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#### **INFORMATION NOTE**

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From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

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Subject: Proposal for a Regulation of the European Parliament and of the Council on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005  
– Outcome of the European Parliament's proceedings (Strasbourg 10-13 September 2018)

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#### **I. INTRODUCTION**

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure<sup>1</sup>, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

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<sup>1</sup> OJ C 145, 30.6.2007, p.5

In this context, the co-rapporteurs Juan Fernando LÓPEZ AGUILAR (S&D, ES) and Mady DELVAUX (S&D, LU) presented one compromise amendment (amendment 96) to the proposal for Regulation, on behalf of the Committee on Economic and Monetary Affairs (DELVAUX), and the Committee on Civil Liberties, Justice and Home Affairs (LÓPEZ AGUILAR). This amendment had been agreed during the informal contacts referred to above.

## II. VOTE

When it voted on 12 September 2018, the plenary adopted one compromise amendment (amendment 96) to the proposal for a Regulation. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto<sup>2</sup>.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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<sup>2</sup> The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

## **Controls on cash entering or leaving the Union \*\*\*I**

**European Parliament legislative resolution of 12 September 2018 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 2017<sup>3</sup>,
  - after consulting the Committee of the Regions,
  - having regard to the provisional agreement approved by the responsible committees under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 27 June 2018 to approve Parliament’s position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
  - 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;

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<sup>3</sup> OJ C 246, 28.7.2017, p. 22.

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.

**P8\_TC1-COD(2016)0413**

**Position of the European Parliament adopted at first reading on 12 September 2018 with a view to the adoption of Regulation (EU) 2018/... of the European Parliament and of the Council on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>4</sup> ,

After consulting the Committee of the Regions ,

Acting in accordance with the ordinary legislative procedure<sup>5</sup>,

Whereas:

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<sup>4</sup> OJ C 246, 28.7.2017, p. 22.

<sup>5</sup> Position of the European Parliament of 12 September 2018.

- (1) The promotion of the harmonious, sustainable and inclusive development of the internal market as an area in which goods, persons, services and capital can freely and safely circulate is one of the priorities of the Union.
- (2) The reintroduction of illicit proceeds into the economy and the diversion of money to finance illicit activities create distortions and unfair competitive disadvantages for law-abiding citizens and companies, and are therefore a threat to the functioning of the internal market. Moreover, those practices foster criminal and terrorist activities which endanger the security of citizens of the Union. Accordingly, the Union has taken action to protect itself.

- (3) One of the main pillars of the action taken by the Union was Council Directive 91/308/EEC<sup>6</sup>, which laid down a series of measures and obligations on financial institutions, legal persons and certain professions as regards, *inter alia*, transparency and record-keeping, as well as ‘know-your-customer’ provisions, and laid down an obligation to report suspicious transactions to national Financial Intelligence Units (FIUs). FIUs were established as hubs to assess such transactions, interact with their counterparts in other countries and, where required, contact judicial authorities. Directive 91/308/EEC has since been amended and replaced by successive measures. The provisions for the prevention of money laundering are currently laid down in Directive (EU) 2015/849 of the European Parliament and of the Council<sup>7</sup>.

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<sup>6</sup> Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ L 166, 28.6.1991, p. 77).

<sup>7</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

- (4) In light 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 Council<sup>8</sup>. That Regulation aims to prevent and detect money laundering and terrorist financing 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 EUR 10 000 or its equivalent in other currencies. *The term 'entering or leaving the Union' should be defined by reference to the territory of the Union as defined in Article 355 of the Treaty on the Functioning of the European Union (TFEU) in order to ensure that this Regulation has the broadest possible scope of application and that no areas would be exempt from its application and present opportunities to circumvent applicable controls.*
- (5) Regulation (EC) No 1889/2005 implemented within the Community the international standards on combating money laundering and terrorist financing developed by the Financial Action Task Force (FATF).

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<sup>8</sup> 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).

- (6) The FATF, established at the G7 summit held in Paris in 1989, is an inter-governmental body that sets standards and promotes the effective implementation of legal, regulatory and operational measures to combat money laundering, terrorist financing and other related threats to the integrity of the international financial system. Several Member States are members of the FATF or are represented in the FATF through regional bodies. The Union is represented in the FATF by the Commission and has committed itself to the effective implementation of the FATF's recommendations. FATF Recommendation 32 on cash couriers specifies that measures should be in place with regard to adequate controls on cross-border movements of cash.
- (7) Directive (EU) 2015/849 identifies and describes a number of criminal activities the proceeds of which might be subject to money laundering or might be used for terrorist financing. The proceeds of those criminal activities are often transported across the external borders of the Union for the purpose of being laundered or used for terrorist financing. This Regulation should take that into account and lay down a system of rules that, in addition to contributing to the prevention of money laundering, ***and especially predicate offences such as tax crimes as defined in national law***, and terrorist financing as such, facilitate the prevention, detection, and investigation of the criminal activities defined in Directive (EU) 2015/849.

