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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
- Mandate for negotiation with the European Parliament

Delegations will find in the annex the Presidency compromise text on the above Proposal, which was approved by qualified majority at the meeting of the Customs Attachés on 26 June 2017.

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

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 Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C , , p. .

² OJ C , , p. .

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/EEC³, 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 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 Council⁴.

³ 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).

⁴ 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).

- (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 Council⁵. 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.

⁵ Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community (OJ L 309, 25.11.2005, p. 9).

- (7) 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 under their national law for additional national controls on movements of cash within the Union, provided that these controls are in accordance with the Union's fundamental freedoms, in particular with Article 65 of the Treaty on the Functioning of the European Union.

- (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 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 or providing access to monetary value or funds which can be used for payment transactions, for acquiring goods or services or for redemption of currency and which are not linked to a bank account. They are widely used for a variety of legitimate purposes and some of these instruments also present a clear social interest. As such prepaid cards are easily transferrable and can be used to transfer considerable value across external borders, it is therefore necessary to include prepaid cards in the definition of cash. This will allow for the possibility to extend the measures to certain types of prepaid cards if the evidence justifies it and with due regard to proportionality and practical enforceability, in accordance with the technology available.
- (16) For the prevention of money laundering and the financing of terrorism, an obligation to declare should be imposed on natural persons entering or leaving the Union. In order not to restrict free movement unduly or overburden citizens and authorities with administrative formalities, the obligation should be subject to a threshold of EUR 10 000 or its equivalent in commodities used as a highly liquid store of value, bearer-negotiable instruments, prepaid cards' worth or other currencies. It should apply to 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, such as cash entering or leaving the Union in postal packages, courier shipments, unaccompanied luggage or containerised cargo, the competent authorities should have the power to require the sender or the recipient to make a disclosure declaration, systematically or on a case by case basis, in accordance with national procedures. Such disclosure should cover a number of elements, such as the origin, destination, economic provenance and intended use of the cash, which are not covered by the usual documentation submitted to customs, such as shipping documents and customs declarations. The disclosure obligation should be subject to a threshold identical to that 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 record 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 and, with regard to unaccompanied cash, on the recipient or the sender, such as their identity details and nationality.

- (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 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 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 competent authorities of other Member States for the purpose of this Regulation. Such exchange of data is proportionate considering that offenders against the obligation to declare who have been apprehended in one Member State would be likely to select another Member State of entry or exit where the competent authorities would have no knowledge of their earlier infractions. The exchange of such information should be made mandatory, in order to ensure consistent application across Member States. Where there are indications that the cash is related to criminal activity which could adversely affect the financial interests of the Union that information should also be made available to the Commission. In order to achieve better the preventive and dissuasive objectives of this Regulation with regards to the circumvention of the obligation to declare, anonymised risk information and risk analysis results should also mandatorily be exchanged between Member States and with the Commission, in accordance with standards defined by implementing act.
- (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 originally obtained the information. The Commission should be informed of any occurrence of information exchange 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 (EU) 2016/680 of the European Parliament and of the Council⁶, Regulation (EU) 2016/679⁷ and Regulation (EU) No 45/2001 of the European Parliament and of the Council⁸.

⁶ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 04.05.2016, p. 89)

⁷ 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, 04.05.2016, p. 1)

⁸ 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).

- (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, in line with the Anti Money Laundering Directive⁹. Processing of personal data under this Regulation serves the same purposes as that under Directive (EU) 2015/849. In order for the FIUs to effectively carry out their analysis, and for the competent authorities to control and enforce the obligation to declare effectively, the period of retention of declaration data should 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.

⁹ 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).

- (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 Council¹⁰.
- (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 or on prepaid cards, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of modifications to this Annex. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.¹¹ 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.

¹⁰ 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).

