

Controls on cash entering or leaving the Union

2016/0413(COD) - 12/09/2018 - Text adopted by Parliament, 1st reading/single reading

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 Parliament's 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.