- (8) Advances have been made regarding insights into the mechanisms used for transferring illicitly acquired value across borders. As a result, the FATF Recommendations have been updated, Directive (EU) 2015/849 has introduced changes to the Union's legal framework and new best practices have been developed. In light of those developments and on the basis of the evaluation of existing Union legislation, Regulation (EC) No 1889/2005 needs to be amended. However, considering the extensive nature of the amendments that would be required, Regulation (EC) No 1889/2005 should be repealed and replaced with a new Regulation.
- (9) This Regulation does not affect the ability of Member States to provide, *under their national law*, for additional national controls on movements of cash within the Union, provided that those controls are in accordance with the Union's fundamental freedoms, in particular Articles 63 and 65 TFEU.

- (10) *A set of rules at Union level which would allow comparable controls on cash within the Union would greatly facilitate efforts to prevent money laundering and terrorist financing.*
- (11) This Regulation does not concern measures taken by the Union or Member States under Article 66 TFEU to restrict movements of capital that cause, or threaten to cause, serious difficulties for the operation of economic and monetary union or under Articles 143 and 144 TFEU as a result of a sudden crisis in the balance of payments.
- (12) Considering their presence at the external borders of the Union, their expertise in carrying out controls on passengers and freight crossing the external borders and their 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, Member States should continue to be able also to designate other national authorities present at the external borders to act as competent authorities. Member States should continue to *provide adequate training for the staff of customs authorities and other national authorities for the carrying out of those controls, including on cash-based money laundering.*

- (13) One of the key concepts used in 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, and prepaid cards which are not linked to a bank account and **which can store an amount of money which is difficult to detect** are likely to be used in place of currency as an anonymous means of transferring value across the external borders in a manner that is not traceable using the classic system of supervision by the public authorities. 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 of this Regulation in response to the attempts by criminals and their associates to circumvent a measure which controls only one type of highly-liquid store of value by bringing another type across the external borders. If evidence of such behaviour on a considerable 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, customs authorities do not have competence to monitor them.*

- (14) Bearer negotiable instruments enable the physical holder to claim a payment of a financial amount without being registered or mentioned by name. They can be easily used to transfer considerable amounts of value and present salient similarities with currency in terms of liquidity, anonymity and risks for abuse.
- (15) Commodities used as highly-liquid stores of value present a high ratio between their value and their volume, for which an easily accessible international trading market exists, allowing them to be converted into currency while incurring only modest transaction costs. Such commodities are mostly presented in a standardised way that allows for quick verification of their value.

- (16) Prepaid cards are non-nominal cards that store *or provide access to* a monetary value or funds which can be used for payment transactions, for acquiring goods or services or for redemption of currency. They are not linked to a bank account. *Prepaid cards encompass anonymous prepaid cards as referred to in the Directive (EU) 2015/849.* They are widely used for a variety of legitimate purposes and some of those instruments also present a clear social interest. Such prepaid cards are easily transferrable and can be used to transfer considerable value across the external borders. It is therefore necessary to include prepaid cards in the definition of cash, *in particular if they can be bought without customer due diligence procedures.* This will allow for the possibility to extend the controls to certain types of prepaid cards, taking into account the available technology, if justified by the evidence, provided that such controls are extended with due regard to proportionality and practical enforceability.

- (17) For the prevention of money laundering and terrorist financing, an obligation to declare cash 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. It should apply to carriers carrying such amounts on their person, in their luggage or in the means of transport in which they cross the external borders. They should be required to make the cash available to the competent authorities for control *and, if necessary, to present it to those authorities. The definition of "carrier" should be understood as excluding those carriers who undertake the professional conveyance of goods or people.*

- (18) As regards movements of unaccompanied cash, for example 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 a representative thereof, to make a disclosure declaration, *systematically or on a case by case basis, in accordance with national procedures*. Such disclosure should cover a number of elements, which are not covered by the usual documentation submitted to customs, such as shipping documents and customs declarations. Such elements are the origin, destination, economic provenance and intended use of the cash. ■ The obligation to disclose unaccompanied cash should be subject to a threshold identical to that for cash carried by carriers.

