

Procedure file

Basic information

COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	2016/0413(COD)	Procedure completed
Controls on cash entering or leaving the Union Repealing Regulation (EC) No 1889/2005 2002/0132(COD)		
Subject 2.50.04.02 Electronic money and payments, cross-border credit transfers 7.30.30.08 Capital outflow, money laundering		

Key players

European Parliament	Joint Committee Responsible	Rapporteur	Appointed
	 Economic and Monetary Affairs  Civil Liberties, Justice and Home Affairs	 DELVAUX Mady	29/06/2017
		 LÓPEZ AGUILAR Juan Fernando	29/06/2017
		Shadow rapporteur	
		 MARTUSCIELLO Fulvio	
		 RADEV Emil	
		 DALTON Daniel	
		 LUCKE Bernd	
		 JEŽEK Petr	
		 TORVALDS Nils	
		 JOLY Eva	
		 KAPPEL Barbara	
	 Economic and Monetary Affairs  Civil Liberties, Justice and Home Affairs		
Committee for opinion	Rapporteur for opinion	Appointed	
JURI Legal Affairs	The committee decided not to give an opinion.		

Council of the European Union	Council configuration	Meeting	Date
	<u>Economic and Financial Affairs ECOFIN</u>	<u>3639</u>	02/10/2018
European Commission	Commission DG	Commissioner	
	<u>Taxation and Customs Union</u>	MOSCOVICI Pierre	

Key events			
21/12/2016	Legislative proposal published	<u>COM(2016)0825</u>	Summary
19/01/2017	Committee referral announced in Parliament, 1st reading		
06/07/2017	Referral to joint committee announced in Parliament		
04/12/2017	Vote in committee, 1st reading		
04/12/2017	Committee decision to open interinstitutional negotiations with report adopted in committee		
08/12/2017	Committee report tabled for plenary, 1st reading	<u>A8-0394/2017</u>	Summary
11/12/2017	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
13/12/2017	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
03/09/2018	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	<u>PE626.978</u>	
11/09/2018	Debate in Parliament		
12/09/2018	Results of vote in Parliament		
12/09/2018	Decision by Parliament, 1st reading	<u>T8-0338/2018</u>	Summary
02/10/2018	Act adopted by Council after Parliament's 1st reading		
23/10/2018	Final act signed		
23/10/2018	End of procedure in Parliament		
12/11/2018	Final act published in Official Journal		

Technical information			
Procedure reference	2016/0413(COD)		
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)		
Procedure subtype	Legislation		
Legislative instrument	Regulation		
	Repealing Regulation (EC) No 1889/2005 <u>2002/0132(COD)</u>		

Legal basis	Treaty on the Functioning of the EU TFEU 033; Treaty on the Functioning of the EU TFEU 114; Rules of Procedure EP 58
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	CJ12/8/10432

Documentation gateway

Legislative proposal	COM(2016)0825	21/12/2016	EC	Summary
Document attached to the procedure	SWD(2016)0470	23/12/2016	EC	
Document attached to the procedure	SWD(2016)0471	23/12/2016	EC	
Economic and Social Committee: opinion, report	CES0342/2017	26/04/2017	ESC	
Committee draft report	PE610.703	29/09/2017	EP	
Amendments tabled in committee	PE612.270	26/10/2017	EP	
Committee report tabled for plenary, 1st reading/single reading	A8-0394/2017	08/12/2017	EP	Summary
Text agreed during interinstitutional negotiations	PE626.978	27/06/2018	EP	
Text adopted by Parliament, 1st reading/single reading	T8-0338/2018	12/09/2018	EP	Summary
Draft final act	00049/2018/LEX	24/10/2018	CSL	
Commission response to text adopted in plenary	SP(2018)724	13/11/2018	EC	

Final act

[Regulation 2018/1672](#)
[OJ L 284 12.11.2018, p. 0006](#) Summary

[Corrigendum to final act 32018R1672R\(02\)](#)
[OJ L 435 23.12.2020, p. 0079](#)

Final legislative act with provisions for delegated acts

Controls on cash entering or leaving the Union

PURPOSE: to provide 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.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the first Cash Control Regulation was adopted in 2005 ([Regulation \(EC\) No 1889/2005](#)) of the European Parliament and of the Council on controls of cash entering or leaving the Community). This Regulation complemented the provisions of Council Directive 91/308/EEC on the prevention of the use of the financial system for the purpose of money laundering 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.

