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COM(2016) 825 final

2016/0413 (COD)

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**

{SWD(2016) 470 final}

{SWD(2016) 471 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

This proposal brings the Cash Control Regulation (hereinafter 'CCR') into line with international norms and best practices in the fight against money laundering and the financing of terrorism. It addresses areas in which an evaluation of the CCR identified room for improvement and implements a number of action points set out in the Commission's Communication on an *Action Plan for strengthening the fight against terrorist financing*<sup>1</sup>.

The first CCR was adopted in 2005<sup>2</sup>. This Regulation complemented the provisions of the Anti-Money Laundering Directive (hereinafter: 'AMLD')<sup>3</sup> by laying down a system of controls that applied to natural persons entering or leaving the Union who were carrying currency or bearer-negotiable instruments worth EUR 10 000 or more. In doing so, the Regulation implemented at EU level international standards in the area of anti-money laundering and terrorism financing, notably a Recommendation of the Financial Action Task Force on Money Laundering (hereinafter: 'FATF') on controls of cash movements.

An evaluation of the extent to which the first CCR achieved its objectives, information received from Member States as well as the evolution of the international standards to control cross-border flows of cash led the Commission to conclude that, while the overall performance of the Regulation was good, a number of areas posed problems and should be strengthened to improve its functioning.

Specifically, this proposal seeks to address the following issues:

#### 1. The imperfect coverage of cross-border cash movements

The current CCR requires natural persons entering or leaving the EU with EUR 10 000 or more to make a declaration to that effect. However, there is no provision for cash that is sent in post, freight or courier shipments. Public authorities have signalled that criminals have resorted to sending or receiving cash via such shipments in order to escape the obligation to make a declaration under the CCR.

#### 2. Difficulties in the exchange of information between authorities

The current CCR requires only that declaration data be 'made available' by the competent authorities to the financial intelligence unit (FIU) of the Member State in which it was collected. This somewhat passive requirement can be met by simply making completed declaration forms available for inspection by the FIU. However, this is not sufficient as the information should be actively transmitted to the FIU in order to enable them to analyse it. Also, declaration data can be exchanged with competent authorities of other Member States only where there are indications of illegal activity and even then it is optional. This has given rise to inconsistent implementation and little systematic sharing of data.

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<sup>1</sup> COM (2016) 50 final.

<sup>2</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).

<sup>3</sup> Insert reference

### 3. The impossibility for competent authorities to temporarily detain sub-threshold amounts

The current CCR does not allow authorities to detain cash temporarily when they detect movements of sub-threshold amounts in relation to which there are indications of illegal activity.

### 4. The imperfect definition of ‘cash’

In line with international standards, cash is defined as ‘currency that is in circulation as a means of exchange, or bearer-negotiable instruments’. However, cases have been flagged in which criminals have moved significant quantities of highly liquid commodities such as gold to transfer value so as not to have to make a declaration. The standard customs declaration does not address this issue sufficiently, as it captures no details regarding, for example, the economic origin or purpose of cash and is not always required. It is also essential to take into account the rapidly changing face of criminality and the rise of cybercrime, online frauds and illicit online market places, which are facilitated by the development of the electronic-money market and the products it offers, specifically targeting prepaid payment instruments. Extending the definition of cash to cover such payment methods is required in order to close a legislative loophole signalled and substantiated by law enforcement agencies<sup>4</sup>.

### 5. Divergent penalties for non-declaration in Member States

Penalties for failure to declare cash vary widely across Member States. Some impose very low penalties which may not be dissuasive, while the severity of penalties in others seems to point to an automatic assumption that a failure to declare cash is evidence of an underlying offence (which has yet to be established and should be the object of a separate investigation). The current CCR required Member States to notify the Commission of the penalties in place when it entered into force, but not of any subsequent changes.

### 6. Different implementation levels among Member States

Under the current CCR, most Member States voluntarily use the same declaration form, but this is not obligatory. Member States also provide the Commission with statistical data, but neither this nor the level of detail of the data can be enforced, which can lead to problems in ensuring consistent application and evaluating effectiveness.

Another problem is raising travellers’ awareness of their obligations. This is best done by the Member States, taking into account their specific needs and situations. The Commission will reflect on how to best achieve this objective and liaise with Member State national experts on this issue and stands ready to help Member States with developing appropriate materials.

#### • **Consistency with existing policy provisions in the policy area**

This proposal should be seen in the context of the EU and international framework for fighting money laundering and the financing of terrorism.

At international level, the FATF, in which the Commission represents the Union, makes recommendations for jurisdictions on tackling money laundering and terrorist financing. The recommendations are not directly applicable legal instruments, but they do carry weight: FATF members’ evaluations of each other’s compliance are closely scrutinised and have great

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<sup>4</sup> See the Europol report "Why cash is still king", which is available at the following link: <https://www.europol.europa.eu/newsroom/news/cash-still-king-criminals-prefer-cash-for-money-laundering>

reputational impact. FATF recommendation 32 addresses the issue of cross-border movements of cash.