- (19) A number of standardised data elements regarding the movement of cash such as the personal details of the *declarant, the owner or the recipient*, the economic provenance and the intended use of the cash, should be recorded in order to achieve the objectives of this Regulation. *In particular, it is necessary that the declarant, the owner or the recipient provide their personal details as contained in their identification documents, in order to reduce to a minimum the risk of errors regarding their identities and the delays due to the possible subsequent need for verification.*
- (20) As regards the obligation to declare accompanied cash and the obligation to disclose unaccompanied cash, competent authorities should be empowered to carry out all requisite controls on persons, their luggage, the means of transport used to cross the external borders and any unaccompanied consignment or receptacle crossing that border which may contain cash, or a means of transport carrying them. In the event of failure to comply with those obligations, the competent authorities should compose an *ex officio* declaration for subsequent transmission of the relevant information to other authorities.
- (21) *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.*
- (22) *The establishment of a common risk management framework should not prevent competent authorities from performing random checks or spontaneous controls whenever they deem necessary.*

*(23) Where they detect amounts of cash below the threshold but there are indications that the cash might be linked to criminal activity as covered by this Regulation, the competent authorities should be able to record, in the case of accompanied cash, information about the carrier, the owner and, where available, the intended recipient of the cash, including full name, contact details, details concerning the nature and the amount or value of the cash, its economic provenance and intended use.*

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

- (25) That information should be passed on to the FIU of the Member State in question, ***which should ensure that the FIU transmit any relevant information spontaneously or upon request to the FIUs 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 that information in order to determine if there are grounds for further investigation that may not be apparent to the competent authorities who collect the declarations and perform controls under this Regulation. ***To guarantee the effective flow of information, FIUs should all be connected to the Customs Information System (the 'CIS') established by Council Regulation (EC) No 515/97<sup>9</sup> and the data produced or exchanged by competent authorities and FIUs should be compatible and comparable.***

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<sup>9</sup> ***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).***

- (26) *Recognising the importance for the successful follow-up of this Regulation of having an effective exchange of information between the relevant authorities, including FIUs within the legal framework covering those entities, and the need to strengthen the cooperation between FIUs within the Union, the Commission should assess by 1 June 2019 the possibility of establishing a common mechanism to fight money laundering and terrorist financing.*
- (27) The detection of sub-threshold amounts of cash in situations where there are indications of criminal activity is highly relevant in this context. Consequently, it should also be possible to share information relating to sub-threshold amounts with the competent authorities in other Member States if there are indications of criminal activity.

(28) Considering that the movements of cash that are subject to controls under this Regulation take place across the external borders, 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 **■** detain cash temporarily in certain circumstances, subject to checks and balances: first, where the obligation to declare or to disclose cash has not been met and, second, where there are indications of criminal activity, irrespective of the amount *or whether the cash is accompanied or unaccompanied* **■**. In view of the nature of such temporary **■** detention and the impact that it might have on the freedom of movement and the right to property, the period of detention 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 detain cash temporarily under this Regulation should be accompanied by a statement of reasons and should adequately describe the specific factors that have given rise to the action. It should be possible to *extend the period of temporary detention of the cash in specific and duly assessed cases, for instance when competent authorities encounter difficulties in obtaining information on a potential criminal activity, inter alia, when communication with a third country is required, when documents have to be translated or when it is difficult to identify and contact the sender or the recipient in the case of unaccompanied cash*. If, at the end of the period of detention, no decision concerning further intervention is taken or if the competent authority decides that there are no grounds to further detain the cash, it should immediately be released, *depending on the situation, to the person from whom the cash was temporarily detained, the carrier or the owner*.

(29) *In order to raise awareness about this Regulation, Member States should, in cooperation with the Commission, develop appropriate materials regarding the obligation to declare or disclose cash.*

(30) It is essential that the competent authorities that collect information pursuant to this Regulation transmit it in a timely manner to the national FIU in order to enable *it* to further

analyse and compare *the information* with other data as *provided for* in Directive (EU) 2015/849.