¹¹ OJ L 123, 12.5.2016, p.1

- (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 opinion¹²,

¹² OJ L 8, 12.01.2001, p. 1

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;
 - commodities used as highly liquid stores of value;
 - prepaid cards;
 - (b) 'entering or leaving the Union' means coming from a territory which is outside the territory covered by Article 355 of the Treaty on the Functioning of the European Union to the territory which is covered by Article 355 of that Treaty, or departing from that territory;
 - (c) 'currency' means banknotes and coins that are in circulation as a medium of exchange or that have been in circulation as a medium of exchange and can still be exchanged through financial institutions or central banks for banknotes and coins that are in circulation as a medium of exchange;

- (d) 'bearer-negotiable instruments' means instruments other than currency which entitles their holder to claim a financial amount upon presentation of the instruments without having to prove their identity or entitlement to that amount. These instruments are:
- (i) traveller's cheques;
 - (ii) cheques, promissory notes or money orders that are either in bearer form, signed but with the payee's name omitted, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery;
- (e) 'commodities used as highly liquid stores of value' means goods that present a high ratio between their value and their volume and that can easily be converted into currency through accessible trading markets whilst incurring only modest transaction costs. Such commodities are referred to in Annex I;
- (f) 'prepaid card' means a non-nominal card storing or providing access to monetary value or funds which can be used for payment transactions, for acquiring goods or services or for redemption of currency and which is not linked to a bank account. Such prepaid cards are referred to in Annex I;
- (g) 'competent authorities' means the customs authorities of the Member States as well as any other authorities empowered by the Member States to apply this Regulation;
- (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 commodities used as highly liquid stores of value and of prepaid cards to circumvent the obligations laid down in Articles 3 and 4.

Article 3

Obligation to declare accompanied cash

1. Any 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 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, at the request of these authorities, 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, nationality and identification document number;
 - (b) the owner of the cash, including for natural persons full name, address, date and place of birth, and identification document number, where available, and nationality, and for legal persons full name, address and where available registration number or Value Added Tax registration number;
 - (c) the intended use and, where available, the recipient of the cash, including for natural persons full name, address, date and place of birth, identification document number, where available, and nationality, and for legal persons full name, address and where available registration number or Value Added Tax registration number;

- (d) the nature, and amount or value;
 - (e) the economic provenance 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). A-copy 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 may request the sender or the recipient, as the case may be, to make a disclosure declaration. The obligation to declare shall not be deemed to be fulfilled if the information provided is incorrect or incomplete.
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, nationality and identification document number;
 - (b) the owner and, where available, the sender of the cash, including for natural persons full name, address, date and place of birth, and identification document number, where available, and nationality, and for legal persons full name, address and where available registration number or Value Added Tax registration number;
 - (c) the intended use and, where available, the recipient of the cash including for natural persons, full name, address, date and place of birth, identification document number, where available, and nationality, and for legal persons full name, address and where available registration number or Value Added Tax registration number;

- (d) the nature, and amount or value of the cash;
 - (e) the economic provenance of the cash.
3. The information shall be provided in writing or electronically using the form laid down pursuant to Article 15(a). A copy shall be delivered to the declarant upon request.

Article 5

Powers of the competent authorities

1. In order to verify compliance with the obligation laid down in Article 3, the competent authorities shall have the power to carry out, in accordance with the conditions laid down in national legislation, controls on natural persons, their baggage and means of transport.
2. For the purposes of implementing the disclosure obligation laid down in Article 4, the competent authorities shall have the power to carry out, in accordance with the conditions laid down in national legislation, controls on any consignments, receptacles or means of transport which may contain unaccompanied cash.
3. If the obligation 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 and shall be performed within a common risk management framework in accordance with the criteria laid down pursuant to Article 15(b).
5. The powers conferred on the competent authorities in this Article shall also extend to Article 6.

Article 6

Sub-threshold amounts

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

Article 7

Temporary retention of cash by competent authorities

1. The competent authorities may temporarily retain cash by an administrative decision in accordance with the conditions laid down in national legislation where:
 - (a) the obligation in Article 3 or 4 is not complied with; or
 - (b) there are indications that the cash, irrespective of the amount, is related to criminal activity.
2. The administrative decision referred to in paragraph 1 shall be accompanied by a statement of reasons which is communicated to the person affected at the time it is issued.
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 90 days. If no determination is made regarding further retention of the cash within that period or if a determination is made that the circumstances of the case do not warrant further retention, the cash shall immediately be made available to 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 30 days after the date on which it was collected.