The evaluation of the first CCR showed that, while the overall performance of the Regulation was good, a number of areas posed problems and should be strengthened to improve its functioning:

- the imperfect coverage of cross-border cash movements: there is no provision for cash that is sent in post, freight or courier shipments;
- difficulties in the exchange of information between authorities: 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;
- the impossibility for competent authorities to temporarily detain sub-threshold amounts;
- the imperfect definition of cash: 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. 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;

- divergent penalties for non-declaration in Member States Penalties for failure to declare cash;
- 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.

This proposal brings the CCR into line with international norms and best practices in the fight against money laundering and the financing of terrorism. It implements a number of action points set out in the [Commissions Communication](#) on an action plan for strengthening the fight against terrorist financing.

IMPACT ASSESSMENT: an [impact assessment](#) was carried out and the Regulatory Scrutiny Board delivered a positive opinion. 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.

CONTENT: 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](#).

The new proposed Regulation:

- extends the definition of cash: in order to take account of changes in behaviour by criminals seeking to avoid the obligation to declare, it establishes four broad categories: (i) currency, (ii) bearer-negotiable instruments, (iii) commodities used as highly liquid stores of value and, (iv) prepaid cards;
- 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 a specific form) and the data that will need to be provided;
- 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;
- 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, any action is subject to a sufficiently high threshold and requires indications of criminal activity;
- 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;
- requires the competent authorities to actively transmit the information collected to the national Financial Intelligence Unit (FIU) of the Member States in which it was collected (merely making this information at the disposal of the FIU is insufficient);
- improves 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.);
- 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;
- provides for divergent penalties for non-declaration in Member States: 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.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

Controls on cash entering or leaving the Union

The Committee on Economic and Monetary Affairs and the Committee on Civil Liberties, Justice and Home Affairs adopted the report prepared jointly by Mady DELVAUX (S&D, LU) and Juan Fernando LÓPEZ AGUILAR (S&D, ES) on the proposal for a regulation of the European Parliament and of the Council on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005.

The committee recommended that the European Parliaments position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows.

Key concepts: the term cash shall include four categories: cash, bearer negotiable instruments, highly liquid value goods and certain types of anonymous prepaid cards. Members clarified the term unaccompanied cash to mean cash making up part of a consignment without a carrier. Carrier shall mean any natural person entering or leaving the Union carrying cash on his or her person, in his or her luggage or in the conveyance in which he or she cross the external border.

Obligation to declare unaccompanied cash: any carrier carrying at least EUR 10 000 in liquid on their person, in their luggage or in the conveyance in which they cross the external border shall be required to declare the amount to the competent authorities of the Member State. They shall be required to make the cash available to the competent authorities for control.

Members extended the information to be indicated in the declaration and specified their nature, both for natural persons (bearer, owner, recipient) and for legal persons. The declaration shall contain information on the value of cash, its source and its intended use. Declarants shall always be able to obtain a written copy.

Disclosure obligation for unaccompanied cash: the competent authorities of the Member State through which the cash is entering or leaving may, following a risk analysis, require the sender or the recipient or their representative to make a disclosure declaration, within a set deadline of no more than 30 days. The competent authorities may retain the cash until the sender, recipient or its representative makes the disclosure.

Control powers on the competent authorities: controls shall be based primarily on a risk analysis, with the purpose of identifying and evaluating the risks and developing the necessary countermeasures. The risk analysis shall not prevent competent authorities from proceeding with spontaneous controls or controls based on specific information obtained by another authority.

The Commission may adopt delegated acts with respect of detailed rules for the carrying out of controls by competent authorities, taking into account the common risk management framework as defined in [Regulation \(EU\) No 952/2013](#) and the risk assessment analysis carried out

Sharing of data: for the purpose of ensuring that the Financial Intelligence Units have prompt access to the information necessary for the conduct of their investigations, the interconnection of the Customs Information System and the decentralised computer network FIU.net shall be encouraged.