(31) ***For the purpose of this Regulation***, where the competent authorities register a failure to declare or disclose cash or where there are indications of criminal activity, they should ***promptly*** share that information with ***competent*** authorities ***of other Member States*** through appropriate channels. Such exchange of data would be proportionate considering that persons who have breached the obligation to declare or disclose cash and 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 breach. The exchange of such information should be mandatory in order to ensure that this Regulation is applied consistently across the 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, ***to the European Public Prosecutor's Office as established by Council Regulation (EU) 2017/1939<sup>10</sup> - by the Member States participating in enhanced cooperation pursuant to that Regulation, and to Europol as established by Regulation (EU) 2016/794 of the European Parliament and of the Council.<sup>11</sup>*** In order to achieve the objectives of this Regulation of preventing and deterring the circumvention of the obligation to declare or disclose cash, anonymised risk information and risk analysis results should also mandatorily be exchanged between Member States and with the Commission, ***in accordance with standards to be set out in implementing acts adopted pursuant to this Regulation.***

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<sup>10</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 **implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')** (OJ L 283, 31.10.2017, p. 1).

<sup>11</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

- (32) It should be possible to exchange information between a competent authority of a Member State or the Commission and the authorities of a third country provided that there are appropriate safeguards. Such exchange should only be permissible where relevant national and Union provisions on fundamental rights and the transfer of personal data are complied with, following authorisation by the authorities which *originally* obtained the information. The Commission should be informed of any *occurrence* of information exchange with third countries pursuant to this Regulation *and should report thereon to the European Parliament and to the Council.*

- (33) Given the nature of the information collected and the legitimate expectations of carriers and declarants that their personal data and information regarding 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 to ensure that agents who require access to the information respect professional secrecy, and adequately protect such information against unauthorised access, use or communication. Unless otherwise provided for by this Regulation or national law, particularly in the context of legal proceedings, such information should not be disclosed without the permission of the authority which obtained it. *The processing of data under this Regulation may also cover personal data and should be carried out in accordance with Union law. Member States and the Commission should process personal data only in a manner compatible with the purposes of this Regulation.* Any collection, disclosure, transmission, communication and other processing of personal data within the scope of this Regulation should be subject to the requirements of Regulation (EC) No 45/2001 *of the European Parliament and of the Council*<sup>12</sup> and Regulation (EU) 2016/679 *of the European Parliament and of the Council*<sup>13</sup>. *The processing of personal data for the purposes of this Regulation should also respect the fundamental right to respect for private and family life recognised by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, as well as the right to respect for private and family life, and the right to the protection of personal data recognised, respectively, by Articles 7 and 8 of the Charter of Fundamental Rights of the European Union (the 'Charter').*

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<sup>12</sup> *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).*

<sup>13</sup> Regulation (EU) 2016/679 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 and on the free movement of such data, and repealing Directive 95/46/EC (**General Data Protection Regulation**) (OJ L 119, 4.5.2016, p. 1).

- (34) For the purposes of the analysis carried out by the FIUs and in order to enable authorities in other Member States to control and enforce the obligation to declare cash, particularly with respect to *persons* who have previously breached that obligation, it is necessary that the data contained in declarations made under this Regulation are stored for a sufficiently long period **■**. *In order for the FIU to effectively carry out their analysis and for the competent authorities to control and effectively enforce the obligation to declare or disclose cash, the period for the retention of data contained in declarations made under this Regulation should not exceed five years with a possible further extension, after a thorough assessment of the necessity and proportionality of such further retention, which should not exceed three additional years.*

- (35) In order to encourage compliance and deter circumvention, Member States should introduce penalties for non-compliance with the obligations to declare or disclose cash. Those penalties should apply only to the failure to declare or disclose cash under this Regulation and should not take into account the potential criminal activity associated with the cash, which may be the object of further investigation and measures that fall outside the scope of this Regulation. Those penalties should be effective, proportionate and dissuasive, and should not go beyond what is required to encourage compliance. ***Penalties introduced by Member States should have an equivalent deterrent effect across the Union on the infringement of this Regulation.***
- (36) ***While most Member States already use a harmonised declaration form, the EU Cash Declaration Form (EU-CDF), on a voluntary basis,*** in order to ensure the uniform application of controls and the efficient processing, transmission and analysis by competent authorities of the declarations, implementing powers should be conferred on the Commission to adopt the templates for the declaration form and the disclosure form, to determine the criteria for a common risk management framework, to establish the technical rules for the exchange of information and the template for the form to be used for the transmission of information, and to establish the rules and the format to be used for the provision of statistical information to the Commission. ■ Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>14</sup>.
- (37) ***In order to improve the current situation in which there is limited access to statistical information and there are only some indications available on the extent of cash being smuggled across the Union's external borders by criminals, more effective cooperation via information exchange between competent authorities and with the Commission should be introduced. To guarantee that this exchange of information is effective and efficient, the Commission should review whether the system established fulfils the***

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<sup>14</sup> 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).

