sargentini, Martin Schirdewan, Molly Scott Cato, Pedro Silva Pereira, Peter Simon, Birgit Sippel, Helga Stevens, Paul Tang, Traian Ungureanu, Marco Valli, Tom Vandenkendelaere, Marie-Christine Vergiat, Miguel Viegas, Josef Weidenholzer, Kristina Winberg, Auke Zijlstra	
Substitutes present for the final vote	Pál Csáky, Bas Eickhout, Ramón Jáuregui Atondo, Teresa Jiménez-Becerril Barrio, Sylvia-Yvonne Kaufmann, Jan Keller, Luigi Morgano, Salvatore Domenico Pogliese, Emil Radev, Barbara Spinelli, Joachim Starbatty, Romana Tomc, Daniele Viotti, Lieve Wierinck	
Substitutes under Rule 200(2) present for the final vote	Zbigniew Kuźmiuk	
Date tabled	8.12.2017	

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

55	+
ALDE	Thierry Cornillet, Petr Ježek, Caroline Nagtegaal, Lieve Wierinck
EFDD	Kristina Winberg
GUE/NGL	Martina Anderson, Martin Schirdewan, Barbara Spinelli, Marie-Christine Vergiat, Miguel Viegas
PPE	Asim Ademov, Pál Csáky, Agustín Díaz de Mera García Consuegra, Kinga Gál, Brian Hayes, Teresa Jiménez-Becerril Barrio, Barbara Kudrycka, Georgios Kyrtos, Werner Langen, Ivana Maletić, Gabriel Mato, Roberta Metsola, Luděk Niedermayer, Sirpa Pietikäinen, Salvatore Domenico Pogliese, Emil Radev, Dariusz Rosati, Anne Sander, Romana Tomc, Traian Ungureanu, Tom Vandenkendelaere
S&D	Hugues Bayet, Monika Beňová, Pervenche Berès, Jonás Fernández, Ramón Jáuregui Atondo, Sylvia-Yvonne Kaufmann, Jan Keller, Cécile Kashetu Kyenge, Juan Fernando López Aguilar, Olle Ludvigsson, Costas Mavrides, Claude Moraes, Luigi Morgano, Pedro Silva Pereira, Peter Simon, Birgit Sippel, Paul Tang, Daniele Viotti, Josef Weidenholzer
VERTS/ALE	Jan Philipp Albrecht, Bas Eickhout, Sven Giegold, Judith Sargentini, Molly Scott Cato

3	-
EFDD	David Coburn
ENF	Gerolf Annemans, Auke Zijlstra

4	0
ECR	Zbigniew Kuźmiuk, Joachim Starbatty, Helga Stevens
EFDD	Marco Valli

Key to symbols:

+ : in favour

- : against

0 : abstention