At EU-level various legal instruments have been adopted to form an effective framework for countering money laundering and terrorism financing; these include:

- the Fourth AMLD<sup>5</sup>, which covers most of the FATF recommendations;
- Regulation (EC) No 1781/2006 on information on the payer accompanying transfers of funds<sup>6</sup>, which implements FATF SR VII on wire transfers;
- Directive 2007/64/EC on payment services in the internal market<sup>7</sup> (Payment Services Directive), which, in combination with the AMLD, implements FATF SR VI on alternative remittances;
- Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism<sup>8</sup>, which, together with Regulation (EC) No 881/2002<sup>9</sup> implementing UN Al-Qaeda and Taliban sanctions, implements part of FATF SR III on freezing terrorist assets.

Broadly speaking, in the fight against money laundering and terrorist finance:

- the AMLD lays down a framework of rules as regards the functioning of the formal financial sector; and
  - the CCR lays down a complementary framework of rules to protect the Union against cross-external border transfers of cash by money launderers and terrorist financiers seeking to circumvent controls on the formal financial system.
- **Consistency with other Union policies**

The proposal is in line with and contributes to other Union policies, notably:

- the *European Agenda on Security*<sup>10</sup>, which emphasises the importance of the fight against terrorism and organised crime, and highlights the importance of information-sharing between competent authorities, in particular FIUs;
  - the *Action Plan for strengthening the fight against terrorist financing*, which lists a number of policy and legal initiatives (including this proposal) to be taken as part of a comprehensive approach in this area; and
  - the Commission’s proposal for a Directive of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism<sup>11</sup>, which includes provisions on criminal sanctions for people or entities who provide material support to terrorism.
- The principle of the free movement of capital which prohibits restrictions on payments and capital movements between Member States and third countries without prejudice to non-discriminatory measures justified on grounds of public policy and public security.

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<sup>5</sup> OJ L 141, 05.06.2015, p. 73.

<sup>6</sup> OJ L 345, 8.12.2006, p. 1.

<sup>7</sup> OJ L 319, 5.12.2007, p. 1.

<sup>8</sup> OJ L 344, 28.12.2001, p. 70.

<sup>9</sup> OJ L 139, 29.5.2002, p. 9.

<sup>10</sup> C (2015) 185 final

<sup>11</sup> COM (2015) 625 final

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

### • Legal basis

The proposal has a dual legal basis in primary law:

- Article 114 TFEU (internal market) – because, in order to guarantee the proper functioning of the internal market and to protect Union citizens and enterprises, measures must be taken to stop money launderers and terrorist financiers exploiting divergent national approaches in order to move cash. To be effective, these measures need to be harmonised; and
- Article 33 (customs cooperation) of the Treaty on the Functioning of the European Union (TFEU) – because controls on cash should take place at the external border of the Union, where customs administrations are widely present. Also, these administrations have significant expertise in controls on passenger traffic and the general cross-external border movement of consignments.

### • Subsidiarity (for non-exclusive competence)

The proposal is part of the EU's anti-money laundering / anti-terrorist finance framework. It establishes a parallelism with the AMLD as regards cross-external border movements of cash.

Organising an internal market with free movement of goods, persons, services and capital involves taking harmonised measures across Member States, where necessary in the public interest, in order to maintain an appropriate and equal degree of protection and a level playing-field.

It would not be possible to achieve the required degree of harmonisation on the basis of national legislation only. Money launderers and terrorist financiers could exploit divergences and attempt to move their cash into or out of the EU through the Member States where control measures are weakest. Given the amounts of declared cash entering or leaving the EU each year (EUR 60-70 billion on average carried by natural persons), this could have a distortive effect on the internal market.

This proposed Regulation would not prevent Member States taking national control measures on cash moving across *internal* borders, provided that these are compatible with Article 65(1)(b) and Article 65(3), TFEU.

This Regulation does not concern measures taken by the EU or Member States which restrict capital movements in case of serious difficulties for the operation of economic or monetary union (Article 66 TFEU) or in case of a sudden crisis in the balance of payments (Article 143-144 TFEU).

### • Proportionality

The Commission considers that the policy options selected to address the above issues and achieve the objectives are both suitable and necessary.

Extending the scope of controls to cash sent in post and freight and allowing authorities to detain sub-threshold amounts where there is an indication of criminal activity would ensure full and explicit compliance with international norms and standards of best practice. In

addition, authorities would have better control powers, while the additional administrative burden on citizens, enterprises and authorities will be limited, notably by a disclosure system for cash sent in post and freight which would give national authorities full powers of control but would not impose a systematic declaratory burden on legitimate operators.

As regards the exchange of information between competent authorities, laying down an active obligation to make data available to the FIU of the Member State in question would ensure that this FIU receives all data necessary for analysis. This degree of harmonisation is required to avoid the data being ‘made available’, but not actively transmitted to the FIU. The exchange of information between competent authorities would be made compulsory as regards infractions and cash movements where there are indications of criminal activity, so as to increase competent authorities' ability to fight against money laundering and terrorism financing, while ensuring proportionality.