*purpose or whether there are obstacles to the timely and direct exchange of information.  
Furthermore, the Commission should publish statistical information on its website.*

(38) In order to be able to quickly take account of future modifications of international standards such as standards established by the FATF or to address the circumvention of this Regulation through reliance on commodities used as highly-liquid stores of value *or reliance on prepaid cards*, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amendments 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 of 13 April 2016 on Better Law-Making<sup>15</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council *should* receive all documents at the same time as Member States' experts, and their experts *should* systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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<sup>15</sup> *OJ L 123, 12.5.2016, p. 1.*

(39) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States, but can rather, by reason of the transnational scale of money laundering and terrorist financing, and the specificities of the internal market and its fundamental freedoms, which can only be fully implemented by ensuring that no excessively disparate treatment based on national legislation is imposed on cash crossing the external borders of the Union, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.

- (40) This Regulation respects the fundamental rights and observes the principles recognised in Article 6 TEU and reflected in the Charter, in particular Title II thereof.
- (41) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 **█** ,

HAVE ADOPTED THIS REGULATION:

Article 1  
Subject matter

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

Article 2  
Definitions

1. For the purposes of this Regulation, the following definitions apply:
  - (a) ‘cash’ means:
    - (i) currency;
    - (ii) bearer-negotiable instruments ■ ;
    - (iii) commodities used as highly-liquid stores of value ■ ;
    - (iv) prepaid cards ■ ;

- (b) 'entering or leaving the Union' means coming from a territory which is outside the territory covered by Article 355 TFEU to the territory which is covered by that Article, or departing **the** territory covered by that Article ;
- (c) 'currency' means banknotes and coins that are in circulation as a medium of exchange or that have been in circulation as a medium of exchange and can still be exchanged through financial institutions or central banks for banknotes and coins that are in circulation as a medium of exchange;
- (d) 'bearer-negotiable **instruments**' means **instruments** other than currency which entitle **their** holders to claim a financial amount upon presentation of the instruments without having to prove **their** identity or entitlement to that amount. **Those instruments are:**
- (i) **traveller's cheques; and**

- (ii) *cheques, promissory notes or money orders that are either in bearer form, signed but with the payee's name omitted, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery;*
- (e) 'commodity used as a highly-liquid store of value' means a good, as listed in point 1 of Annex I, that presents a high ratio between its value and its volume and that can easily be converted into currency through accessible trading markets while incurring only modest transaction costs;
- (f) 'prepaid card' means a non-nominal card, as listed in point 2 of Annex I, that stores *or provides access to* monetary value or funds which can be used for payment transactions, for acquiring goods or services or for the redemption of currency where such card is not linked to a bank account;
- (g) 'competent authorities' means the customs authorities of the Member States *and* any other authorities empowered by the Member States to apply this Regulation;

- (h) *‘carrier’ means any natural person entering or leaving the Union carrying cash on their person, in their luggage or in their means of transport;*
- (i) *‘unaccompanied cash’ means cash making up part of a consignment **without a carrier**;*
- (j) *‘criminal activity’ means any of the activities listed in point (4) of Article 3 of Directive (EU) 2015/849;*
- (k) *‘Financial Intelligence Unit (FIU)’ means the entity established in a Member State for the purposes of implementing Article 32 of Directive (EU) 2015/849.*

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 15 of this Regulation in order to amend Annex I to this Regulation to take account of new trends in money laundering, as defined in Article 1(3) and (4) of Directive (EU) 2015/849, or terrorist financing, as defined in Article 1(5) of that Directive, or to take account of best practices in preventing money laundering or terrorist financing or to prevent the use by criminals of **█** commodities used as highly-liquid stores of value **and of** prepaid cards to circumvent the obligations laid down in Articles 3 and 4 of this Regulation.

### Article 3

#### Obligation to declare *accompanied cash*

1. **Carriers** who carry cash of a value of EUR 10 000 or more ■ shall declare that cash to the competent authorities of the Member State through which they are entering or leaving the Union and make it available to them for control. The obligation to declare cash shall not be deemed to be fulfilled if the information provided is incorrect or incomplete or if the cash is not made available for control.
2. The declaration referred to in paragraph 1 shall provide details about the following:
  - (a) the *carrier*, including full name, *contact details, including* address, date and place of birth, ■ nationality *and identification document number*;

- (b) the owner of the cash, including the full name, *contact details, including* address, date and place of birth, █ nationality *and identification document number, where the owner is a natural person, or the full name, contact details, including address, registration number and, where available, Value Added Tax (VAT) identification number, where the owner is a legal person;*
- (c) *where available*, the intended recipient of the cash, including the full name, *contact details, including* address, date and place of birth, █ nationality *and identification document number, where the intended recipient is a natural person, or the full name, contact details, including address, registration number and, where available, VAT identification number, where the intended recipient is a legal person;*

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

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

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

(g) the transport route; and

(h) the means of transport.

