



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

2016/0413(COD)

29.9.2017

*****I**

DRAFT 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 ... ¹,
 - having regard to the opinion of the Committee of the Regions of ... ²,
 - 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 (A8-0000/2017),
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 ... / Not yet published in the Official Journal.

² OJ C ... / Not yet published in the Official Journal.

Amendment 1

Proposal for a regulation

Recital 4

Text proposed by the Commission

(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 currencies.

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

(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 10 000 EUR or its equivalent in other currencies.

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).

Or. en

Amendment 2

Proposal for a regulation

Recital 9 a (new)

Text proposed by the Commission

Amendment

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

Amendment 3**Proposal for a regulation****Recital 11***Text proposed by the Commission*

(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.

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 to act as competent authorities.

Or. en

Amendment 4**Proposal for a regulation****Recital 12***Text proposed by the Commission*

(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

Amendment

(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.

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)

Or. en

Amendment 5

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.

Amendment

(15) 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

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.

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, *in accordance with the available technology*.

Or. en

Amendment 6

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 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.

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, *prepaid* cards' worth or other currencies. It should apply to *carriers, which should be defined for the purpose 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.

Or. en

Amendment 7

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 carried by natural persons.

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.

Or. en

Amendment 8

Proposal for a regulation

Recital 17 a (new)

Text proposed by the Commission

Amendment

(17 a) The definition of "carrier" should be understood as excluding professional carriers who undertake the professional

conveyance of goods or people.

Or. en

Amendment 9

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.*

Or. en

Amendment 10

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

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*

financing who receive and process information from various sources such as financial institutions and analyse it in order to determine if there are grounds for further investigation that may not be apparent to the competent authorities who collect the declarations and perform controls under this Regulation.

Member States. Those units are designated as the hub elements in the fight against money-laundering and terrorist financing who receive and process information from various sources such as financial institutions and analyse it in order to determine if there are grounds for further investigation that may not be apparent to the competent authorities who collect the declarations and perform controls under this Regulation. ***In order to further strengthen the cooperation between the Financial Intelligence Units, the Commission should assess the adequacy of establishing a Union Financial Intelligence Unit, and present a legislative proposal, if appropriate.***

Or. en

Amendment 11

Proposal for a regulation

Recital 23

Text proposed by the Commission

(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 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

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. 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

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*.

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 *released* to the *relevant interested party*.

Or. en

Amendment 12

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 *promptly* to the national Financial Intelligence Unit, in order to enable it to further analyse and compare them with other data as *provided for* in Directive 2015/849.

Or. en

Amendment 13

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. 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.***

Or. en

Amendment 14

Proposal for a regulation

Recital 26

Text proposed by the Commission

(26) It should be made possible to

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.

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 the Commission shall report on a yearly basis to the European Parliament on this information.***

Or. en

Amendment 15

Proposal for a regulation Recital 27

Text proposed by the Commission

(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 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

Amendment

(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 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 .

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).

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).

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).

Or. en

Amendment 16

Proposal for a regulation Recital 28

Text proposed by the Commission

(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

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 **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. ***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.***

five years.

Or. en

Amendment 17

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.

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 according to the level of penalties in force, this Regulation should introduce a convergence of national penalties.***

Or. en

Amendment 18

Proposal for a regulation

Recital 29 a (new)

(29a) 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.

Or. en

Amendment 19

Proposal for a regulation

Recital 30

Text proposed by the Commission

Amendment

(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.

(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 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.

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

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).

mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Or. en

Amendment 20

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, and should be performed within a common risk management framework, as defined in Regulation (EU) No 952/2013 of the European Parliament and of the Council^{1a}, which should take into account the risk assessment analysis carried out under Directive (EU) 2015/849. The Commission should be empowered to adopt, by means of delegated acts, the definition of the criteria of this common risk management framework

^{1a} 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).

Or. en

Amendment 21

Proposal for a regulation Recital 31

Text proposed by the Commission

(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 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]

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 **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]

Or. en

Amendment 22

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 be more active in raising awareness about the issue. To ensure the efficiency of such efforts, the Commission should help Member States with the development of appropriate materials and guarantee that these awareness-raising campaigns are harmonised, as they are designed for the external borders of the Union.

Or. en

Amendment 23

Proposal for a regulation

Article 2 – paragraph 1 – point a – indent 2

Text proposed by the Commission

Amendment

- bearer-negotiable instruments
referred to in Annex I;

- bearer-negotiable instruments;

Or. en

Amendment 24

Proposal for a regulation

Article 2 – paragraph 1 – point a – indent 3

Text proposed by the Commission

Amendment

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

- commodities used as highly liquid
stores of value;

Or. en

Amendment 25

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

- prepaid cards;

Or. en

Amendment 26

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*;

Or. en

Amendment 27

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 28

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) '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. ***Such prepaid cards are listed in Annex I;***

Or. en

Amendment 29

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 their person, in their luggage or in the conveyance in which they cross the external border;

Or. en

Amendment 30

Proposal for a regulation

Article 2 – paragraph 1 – point h

Text proposed by the Commission

(h) 'unaccompanied cash' means cash making up part of a consignment ***where the owner, sender or intended recipient of the***

Amendment

(h) 'unaccompanied cash' means cash making up part of a consignment ***without a***

cash does not travel with the consignment;

carrier;

Or. en

Amendment 31

Proposal for a regulation Article 3 – title

Text proposed by the Commission

Amendment

Obligation to declare

Obligation to declare *accompanied cash*

Or. en

Amendment 32

Proposal for a regulation Article 3 – paragraph 1

Text proposed by the Commission

Amendment

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.