By extending the definition of ‘cash’ to include gold and selecting a mechanism in which the components can be amended flexibly by delegated act in the light of evolving trends and technology, the proposal takes account of the latest developments and demonstrates the EU’s commitment to tackling possible future escape routes used to transfer value. The proposed penalties for non-declaration leave discretion to Member States to take the measures that they deem necessary to achieve the objectives. Given their characteristics, prepaid cards risk being used to transfer value across the external borders to finance illicit activities. In line with Better Regulation principles, the possible future inclusion of certain prepaid cards by delegated act should be preceded by an assessment of the evidence of such a risk, of practical enforceability and proportionality, taking into account the legitimate use of prepaid cards.

- **Choice of instrument**

The appropriate legal instrument to achieve the objective and the required degree of harmonisation is a Regulation.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

An extensive *ex post* evaluation of the original CCR in 2015<sup>12</sup> identified several areas which could be considered for improvement:

- including cash movements by mail and freight at EU external borders in the scope of the Regulation;
- widening and harmonising the possibilities for information exchange between Member States by:
  - a. including all cash control information (including non-suspicious voluntary declarations); and
  - b. setting out clear procedures and providing effective tools for the exchange of information;
- explicitly allowing the use of cash declaration information for tax purposes, including the fight against tax fraud and evasion;

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<sup>12</sup> Link to evaluation to be inserted

- approximating cash control penalties applied by Member States at EU external borders;
- streamlining the cash declaration exchange process as it pertains to FIUs;
- amending the definition of cash to include gold and precious stones; and
- developing a mechanism to ensure a sufficient and consistent level of implementation in the Member States.

These areas were analysed in the subsequent impact assessment.

- **Stakeholder consultations**

A public stakeholder consultation on the various policy options<sup>13</sup> was conducted on the EUSurvey platform. A limited number of responses were received, but in general the options taken up are those viewed favourably by respondents, with the exception of the expansion of the definition of ‘cash’, which was opposed by a small majority. However, a targeted consultation produced another result (see below) which the Commission judged to be of overriding relevance. Subsidiarity considerations led the Commission to conclude that awareness-raising measures would be best left to the Member States, with Commission support. Respondents favoured making it possible to exchange regular cash declaration data for fiscal purposes, but legal concerns were raised in the course of the impact assessment and the option could not be pursued in this proposal.

A more targeted consultation was conducted among customs, police and FIU authorities in all Member States on the possibility of extending the definition of cash beyond currency and bearer-negotiable instruments. The responses (72 from 27 Member States) were generally favourable and suggested that the approach taken should allow for the list of such stores of value to be amended easily. The Commission proposes to incorporate this advice and to expand the definition of ‘cash’, establishing a list of main categories in the proposal, with the components listed in an annex which can be amended by delegated act to take account of changes and to future-proof the Regulation while allowing for oversight by the European Parliament and the Council.

Finally, since the original CCR entered into force, the Commission has been in regular contact with national experts on cash controls. These experts have provided valuable input over the years, which has been taken into account in the drafting of this proposal.

- **Impact assessment**

An impact assessment has been conducted<sup>14</sup> and the Regulatory Scrutiny Board has delivered a positive opinion<sup>15</sup>.

The options that have been selected to tackle the problems identified are compatible and would considerably improve the functioning of the current CCR without creating unnecessary administrative burdens. This would be done through:

- correct implementation of FATF recommendation 32 on cash couriers through measures based on disclosures for cash sent in freight and courier consignments

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<sup>13</sup> For the synopsis report of the consultation, see: [Link to be inserted](#)

<sup>14</sup> For summary, see: [Insert link](#); for full version, see: [Insert link](#)

<sup>15</sup> [Insert link](#)

which, coupled with adequate controls and evaluation, would provide insight and control without the additional burden of systematic declaration;

- streamlining and providing clarifications with regard to the exchange of data, identifying the actors and the procedure to be applied;
- explicitly allowing for sub-threshold amounts to be detained on the basis of national legislation, with a sufficiently high threshold for action;
- a redefinition of ‘cash’ based on objective elements, but future-proofed by the possibility of incorporating new elements through delegated legislation, under the supervision of Council and Parliament;
- leaving responsibility for penalties with the Member States, who should notify the Commission of applicable national provisions and any changes; and
- formalising a number of other supportive elements such as the provision of statistics, a harmonised declaration form and reporting on amendments to penalties for non-declaration, which have been mostly voluntary until now, thus providing guarantees for the quality of future evaluations and greater legal certainty for stakeholders.