3. The details listed in paragraph 2 of this Article shall be provided in writing or electronically, using the declaration form referred to in to point (a) of Article 16(1). An endorsed copy of the declaration shall be delivered to the declarant upon request.

## Article 4

### Obligation to disclose *unaccompanied cash*

1. Where unaccompanied cash of a value of EUR 10 000 or more is entering or leaving the Union, the competent authorities of the Member State through which the cash is entering or leaving the Union may ▯ require the sender or the recipient of the cash, or a representative thereof, *as the case may be*, to make a disclosure declaration *within a deadline of 30 days. The competent authorities may detain the cash until the sender or the recipient, or a representative thereof, makes the disclosure declaration.* The obligation to disclose unaccompanied cash shall not be deemed to be fulfilled *where the declaration is not made before the deadline expires*, the information provided is incorrect or incomplete, or the cash is not made available for control.
2. The disclosure declaration shall provide details about the following:
  - (a) the declarant, including full name, *contact details, including* address, date and place of birth, ▯ nationality *and identification document number*;

- (b) the owner of the cash, including the full name, *contact details, including* address, date and place of birth, nationality *and identification document number, where the owner is a natural person, or full name, contact details, including address, registration number and, where available, the VAT identification number, where the owner is a legal person;*
- (c) the sender of the cash, including the full name, *contact details, including* address, date and place of birth, nationality *and identification document number, where the sender is a natural person, or the full name, contact details, including address, registration number and where available, VAT identification number, where the sender is a legal person;*
- (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, where the recipient or intended recipient is a natural person, or the full name, contact details, including address, registration number and, where available, VAT identification number, where the recipient or intended recipient is a legal person;*

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

(f) the *economic* provenance ■ of the cash; *and*

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

3. The details listed in paragraph 2 of this Article shall be provided in writing or electronically, using the disclosure form referred to in point (a) of Article 16(1). An endorsed copy of the disclosure declaration shall be delivered to the declarant upon request.

## Article 5

### Powers of the competent authorities

1. In order to verify compliance with the obligation to declare accompanied cash laid down in Article 3, the competent authorities shall have the power to carry out controls on natural persons, their luggage and ■ their means of transport, in accordance with the conditions laid down in national law.
2. For the purposes of implementing the obligation to disclose unaccompanied cash laid down in Article 4, the competent authorities shall have the power to carry out controls on any consignments, receptacles or means of transport which may contain unaccompanied cash, in accordance with the conditions laid down in national law.

3. If the obligation *to declare* accompanied cash under Article 3 or the obligation to disclose unaccompanied cash under Article 4 has not been fulfilled, the competent authorities shall compose, 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 4(2), as the case may be.
4. The controls shall be based primarily on risk analysis, with the purpose of identifying and evaluating the risks and developing the necessary countermeasures, and shall be performed within a common risk management framework in accordance with the criteria referred to in point (b) of Article 16(1) *which shall also take into account the risk assessments established by the Commission and the FIUs under Directive (EU) 2015/849*.
5. *For the purposes of Article 6, the competent authorities shall also exercise the powers conferred on them under this Article.*

## Article 6

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

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

## Article 7

### Temporary detention of cash by competent authorities

1. The competent authorities may temporarily detain cash by means of an administrative decision in accordance with the conditions laid down in national law where:
  - (a) the obligation to declare accompanied cash under Article 3 or the obligation to disclose unaccompanied cash under Article 4 has not been fulfilled; or
  - (b) there are indications that the cash, *irrespective of the amount*, is related to criminal activity .
  