Members suggested that Member States be required to provide information no later than four working days after the date of collection, instead of one month as required by the proposed regulation.

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

Exchange of information with third countries: the Commission should be informed of any exchange of information with third countries pursuant to this Regulation and should report thereon on a yearly basis to the European Parliament.

Personal data protection and retention periods: the processing of personal data on the basis of this Regulation shall take place only for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

If there are indications that the cash is related to a criminal activity, personal data obtained shall be stored by the competent authorities and the Financial Intelligence Unit for no longer than five years. In such case the reasons for this longer storage shall be justified and recorded. If no decision is taken on the continued storage that data shall be erased automatically after three years.

Penalties for non-compliance: Member States shall aim at introducing a coordinated set of penalties across the Union. To achieve this aim, the Commission shall, if appropriate, present a legislative proposal.

Reporting on the implementation of the Regulation: the Commission shall publish an annual report on the statistical information to estimate the scale and sums of smuggled cash. As soon as the Regulation is implemented, the Commission, in cooperation with the Member States and the European Data Protection Supervisor, shall carry out awareness raising campaigns aimed at informing Union citizens and third-country nationals, as well as legal persons, of the obligation to declare cash when crossing borders.

Controls on cash entering or leaving the Union

The European Parliament adopted by 625 votes to 39, with 34 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005.

The proposed Regulation provides for a system of controls on 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.

The European Parliaments position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

Key definitions: cash shall mean: currency; bearer-negotiable instruments; commodities used as highly-liquid stores of value; prepaid cards.

The term 'entering or leaving the Union' should be defined by reference to the territory of the Union as defined in Article 355 of the Treaty on the Functioning of the European Union (TFEU) in order to ensure that this Regulation has the broadest possible scope of application and that no areas would be exempt from its application and present opportunities to circumvent applicable controls.

Reporting and disclosure obligation: any holder carrying at least EUR 10 000 in cash on their person, in his luggage or in their means of transport would be required to declare the sum to the competent authorities of the Member State through which he enters or leaves the Union and to make it available to them for control purposes.

Where unaccompanied cash of a value of EUR 10 000 or more is entering or leaving the Union, the competent authorities of the Member State through which the cash is entering or leaving the Union may require the sender or the recipient of the cash, or a representative thereof, as the case may be, to make a disclosure declaration within a deadline of 30 days. The competent authorities may detain the cash until the sender or the recipient, or a representative thereof, makes the disclosure declaration.

Parliament has extended the number of items of information to be included in the declaration - whether or not accompanied by cash - and has specified their nature, both for natural persons (declarant, owner, sender, and recipient) and for legal persons. The declaration shall therefore contain information:

- on the contact details, nationality and number of an identity document or, where the owner is a natural person, or the full name, contact details, including address, registration number and, where available, Value Added Tax (VAT) identification number, where the owner is a legal;
- on the value of cash, its provenance and its intended use.

Sub-threshold amounts suspected to be related to criminal activity: where the competent authorities detect a carrier with an amount of cash below the threshold and that there are indications that the cash is related to criminal activity, they shall be able to record:

- in the case of accompanied cash, the carrier, including full name, contact details, including address, date and place of birth, nationality and identification document number; the nature and the amount or value of the cash; the economic provenance and its intended use;
- in the case of unaccompanied cash, information on the declarant, owner, sender and the intended recipient or recipient of the cash, including full name and surname/denomination, contact details, information on the nature and amount or value of the cash, its economic provenance and its intended use.

Provision of information: the competent authorities shall record the information obtained and transmit it to the financial intelligence unit (FIU) of the Member State in which it was obtained. Member States shall ensure that the FIU of the Member State in question exchange such information with the relevant FIUs of the other Member States.

Temporary detention of cash by competent authorities: the period of temporary detention shall not exceed 30 days. After the competent authorities carry out a thorough assessment of the necessity and proportionality of a further temporary detention, they may decide to extend

the period of temporary detention to a maximum of 90 days

Data processing: in order for the FIU to effectively carry out their analysis, the period for the retention of data contained in declarations made under this Regulation should not exceed five years with a possible further extension, after a thorough assessment of the necessity and proportionality of such further retention, which should not exceed three additional years.