As regards administrative burden and costs, the measures concern cash amounts of EUR 10 000 or more moved across the external EU borders, either by persons or as freight/post, a mode of transport very rarely used by enterprises. Currently, a physical person accompanying a cash shipment has to make a declaration. Experience shows that professional couriers are highly aware of their obligations and are largely compliant. The new disclosure obligation for cash shipments in post/freight is designed to allow authorities to carry out controls and, if necessary, request documentation. There is no systematic obligation to file a declaration and authorities can exercise discretion (e.g. in cases of shipments between banks). It is expected that, due to the relative rarity of this shipment mode and the approach proposed, any impact on professional couriers will be minimal. No specific SME or micro-enterprise impact is expected.

- **Fundamental rights**

The envisaged measures are likely to impact the following rights which are enshrined in the following Articles of the Charter of fundamental Rights of the EU (hereinafter: 'CFR'):

- respect for private life, home and family life (Article 7 CFR);
- the protection of personal data (Article 8 CFR);
- the freedom to conduct a business (Article 16 CFR); and
- the right to property (Article 17 CFR).

A number of the measures impact those rights: citizens may have to file a declaration and provide personal data which will be recorded, processed and transmitted to other authorities; more information will be collected than under the current system; in cases of suspected criminal activity in relation to the sums carried, authorities may decide to detain the cash temporarily, thereby impacting the right to property.

Article 52 CFR specifies that any limitation of the recognised rights and freedoms must be provided for by law, respect the essence of the rights and freedoms, meet objectives of general interest recognised by the Union and be proportionate.

The current proposal establishes a legal basis and pursues objectives of general interest. It provides a number of safeguards as regards the use of the data, including the obligation for competent authorities (acting as controllers) to ensure the security of the data and to treat it according to the duty of professional secrecy, the purpose limitation and a specific retention period.

The measures strike a careful balance between the rights in question and the legitimate interests of society by taking an approach that is efficient (achieves the objective) but affects the rights as little as possible.

#### **4. BUDGETARY IMPLICATIONS**

The proposal has no significant implications for the budget of the European Union.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission would monitor the implementation of the Regulation and its application in close cooperation with the Member States. Continuous and systematic monitoring would make it possible to determine whether the Regulation is applied as expected and address problems in a timely manner. Factual data would be collected to monitor the suggested indicators (i.e. statistical information on registered declarations passed on to the Commission; controls in cases where a declaration is made; controls in the absence of declaration and the results of the controls; statistical information on penalties for non-declaration) and provide a basis for the future evaluation of the Regulation.

The proposal provides for the Commission to submit an evaluation report to the Parliament and the Council five years after the Regulation has entered into force and every five years thereafter. The evaluation will assess the extent to which the objectives of the Regulation have been met.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 sets out the objectives of the proposal and makes clear that the intention is to establish a parallelism with the AMLD when it comes to cross-external border cash movements.

Article 2 establishes a number of definitions, most notably what is meant by ‘cash’. In order to take account of changes in behaviour by criminals seeking to avoid the obligation to declare, it establishes four broad categories: currency, bearer-negotiable instruments, commodities used as highly liquid stores of value and prepaid cards. The components of the second, third and fourth categories are described in an Annex which can be amended by delegated act under supervision by the Council and the European Parliament. The rationale behind this approach is that criminals who seek to avoid having to declare currency sometimes convert it into precious commodities such as gold coins. If, as proposed, gold coins and high-purity bullion are controlled, criminals may seek other means of circumvention in the form of other commodities. It is imperative that measures to react to these behaviours can be taken quickly, should a demonstrable need arise. When considering amendments to the Annex, the Commission will weigh that need against ease of implementation in the field, where competent authorities need to have the technical

means to quickly determine the nature of a commodity and its value, and the proportionality of the measure from a fundamental rights perspective.

Article 2 point (i) defines the term 'criminal activity' by reference to the activities listed in Article 3(4) of Directive (EU) 2015/849. Moreover, a definition of 'criminal activity' for the purposes of the criminalisation of money laundering has been proposed (footnote proposal for a Directive on countering money laundering by criminal law COM (2016)826 final of 21 December 2016). After adoption by legislators of the proposal for a Directive on countering money laundering by criminal law, the Commission will assess whether it will be necessary to revise Directive (EU) 2015/849 with a view to aligning the definition of "criminal activity" as reflected in the Directive on countering money laundering by criminal law.

Article 3 requires natural persons to declare sums of EUR 10 000 or more and specifies the manner in which the declaration shall be made (in writing or electronically, using the form laid down in accordance with Article 15(a)) and the data that will need to be provided.

Article 4 imposes a disclosure obligation for unaccompanied cash (such as cash sent in freight or parcel consignments), which will enable competent authorities, on encountering a cash shipment of EUR 10 000 or more, to exercise discretion and require the sender, intended recipient or their representative to make a declaration. This approach ensures that authorities can obtain full information without having to impose a systematic declarative burden, e.g. on shipments between recognised financial institutions. As is the case for declarations under Article 3, it is proposed that disclosure declarations be made in writing or electronically, using the form laid down in accordance with Article 15(a).

Article 5 confers control powers on the competent authorities and specifies that, in cases of infraction, where no declaration has been made, they will be empowered to establish an ex officio declaration.