2. The administrative decision referred to in paragraph 1 shall be *subject to an effective remedy* in accordance with procedures provided for in national law. The competent authorities shall notify a *statement of reasons for the administrative decision 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 person required to provide the information in accordance with Article 6(1) or (2).*

3. The period of temporary detention shall be strictly limited *under national law* to the time required for competent authorities to determine whether the circumstances of the case warrant further detention. The ■ period of temporary detention shall ■ not exceed 30 days. *After the competent authorities carry out a thorough assessment of the necessity and proportionality of a further temporary detention, they may decide to extend the period of temporary detention to a maximum of 90 days.*

Where no determination is made regarding further detention of the cash within that period or if a determination is made that the circumstances of the case do not warrant further detention, the cash shall be immediately released to:

- (a) *the person from whom the cash was temporarily detained in the situations referred to in Article 3 or 4; or*
- (b) *the person from whom the cash was temporarily detained in the situations referred to in Article 6(1) or (2).*

*Article 8*  
*Information campaigns*

*Member States shall ensure that persons who enter or leave the Union or persons who send unaccompanied cash from the Union or who receive unaccompanied cash in the Union are informed of their rights and obligations under this Regulation and shall, in cooperation with the Commission, develop appropriate materials aimed at those persons.*

*Member States shall ensure that sufficient funding is made available for such information campaigns.*

Article 9  
Provision of information to the FIU

1. The competent authorities shall record the information obtained under Article 3 or 4, Article 5(3) or Article 6 and transmit it to the FIU of the Member State in which it was obtained, in accordance with the technical rules referred to in point (c) of Article 16(1).
2. *The Member States shall ensure that the FIU of the Member State in question exchange such information with the relevant FIUs of the other Member States in accordance with Article 53(1) of Directive (EU) 2015/849.*
3. The *competent authorities* shall transmit the information referred to in paragraph 1 as soon as possible, and in any event no later than **15 working days** after the date on which the information was obtained.

## Article 10

Exchange of information between competent authorities and with the Commission

1. The competent authority of each Member State shall, by electronic means, transmit the following information to the competent authorities of all the other Member States:
  - (a) *ex officio* declarations composed under Article 5(3);
  - (b) information obtained under Article 6;
  - (c) declarations obtained under Article 3 or 4, where there are indications that the cash is related to criminal activity;
  - (d) anonymised risk information and risk analysis results.
2. Where there are indications that the cash is related to criminal activity which could adversely affect the financial interests of the Union, the information referred to in paragraph 1 shall also be transmitted to the Commission, ***to the European Public Prosecutor's Office - by the Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939 and where it is competent to act under Article 22 of that Regulation, and to Europol where it is competent to act under Article 3 of Regulation (EU) 2016/794.***

3. The competent authority shall transmit the information referred to in paragraphs 1 and 2 in accordance with the technical rules referred to in point (c) of Article 16(1) and using the form referred to in point (d) of Article 16(1).
4. The information referred to in *points (a), (b), and (c)* of paragraph 1 and in paragraph 2 shall be transmitted as soon as possible and in any event no later than **15 working days** after the date on which that information was obtained.
5. ***The information and results referred to in point (d) of paragraph 1 shall be transmitted on a six-monthly basis.***

## Article 11

### Exchange of information with third countries

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

## Article 12

### Professional secrecy and confidentiality and data security

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

## Article 13

### Personal data protection and retention periods

1. The competent authorities shall act as controllers of the personal data they obtain by operation of Articles 3 and 4, **Article 5(3)** and Article 6.
2. The processing of personal data on the basis of this Regulation shall take place only for the purposes of the prevention and fight against criminal activities.
3. The personal data obtained by operation of Articles 3 and 4, **Article 5(3)** and Article 6 shall be accessed only by duly authorised staff of the competent authorities and shall be adequately protected against unauthorised access or transmission. Unless otherwise provided for in Articles 9, 10 and 11, the data may not be disclosed or transmitted without the express authorisation of the competent authority which originally obtained them. However, that authorisation shall not be necessary where the competent authorities are required to disclose or transmit that data pursuant to the national law of the Member State in question, particularly in connection with legal proceedings.

4. *The competent authorities and the FIU shall store personal data obtained by operation of Articles 3 and 4, Article 5(3) and Article 6 for a period of five years from the date on which the data were obtained. The personal data shall be erased upon the expiry of that period.*
5. *The period of retention may be extended once by another period which shall not exceed three additional years if:*
- (a) after it has carried out a thorough assessment of the necessity and proportionality of such further retention and considers it to be justified for the fulfilment of its tasks with respect to the fight against money laundering or terrorist financing, the FIU determines that further retention is required; or*
  - (b) after they have carried out a thorough assessment of the necessity and proportionality of such further retention and consider it to be justified for the fulfilment of their tasks with respect to providing effective controls as regards the obligation to declare accompanied cash or the obligation to disclose unaccompanied cash, competent authorities determine that further retention is required.*

## Article 14

### Penalties

Each Member State shall introduce penalties which shall apply in the event of failure to comply with the obligation to declare accompanied cash laid down in Article 3 **or the obligation to disclose unaccompanied cash** laid down in Article 4. Such penalties shall be effective, proportionate and dissuasive.