Article 9

Exchange of information between competent authorities and with the Commission

1. The competent authority of each Member State shall, by electronic means, communicate the following information to the competent authorities of all the other Member States:
 - (a) *ex officio* declarations established under Article 5(3);
 - (b) information collected under Article 6;
 - (c) declarations obtained under Article 3 or 4, where there are indications that the cash is related to criminal activities;
 - (d) anonymised risk information and risk analysis results.
2. Where there are indications that the cash is related to criminal activity which could adversely affect the financial interests of the Union, the information referred to in paragraph 1 shall also be transmitted to the Commission.
3. The competent authority shall communicate the information referred to in paragraph 1 and 2 in accordance with the technical rules laid down pursuant to Article 15(c) and using the form laid down pursuant to Article 15(d).

4. The information referred to in paragraphs 1 , letters (a), b) and (c) and 2 shall be communicated as soon as possible, and no later than 30 days after the date on which it was collected.
5. The information and results referred to in paragraph 1 , letter (d) shall be communicated on a six-monthly basis.

Article 10

Exchange of information with third countries

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

Article 11

Professional secrecy and confidentiality and data security

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

Article 12

Personal data protection and Retention periods

1. The competent authorities shall act as controllers of the personal data they obtained in accordance with Articles 3, 4, 5 (3), and 6.
2. The processing of personal data on the basis of this Regulation shall take place only for the purposes of the prevention and fight against criminal activities.
3. The personal data obtained in accordance with Articles 3, 4, 5 (3), and 6 shall be accessed only by duly authorised staff of the competent authorities and be adequately protected against unauthorized access or communication. Unless otherwise provided for in Articles 8, 9, and 10, it may not be disclosed or communicated without the written 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, 5 (3), and 6 shall be stored by the competent authorities and the Financial Intelligence Unit for a period of five years after the date on which it was collected. At the expiry of this period it shall be deleted or rendered anonymous.
5. The period of retention may be extended once with another period which shall not exceed five additional years¹³ if,
 - after they have carried out a thorough assessment of the necessity and proportionality of such further retention and consider it to be justified for the fulfilment of their tasks with respect to the fight against money laundering or terrorist financing, the Financial Intelligence Unit determines that further retention is required or;

¹³ Period aligned with Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015. To be aligned with amending Directive currently under negotiation.

- 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 laid down under this Regulation, competent authorities determine that further retention is required.

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 or to disclose as laid down in Articles 3 and 4. Such penalties shall be effective, proportionate and dissuasive.

Article 14

Exercise of the delegation

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

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

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, as follows:

- (a) the template of the declaration and disclosure forms referred to in Articles 3(3) and 4(3);
- (b) the criteria of the common risk management framework referred to in Article 5(4), and more specifically, the establishment of risk criteria, standards, and priority control areas, based on the information exchanged pursuant to Article 9(1)(d), and Union and international policies and best practices.
- (c) the technical rules for the exchange of information under Articles 8 and 9, via the Customs Information System, as laid down in Article 23 of Regulation (EC) No 515/97;
- (d) the template of the form for the communication of information referred to in Article 9(3);
- (e) the rules and the format to be used by Member States for providing to the Commission anonymous statistical information on declarations and infractions pursuant to Article 17.

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

Article 16

Committee procedure

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

Article 17

Communication of information relating to the implementation of this Regulation

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

1. This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.
2. Article 15 shall apply from the date of entry into force of this Regulation. All other Articles shall apply from [...]*.
3. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

* 30 months after the date of entry into force.

ANNEXES

to the

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

ANNEX I

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

1. The following commodities used as highly liquid stores of value *shall be considered cash in accordance with Article 2(1)(a)(iii)*:
 - (a) coins with a gold content of at least 90 %;
 - (b) bullion such as bars, nuggets or clumps with a gold content of at least 99,5 %.
2. The following prepaid cards shall be considered cash in accordance with Article 2(1) (f):

[*]

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

ANNEX II

Correlation Table

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