Article 6 enables authorities to register details of movements of cash amounts below the declaration or disclosure threshold. Given the impact that this has on fundamental rights and especially in connection with the temporary detention of cash under Article 7, any action is subject to a sufficiently high threshold and requires indications of criminal activity. The AMLD definition of 'criminal activity' will apply (money laundering, terrorist financing or predicate offences such as fiscal crime).

Article 7 enables authorities to detain cash temporarily where a declaration or disclosure declaration should have, but has not, been made or — irrespective of the amount — where there are indications of criminal activity. The detailed arrangements for this detention are to be laid down in national legislation, but it is important to emphasise that it is a strictly conservatory administrative measure, the sole objective of which is to enable competent authorities to detain cash between the moment they detect an anomaly and the moment that other authorities, such as the FIU or judicial authorities, decide whether there are sufficient grounds to proceed with an enquiry and judicially seize or liberate it. Any such temporary detention has to be justified by reference to specific circumstances and shall be subject to an effective remedy according to national law. In cases where the competent authorities do not decide within the time limit laid down for the period of temporary detention or in case that they decide that there are no reasons to further detain the cash, the cash should be immediately made available to the declarant.

Article 8 requires the competent authorities to actively transmit the information obtained under Articles 3, 4, 5(3) or 6 to the FIU; merely making this information at the disposal of

the FIU is insufficient. The information would need to be transmitted according to the technical rules laid down pursuant with Article 15(c).

Article 9 provides for the exchange of information between competent authorities, i.e. customs authorities and other authorities designated by the Member States for the purpose of applying the Regulation (e.g. border guards, fiscal authorities, etc.). Given the transnational nature of money laundering and terrorist finance and the fact that it is possible to enter or leave the Union via one Member State, then to circulate without encountering additional controls, it is imperative for purposes of risk analysis and prevention that information on infractions (failure to declare, *ex officio* declarations or indications of criminal activity) be made available to competent authorities in other Member States. Competent authorities should also be able to make this information available to other authorities that are charged with investigating criminal activity as defined in the proposal, but are not directly designated as ‘competent authorities’, e.g. the police or (for the purpose of detecting and acting on tax crimes) the fiscal authorities. The Commission should be notified of any indications of criminal activity which could adversely affect the financial interests of the Union. Anonymised risk analysis information and the results of risk analysis should also be exchanged between competent authorities in the same and other Member States where they determine that the threat present a high risk elsewhere in the Union. The information would need to be exchange according with the technical rules laid down pursuant to Article 15(c) and using the form laid down pursuant with Article 15(d).

Article 10 allows the exchange of information with non-EU countries, subject to the agreement of the authorities that originally collected the information and compliance with all national and Union provisions regarding the transfer of personal data to non-EU countries.

Article 11 specifies that the competent authorities who obtain data under this Regulation shall act as controllers of the personal data obtained and that all information obtained under the Regulation is covered by professional secrecy and must be adequately protected. Information can be disclosed only where national legal provisions allow, notably in connection with ongoing legal proceedings.

Article 12 restricts the processing of personal data for the purposes of the prevention and the combating of criminal activity. The article also lays down the retention period for declaration data and determines it to be five years.

Article 13 lays down penalties for non-compliance with the obligation to declare. A new element is the obligation on Member States to keep the Commission informed of any amendments to their penalty provisions after the Regulation has entered into force. Member States are free to determine the penalties, but any penalty applies only to failure to declare under the Regulation and should be effective, proportionate and dissuasive in that respect. When imposing a penalty for failure to declare, authorities should not assume or take into account the absence or presence of underlying predicate offences with regard to the undeclared cash. The penalty does not avert the need for a separate investigation into the possibility of criminal offences, which is outside the scope of the Regulation. In determining the penalties for failure to declare, Member States should take account of relevant jurisprudence from the Court of Justice of the European Union and the European Court of Human Rights.

Article 14 confers on the Commission the power to adopt delegated acts so as to enable it to amend the Annex, which lists the components of the definition of ‘cash’. Such flexibility is required in order to future-proof the Regulation and enable policy-makers quickly to

react to new criminal trends and take account of evolving international standards and best practices. Any amendment will be subject to demonstrated necessity, a proportionate approach that ensures that competent authorities will be able, in practice, to enforce any additions, and oversight by the European Parliament and the Council, who have the authority to object after being notified of the adoption of such an act and may revoke the delegated authority at any time. Before adopting a delegated act the Commission shall consult Member States national experts in the field of cash control in order to obtain their input.

Article 15 confers implementing powers on the Commission to lay down measures to ensure the uniform application of controls by establishing, *inter alia*, the templates for declaration and disclosure forms; the technical rules for the exchange of information (which shall include the electronic system to be used) and the rules and the format for the provision by Member States to the Commission of anonymous statistical information on declarations and infractions.

Article 16 establishes a Cash Control Committee for which national experts will be designated by the Member States and which will assist the Commission in the establishment of implementing acts.