## Article 15

### Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 2(2) shall be conferred on the Commission for an indeterminate period of time from ...[date of entry into force of the basic legislative act].
3. The delegation of power referred to in Article 2(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

Article 16  
Implementing acts

- I.** The Commission shall adopt, by means of implementing acts, the following measures to ensure the uniform application of controls by competent authorities:
- (a) the templates for the declaration form referred to in Article 3(3) and for the disclosure form referred to in Article 4(3);
  - (b) the criteria for the common risk management framework referred to in Article 5(4) ***and, more specifically, the risk criteria, standards, and priority control areas, based on the information exchanged pursuant to point (d) of Article 10(1), and Union and international policies and best practice;***
  - (c) the technical rules for the ***effective*** exchange of information under Article 9(1) ***and (3)*** and Article 10 of this Regulation ***via the CIS established by Article 23 of Regulation (EC) No 515/97;***

- (d) the template for the form for the transmission of information referred to in Article 10(3); and
  - (e) the rules and the format to be used by Member States for providing to the Commission with anonymous statistical information on declarations and infractions pursuant to Article 18.
2. The implementing acts referred to in paragraph 1 of this Article shall be adopted in accordance with the examination procedure referred to in Article 17(2).

#### Article 17

##### Committee procedure

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

## Article 18

### Transmission of information relating to the implementation of this Regulation

1. By ... [six months after the date of application of this Regulation], Member States shall transmit the following to the Commission:
  - (a) the list of competent authorities;
  - (b) the details of the penalties introduced pursuant to Article 14;
  - (c) anonymised statistical information regarding declarations, controls and infractions, using the format referred to in point (e) of Article 16(1).
2. Member States shall notify the Commission of any subsequent changes to the information referred to in points (a) and (b) of paragraph 1 at the latest one month after those changes take effect.

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

■

3. The Commission shall make the information referred to in point (a) of paragraph 1 and any subsequent changes to that information pursuant to paragraph 2 available to all the other Member States.
4. *The Commission shall annually publish the information referred to in points (a) and (c) of paragraph 1 and any subsequent changes to that information pursuant to paragraph 2 on its website and shall inform users, in a clear way, about the controls with respect to cash entering or leaving the Union.*

Article 19  
Evaluation

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

*The report referred to in the first subparagraph shall, in particular, evaluate whether:*

- (a) *other assets should be included within the scope of this Regulation;*
- (b) *the disclosure procedure for unaccompanied cash is effective;*

- (c) *the threshold for unaccompanied cash should be reviewed;*
- (d) *the information flows in accordance with Articles 9 and 10 and the use of the CIS, in particular, are effective or whether there are obstacles to the timely and direct exchange of compatible and comparable information between competent authorities and with FIUs; and*
- (e) *the penalties introduced by Member States are effective, proportionate and dissuasive and in line with the established case law of the Court of Justice of the European Union and whether they have an equivalent deterrent effect across the Union on the infringement of this Regulation.*

2. *The report referred to in paragraph 1 shall include, where available:*

- (a) *a compilation of information received from Member States regarding cash related to criminal activities which adversely affect the financial interests of the Union; and*
- (b) *information on exchange of information with third countries.*

Article 20

Repeal of Regulation (EC) No 1889/2005

Regulation (EC) No 1889/2005 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 21

Entry into force and application

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

***It shall apply from ... [30 months after the date of entry into force of this Regulation].*** However, ***Article 16*** shall apply ***from ... [the date of entry into force of this Regulation].***

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

Done at...

*For the European Parliament*

*For the Council*

*The President*

*The President*

## ANNEX I

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

1. Commodities used as highly-liquid stores of value:
  - (a) coins with a gold content of at least 90 %; and
  - (b) bullion such as bars, nuggets or clumps with a gold content of at least 99,5 %.
2. Prepaid cards: P.M.

## ANNEX II

### Correlation table

Regulation (EC) No 1889/2005	This Regulation
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
-	Article 4
Article 4(1)	Article 5
Article 5(2)	Article 6
Article 4(2)	Article 7
-	Article 8
Article 5(1)	Article 9
Article 6	Article 10
Article 7	Article 11
Article 8	Article 12

-	Article 13
Article 12	Article 14
-	Article 15
-	Article 16
-	Article 17
-	Article 18
Article 10	Article 19
-	Article 20
Article 11	Article 21
-	Annex I
-	Annex II

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