1. Any *carrier* 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 *they 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.

Or. en

Amendment 33

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***;

Or. en

Amendment 34

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

Or. en

Amendment 35

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

Or. en

Amendment 36

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;

Or. en

Amendment 37

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;

Or. en

Amendment 38

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ea) *the intended use of the cash*;

Or. en

Amendment 39

Proposal for a regulation

Article 4 – title

Text proposed by the Commission

Amendment

Disclosure obligation

Obligation *to disclose unaccompanied cash*

Or. en

Amendment 40

Proposal for a regulation

Article 4 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 41

Proposal for a regulation

Article 4 – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

(b) the owner of the cash, including ***for natural persons*** the full name, ***contact details (including*** address), date and place of birth, ***identification document number*** and nationality ***and for legal persons full name, contact details (including address), registration number or Value Added Tax registration number;***

Or. en

Amendment 42

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

Or. en

Amendment 43

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

Or. en

Amendment 44

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;

Or. en

Amendment 45

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;

Or. en

Amendment 46

Proposal for a regulation

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

Text proposed by the Commission

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

Amendment

Or. en

Amendment 47

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 48

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, and shall be performed within a common risk management framework, *as defined in Regulation (EU) No 952/2013. That framework shall take into account the risk-assessment analysis carried out under Articles 6 and 7 of Directive (EU) 2015/849.*

Or. en

Amendment 49

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

Text proposed by the Commission

Amendment

4a. 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, including the definition of criteria of the common riskmanagement framework referred to in Article 5(4);

Or. en

Amendment 50

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 51

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*

Or. en

Amendment 52

Proposal for a regulation Article 6 – paragraph 1

Text proposed by the Commission

Amendment

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**.

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)**.

Or. en

Amendment 53

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)**.

Or. en

Amendment 54

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.

Or. en

Amendment 55

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:***

Or. en

Amendment 56

Proposal for a regulation

Article 7 – paragraph 2 – point a (new)

Text proposed by the Commission

Amendment

(a) the person required to make the declaration in accordance with Article 3 or the disclosure declaration in accordance with Article 4;

Or. en

Amendment 57

Proposal for a regulation

Article 7 – paragraph 2 – point b (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 58

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.*

Or. en

Amendment 59

Proposal for a regulation

Article 7 – paragraph 3

Text proposed by the Commission

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 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*.

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 *released to:*

Or. en

Amendment 60

Proposal for a regulation

Article 7 – paragraph 3 – point a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 61

Proposal for a regulation Article 7 – paragraph 3 – point b (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 62

Proposal for a regulation Article 8 – paragraph 2

Text proposed by the Commission

Amendment

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.

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

Or. en

Amendment 63

Proposal for a regulation Article 8 – paragraph 2 a (new)

Text proposed by 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.

Or. en

Amendment 64

Proposal for a regulation Article 9 – paragraph 2

Text proposed by 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.

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 **and the European Public Prosecutor's Office.**

Or. en

Amendment 65

Proposal for a regulation Article 9 – paragraph 4

Text proposed by the Commission

Amendment

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.

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 **three working days** after the date on which it was collected;

Or. en

Amendment 66

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.*

Or. en

Amendment 67

Proposal for a regulation

Article 10 – paragraph 1 – introductory part

Text proposed by the Commission

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:

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 *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:

Or. en

Amendment 68

Proposal for a regulation

Article 10 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall notify the Commission of any communication of

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

information pursuant to paragraph 1.

the Commission shall report on a yearly basis to the European Parliament on the information communicated.

Or. en

Amendment 69

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.

Or. en

Amendment 70

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 State in question, particularly in connection with legal proceedings.

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.

Amendment 71

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 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.

Or. en

Amendment 72

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 **or disclose** laid down in Articles 3 and 4. Such penalties shall be effective, proportionate and dissuasive, **and shall therefore be between 20 % and 40 % of the value of the undeclared or wrongfully declared cash or of the wrongfully disclosed cash.**

Or. en

Amendment 73

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 from²⁶

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 from²⁶

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

Or. en

Amendment 74

**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.

Or. en

Amendment 75

**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

Amendment

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

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.

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.

Or. en

Amendment 76

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

Or. en

Amendment 77

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 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).

Or. en

Amendment 78

Proposal for a regulation Article 18 – paragraph 1

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 evaluate whether the disclosure procedure for unaccompanied cash fits the purpose or whether the introduction of a mandatory declaration would be a more viable option and shall present, if appropriate, a legislative proposal. It shall also evaluate whether other assets should be included within the scope of this Regulation.*

Or. en

Amendment 79

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].

Or. en

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.