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

Evaluation: no later than three years after the entry into force of the Regulation and every five years thereafter, the Commission shall submit a report assessing in particular: (i) whether other assets should be included within the scope of the Regulation; (ii) whether the procedure for disclosing unaccompanied cash is effective; and (iii) whether the threshold for unaccompanied cash should be amended.

The Commission shall assess, by 1 June 2019, the possibility of setting up a common mechanism to combat money laundering and terrorist financing.

Controls on cash entering or leaving the Union

PURPOSE: to improve controls of cash entering or leaving the EU in order to better detect terrorist financing, money laundering and other criminal activities in Europe.

LEGISLATIVE ACT: Regulation (EU) 2018/1672 of the European Parliament and of the Council on controls of cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005.

CONTENT: The Regulation provides for a system of controls on cash entering or leaving the Union to complement the legal framework for the prevention of money laundering and terrorist financing set out in Directive (EU) 2015/849.

The new legislative act replacing Regulation (EC) No 1889/2005 is necessary to take into account the fact that terrorists and criminals have managed to find ways to circumvent the rules on cash controls. Its objective is to ensure that EU legislation incorporates the latest developments in international standards against money laundering and terrorist financing developed by the Financial Action Task Force (FATF).

The new Regulation does not affect the ability of Member States to provide, under their national law, for additional national controls on movements of cash within the Union, provided that those controls are in accordance with the Union's fundamental freedoms.

Scope and key definitions

The definition of the term cash has been extended to cover not only banknotes, but also other commodities used as highly-liquid stores of value, travellers' cheques, prepaid cards and gold.

The scope of the Regulation is also extended to include cash sent by the post office, by freight or carrier.

Reporting and disclosure obligation

Under the new rules, any holder carrying at least EUR 10 000 in cash on their person, in his luggage or in their means of transport would be required to declare the sum to the competent authorities of the Member State through which he enters or leaves the Union and to make it available to them for control purposes.

If the cash is to be sent in postal packages, consignments by courier, unaccompanied luggage or containerised cargo (unaccompanied cash), Member State through which the cash enters or leaves may require the sender or recipient or their representative to make a disclosure declaration within a fixed period of time not exceeding 30 days. The competent authorities may withhold cash until the declaration is made.

The authorities may control any consignment, container or means of transport likely to contain unaccompanied cash.

Information to be included in the declaration

The new Regulation extends the number of items of information to be included in the declaration - whether or not accompanied by cash - and has specified their nature, both for natural persons (declarant, owner, sender, and recipient) and for legal persons.

The declaration shall therefore contain information:

- on the contact details, nationality and number of an identity document or, where the owner is a natural person, or the full name, contact details, including address, registration number and, where available, Value Added Tax (VAT) identification number, where the owner is a legal;
- on the value of cash, its provenance and its intended use.

When cash of less than EUR 10 000 is discovered but there is evidence that it may be related to criminal activity, the competent authorities may also record information on the carrier, the owner and, where applicable, the intended recipient, its economic provenance and the intended use.

Temporary detention of cash by the competent authorities

The duration of the temporary detention may not exceed 30 days. However, the competent authorities may decide to extend the period of temporary detention to a maximum of 90 days.

Transmission and exchange of information

The competent authorities shall record the information obtained and transmit it to the financial intelligence unit (FIU) of the Member State in question. The latter shall ensure that the FIU transmits all relevant information spontaneously or on request to FIUs in other Member States.

Member State authorities shall exchange information when there are indications that cash is related to criminal activity that could harm the EU's financial interests. This information shall also be transmitted to the European Commission.

Information campaigns

Member States shall ensure that persons who enter or leave the Union or persons who send unaccompanied cash from the Union or who receive unaccompanied cash in the Union are informed of their rights and obligations under this Regulation.

The Commission shall assess, by 1 June 2019, the possibility of setting up a common mechanism to combat money laundering and terrorist financing.

ENTRY INTO FORCE: 2.12.2018.

APPLICATION: from 3.6.2021.