Article 17 concerns the provision of information to the Commission and specifies that Member States shall provide information regarding the competent authorities for the application of the Cash Control Regulation and the penalties laid down for failure to declare. Member States should also keep the Commission updated about any subsequent modifications. Anonymous statistical data should also be provided to the Commission at a frequency to be determined by implementing provisions but at least once per year.

Article 18 concerns measures of evaluation and specifies that a report shall be sent by the Commission to the European Parliament and the Council five years after the entry into force of the Regulation and every five years thereafter.

Article 19 repeals Regulation (EC) No 1889/2005.

Article 20 specifies that the Regulation shall enter into force on the 20<sup>th</sup> day following its adoption. Its entry into force shall take place as determined by the legislator.

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**

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>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</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).

successive measures. Currently, provisions for the prevention of money laundering are laid down in Directive (EU) 2015/849 of the European Parliament and of the Council<sup>4</sup>.

- (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 Council<sup>5</sup>. 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.
- (5) Regulation (EC) No 1889/2005 implemented within the Community the international standards on combating money laundering and terrorism financing developed by the Financial Action Task Force (FATF).
- (6) Directive (EU) 2015/849 identifies and describes a number of criminal activities the proceeds of which may be subject to money laundering or used for the financing of terrorism. Often, the proceeds of those criminal activities are, for the purpose of their being laundered or used for terrorism financing, transported across the external border of the Union. This Regulation should take this into account and lay down a system of rules that, apart from contributing to the prevention of money laundering and terrorism financing as such, facilitate the detection and investigation of the criminal activities identified in Directive (EU) 2015/849.
- (7) The FATF, which was established by the G7 summit in Paris in 1989, is an inter-governmental body that sets standards and promotes effective implementation of legal, regulatory and operational measures to combat money laundering, terrorist financing and other related threats to the integrity of the international financial system. Several Member States are members of the FATF or represented in the FATF through regional bodies. The Union is represented in the FATF by the Commission and has committed itself to the effective implementation of its recommendations. On FATF-level, Recommendation 32 on cash couriers specifies that rules should be in place with regard to adequate controls on cross-border movements of cash.
- (8) As a result of the advancing insights into the mechanisms used for transferring illicitly acquired value across borders and the resulting changes implemented in the FATF Recommendations, the changes to the legal framework introduced by Directive (EU) 2015/849 as well as the development of new best practices and on the basis of the evaluation of existing legislation, the provisions of Regulation (EC) No 1889/2005 should reflect those developments. Considering the extensive nature of the amendments that would be required, that Regulation should be repealed and replaced with a new Regulation.
- (9) This Regulation does not affect Member States' ability to provide for additional national controls on movements of cash within the Union, provided that these controls are in accordance with the Union's fundamental freedoms, in particular with Articles 63 and 65 of the Treaty on the Functioning of the European Union.

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<sup>4</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 (OJ L 141, 5.6.2015, p. 73).

<sup>5</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).

- (10) This Regulation does not concern measures taken by the Union or Member States which restrict capital movements in case of serious difficulties for the operation of economic or monetary union under Article 66 of the Treaty on the Functioning of the European Union or in case of a sudden crisis in the balance of payments under Articles 143 and 144 of the same Treaty).
- (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.
- (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.
- (13) Bearer negotiable instruments are financial instruments that enable the physical holder to claim a payment of a financial amount without being registered or mentioned by name. They can be easily used to transfer considerable amounts of value and present salient similarities with currency in terms of risks for abuse, liquidity and anonymity.
- (14) Commodities used as highly liquid stores of value are goods that represent a high ratio between their value and volume and for which an easily accessible international trading market exists which allows them to be converted into currency whilst incurring only modest transaction costs. Such commodities are mostly presented in a standardised way that allows for quick verification of their value.
- (15) Prepaid cards are non-nominal cards storing monetary value or funds which can be used for payment transactions, for acquiring goods or services or for redemption of currency and which are not linked to a bank account. They are widely used for a variety of legitimate purposes and some of these instruments also present a clear social interest. As such prepaid cards are easily transferrable and can be used to transfer considerable value across external borders. It is therefore necessary to include prepaid cards in the definition of cash. This will allow for the possibility to extend the measures to certain types of prepaid cards if the evidence justifies it and with due regard to proportionality and practical enforceability.
- (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.

- (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.
- (18) Achieving the objectives of this Regulation requires that a number of standardised data elements regarding the movement of the cash such as the personal details of the owner, the recipient, the economic provenance and the intended use of the cash be recorded.
- (19) As regards the obligation to declare and the disclosure obligation, competent authorities should be vested with the power to carry out all requisite controls on persons, their luggage, the conveyance used to cross the external border and any unaccompanied consignment or receptacle crossing that border which may contain cash, or a means of transport carrying them. In the event of failure to comply with the obligations, the competent authorities should establish an *ex officio* declaration for subsequent communication of the relevant information to other authorities.
- (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.
- (21) That information should be passed on to the Financial Intelligence Unit of the Member State in question. Those units are designated as the hub elements in the fight against money-laundering and terrorist financing who receive and process information from various sources such as financial institutions and analyse it in order to determine if there are grounds for further investigation that may not be apparent to the competent authorities who collect the declarations and perform controls under this Regulation.
- (22) The detection of a sub-threshold amount in situations where there are indications of criminal activity is highly relevant in this context. Consequently, it should also be possible to share information relating to sub-threshold amounts with the competent authorities in other Member States if there are indications of criminal activity.
- (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 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.

- (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 [
- (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.
- (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.
- (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 requirements of Directive 95/46/EC of the European Parliament and of the Council<sup>6</sup> and Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>7</sup>.

- (28) For the purposes of the analysis carried out by the Financial Intelligence Units and in order to enable authorities in other Member States to control and enforce the obligation to declare, particularly with respect to declarants who have previously committed infractions against that obligation it is necessary that the declaration data is stored for a sufficiently long period so as to enable the competent authorities to effectively conduct investigations. Processing of personal data under this Regulation serves the same purposes as that under Directive (EU) 2015/849. Under this Directive, the Financial Intelligence Units retain data provided to them by "obliged entities" for five years. In order to control and enforce the obligation to declare effectively, the period of retention of declaration data should be aligned with that provided for under Directive (EU) 2015/849.
- (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.
- (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 Council<sup>8</sup>.
- (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

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<sup>6</sup> 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).

<sup>7</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>8</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).

Agreement on Better Law-Making of 13 April 2016.<sup>9</sup> 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.

- (32) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States, but, because of the transnational scale of money laundering and terrorism financing, and the specificities of the internal market and its fundamental freedoms, which can only be fully implemented by ensuring that no excessively disparate treatment based on national legislation is imposed on cash crossing the external border of the Union, can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.
- (33) This Regulation respects the fundamental rights and observes the principles recognised in Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, in particular Title II thereof.
- (34) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion<sup>10</sup>,

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 shall apply:
- (a) ‘cash’ means:
- currency;;
  - bearer-negotiable instruments referred to in Annex I;
  - commodities used as highly liquid stores of value referred to in Annex I;
  - prepaid cards referred to in Annex I;
- (b) ‘entering or leaving the Union’ means coming from a territory which is outside the territory covered by Article 355 of the Treaty on the Functioning of the European Union to the territory which is covered by Article 355 of that Treaty, or departing from a territory which is covered by Article 355 of that Treaty to a territory which is outside the territory covered by Article 355 of that Treaty;

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<sup>9</sup> Ref. to OJ [L 123/1]

<sup>10</sup> OJ C , , p. .

- (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 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;
  - (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;
  - (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;
  - (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) 'unaccompanied cash' means cash making up part of a consignment where the owner, sender or intended recipient of the cash does not travel with the consignment;
  - (i) 'criminal activity' means any of the activities listed in Article 3(4) of Directive (EU) 2015/849;
  - (j) 'Financial Intelligence Unit' means the entity established in the Member State for the purposes of implementing Article 32 of Directive (EU) 2015/849.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 14 in order to amend Annex I to take account of new trends in money laundering or terrorist financing, as defined in paragraphs 3, 4 and 5 of Article 1 of Directive (EU) 2015/849, or best practices in preventing money laundering or terrorist financing or to prevent the use by criminals of bearer-negotiable instruments, commodities used as highly liquid stores of value or prepaid cards to circumvent the obligations laid down in Articles 3 and 4.

*Article 3*  
*Obligation to declare*

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.
2. The declaration referred to in paragraph 1 shall provide the details of:
- (a) the declarant, including full name, address, date and place of birth, and nationality;
  - (b) the owner of the cash, including full name, address, date and place of birth, and nationality;

- (c) the intended recipient of the cash, including full name, address, date and place of birth, and nationality;
  - (d) the amount and nature of the cash;
  - (e) the provenance and intended use of the cash;
  - (f) the transport route;
  - (g) the means of transport.
3. The information shall be provided in writing or electronically using the form laid down pursuant to Article 15(a). An endorsed copy shall be delivered to the declarant upon request.

*Article 4*  
*Disclosure obligation*

1. Where unaccompanied cash of a value of EUR 10 000 or more is entering or leaving the Union, the competent authorities of the Member State through which the cash is entering or leaving may, following a risk analysis, require the sender or the recipient or their representative to make a disclosure declaration. The obligation to declare shall not be deemed to be fulfilled if the information provided is incorrect or incomplete or the cash is not made available for control.
2. The disclosure declaration referred to in paragraph 1 shall provide the details of:
- (a) the declarant, including full name, address, date and place of birth, and nationality;
  - (b) the owner of the cash, including the full name, address, date and place of birth and nationality;
  - (c) the sender of the cash, including the full name, address, date and place of birth and nationality;
  - (d) the recipient or intended recipient of the cash, including the full name, address, date and place of birth and nationality;
  - (e) the amount and nature of the cash;
  - (f) the provenance and intended use of the cash.
3. The information shall be provided in writing or electronically using the form laid down pursuant to Article 15(a). An endorsed copy shall be delivered to the declarant upon request.

*Article 5*  
*Powers of the competent authorities*

1. In order to verify compliance with the obligation laid down in Article 3, the competent authorities shall have the power to carry out, in accordance with the conditions laid down in national legislation, controls on natural persons, their baggage and their means of transport.
2. For the purposes of implementing the disclosure obligation laid down in Article 4, the competent authorities shall have the power to carry out, in accordance with the

conditions laid down in national legislation, controls on any consignments, receptacles or means of transport which may contain unaccompanied cash.

3. If the obligation under Article 3 or the disclosure obligation under Article 4 has not been fulfilled, the competent authorities shall establish in writing or in an electronic form an *ex officio* declaration which shall contain to the extent possible the details listed in Article 3(2) or Article 4(2), as the case may be.
4. The controls shall be based primarily on risk analysis, with the purpose of identifying and evaluating the risks and developing the necessary counter-measures, and shall be performed within a common risk management framework in accordance with the criteria laid down pursuant to Article 15(b).

#### *Article 6* *Sub-threshold amounts*

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.
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.

#### *Article 7* *Temporary retention of cash by competent authorities*

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

*Article 8*  
*Provision of information to the Financial Intelligence Unit*

1. The competent authorities shall record the information obtained under Articles 3, 4, 5(3) or 6 and transmit it to the Financial Intelligence Unit of the Member State in which it was obtained, in accordance with the technical rules laid down pursuant to Article 15(c).
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.

*Article 9*  
*Exchange of information between competent authorities and with the Commission*

1. The competent authority of each Member State shall, by electronic means, communicate the following information to the competent authorities of all the other Member States:
  - (a) *ex officio* declarations established under Article 5(3);
  - (b) information collected under Article 6;
  - (c) declarations obtained under Article 3 or 4, where there are indications that the cash is related to criminal activity;
  - (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.
3. The competent authority shall communicate the information referred to in paragraph 1 and 2 in accordance with the technical rules laid down pursuant to Article 15(c) and using the form laid down pursuant to Article 15(d).
4. The information referred to in paragraphs 1 and 2 shall be communicated as soon as possible, and no later than one month after the date on which it was collected.

*Article 10*  
*Exchange of information with 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 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:
  - (a) *ex officio* declarations established under Article 5(3);
  - (b) information collected under Article 6;
  - (c) declarations obtained under Article 3 or 4, where there are indications that the cash is related to money laundering or terrorist financing.

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

#### *Article 11*

##### *Professional secrecy and confidentiality and data security*

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

#### *Article 12*

##### *Personal data protection and Retention periods*

1. The competent authorities shall act as controllers of the personal data they obtained in accordance with Articles 3, 4 and 6.
2. The processing of personal data on the basis of this Regulation shall take place only for the purposes of the prevention and fight against criminal activities. .
3. The personal data obtained in accordance with Articles 3, 4 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.
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.

#### *Article 13*

##### *Penalties for non-compliance*

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.

#### *Article 14*

##### *Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 2(2) shall be conferred on the Commission for an indeterminate period of time from ...\*
3. The delegation of power referred to in Article 2(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 2(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

*Article 15*  
*Conferral of implementing powers*

The Commission shall adopt, by means of implementing acts, measures to ensure the uniform application of controls by competent authorities, including:

- (a) the template of the declaration and disclosure forms referred to in Articles 3(3) and 4(3);
- (b) the criteria of the common risk management framework referred to in Article 5(4);
- (c) the technical rules for the exchange of information under Articles 8 and 9, including the establishment of an appropriate electronic system;
- (d) the template of the form for the communication of information referred to in Article 9(3);
- (e) the rules and the format to be used by Member States for providing to the Commission anonymous statistical information on declarations and infractions pursuant to Article 17.

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

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

*Article 16*  
*Committee procedure*

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

*Article 17*  
*Communication of information relating to the implementation of this Regulation*

1. No later than six months after the date of application of this Regulation, Member States shall communicate to the Commission:
  - (a) the list of competent authorities under Article 2(1);
  - (b) the details of the penalties introduced pursuant to Article 13;
  - (c) anonymised statistical information regarding declarations, controls and infractions, using the format laid down pursuant to Article 15(e).
2. Member States shall notify the Commission of any subsequent changes to the information referred to in points (a) and (b) of paragraph 1 at the latest one month after those changes take effect.

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

3. The Commission shall make the information referred to in paragraph 1(a) and any subsequent changes to that information pursuant to paragraph 2 available to all the other Member States.

*Article 18*  
*Evaluation*

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.

*Article 19*  
*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 in accordance with the correlation table in Annex II.

*Article 20*  
*Entry into force and application*

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

It shall apply from...\*

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

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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\* Two years after the entry into force of the basic legislative act or any other date set by the legislator.