

DIRECTIVES

DIRECTIVE (EU) 2018/1673 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 October 2018

on combating money laundering by criminal law

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 Article 83(1) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure⁽¹⁾,

Whereas:

- (1) Money laundering and the related financing of terrorism and organised crime remain significant problems at Union level, thus damaging the integrity, stability and reputation of the financial sector and threatening the internal market and the internal security of the Union. In order to tackle those problems and to complement and reinforce the application of Directive (EU) 2015/849 of the European Parliament and of the Council⁽²⁾, this Directive aims to combat money laundering by means of criminal law, enabling more efficient and swifter cross-border cooperation between competent authorities.
- (2) Measures adopted solely at national or even at Union level, without taking into account international coordination and cooperation, would have very limited effect. The measures adopted by the Union to combat money laundering should therefore be compatible with, and at least as stringent as, other actions undertaken in international fora.
- (3) Union action should continue to take particular account of the Financial Action Task Force (FATF) Recommendations and instruments of other international organisations and bodies active in the fight against money laundering and terrorist financing. The relevant Union legal acts should, where appropriate, be further aligned with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by the FATF in February 2012 (the 'revised FATF Recommendations'). As a signatory to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, the Union should transpose the requirements of that Convention into its legal order.
- (4) Council Framework Decision 2001/500/JHA⁽³⁾ lays down requirements with regard to the criminalisation of money laundering. However, that Framework Decision is not comprehensive enough and the current criminalisation of money laundering is not sufficiently coherent to effectively combat money laundering across the Union and results in enforcement gaps and in obstacles to cooperation between the competent authorities in different Member States.

⁽¹⁾ Position of the European Parliament of 12 September 2018 (not yet published in the Official Journal) and decision of the Council of 11 October 2018.

⁽²⁾ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

⁽³⁾ Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ L 182, 5.7.2001, p. 1).

- (5) The definition of criminal activities which constitute predicate offences for money laundering should be sufficiently uniform in all Member States. Member States should ensure that all offences that are punishable by a term of imprisonment as set out in this Directive are considered predicate offences for money laundering. Moreover, to the extent that the application of those penalty thresholds does not already do so, Member States should include a range of offences within each of the categories of offences listed in this Directive. In that case, Member States should be able to decide how to delimit the range of offences within each category. Where a category of offences, such as terrorism or environmental offences, includes offences set out in legal acts of the Union, this Directive should refer to those legal acts. Member States should, however, consider any offence set out in those legal acts as constituting a predicate offence for money laundering. Any kind of punishable involvement in the commission of a predicate offence as criminalised in accordance with national law should also be considered as a criminal activity for the purposes of this Directive. In cases where Union law allows Member States to provide for sanctions other than criminal sanctions, this Directive should not require Member States to classify the offences in those cases as predicate offences for the purposes of this Directive.
- (6) The use of virtual currencies presents new risks and challenges from the perspective of combating money laundering. Member States should ensure that those risks are addressed appropriately.
- (7) Due to the impact of money laundering offences committed by public office holders on the public sphere and on the integrity of public institutions, Member States should be able to consider including more severe penalties for public office holders in their national frameworks in accordance with their legal traditions.
- (8) Tax crimes relating to direct and indirect taxes should be covered by the definition of criminal activity, in line with the revised FATF Recommendations. Given that different tax crimes in each Member State can constitute a criminal activity punishable by the sanctions referred to in this Directive, the definitions of tax crimes might diverge in national law. The aim of this Directive, however, is not to harmonise the definitions of tax crimes in national law.
- (9) In criminal proceedings regarding money laundering, Member States should assist each other in the widest possible way and ensure that information is exchanged in an effective and timely manner in accordance with national law and the existing Union legal framework. Differences between the definitions of predicate offences in national law should not hinder international cooperation in criminal proceedings regarding money laundering. Cooperation with third countries should be intensified, in particular by encouraging and supporting the establishment of effective measures and mechanisms to combat money laundering and by ensuring better international cooperation in this field.
- (10) This Directive does not apply to money laundering involving property derived from criminal offences affecting the Union's financial interests, which is subject to specific rules as laid down in Directive (EU) 2017/1371 of the European Parliament and of the Council⁽¹⁾. This is without prejudice to the possibility for Member States to transpose this Directive and Directive (EU) 2017/1371 by means of a single comprehensive framework at national level. In accordance with Article 325(2) of the Treaty on the Functioning of the European Union (TFEU), the Member States are to take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.
- (11) Member States should ensure that certain types of money laundering activities are also punishable when committed by the perpetrator of the criminal activity that generated the property ('self-laundering'). In such cases, where, the money laundering activity does not simply amount to the mere possession or use of property, but also involves the transfer, conversion, concealment or disguise of property and results in further damage than that already caused by the criminal activity, for instance by putting the property derived from criminal activity into circulation and, by doing so, concealing its unlawful origin, that money laundering activity should be punishable.

⁽¹⁾ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

- (12) In order for criminal law measures to be effective against money laundering, a conviction should be possible without it being necessary to establish precisely which criminal activity generated the property, or for there to be a prior or simultaneous conviction for that criminal activity, while taking into account all relevant circumstances and evidence. It should be possible for Member States, in line with their national legal systems, to ensure this by means other than legislation. Prosecutions for money laundering should also not be impeded by the fact that the criminal activity was committed in another Member State or in a third country, subject to the conditions set out in this Directive.
- (13) This Directive aims to criminalise money laundering when it is committed intentionally and with the knowledge that the property was derived from criminal activity. In that context, this Directive should not distinguish between situations where property has been derived directly from criminal activity and situations where it has been derived indirectly from criminal activity, in line with the broad definition of 'proceeds' as laid down in Directive 2014/42/EU of the European Parliament and of the Council⁽¹⁾. In each case, when considering whether the property is derived from criminal activity and whether the person knew that, the specific circumstances of the case should be taken into account, such as the fact that the value of the property is disproportionate to the lawful income of the accused person and that the criminal activity and acquisition of property occurred within the same time frame. Intention and knowledge can be inferred from objective, factual circumstances. As this Directive provides for minimum rules concerning the definition of criminal offences and sanctions in the area of money laundering, Member States are free to adopt or maintain more stringent criminal law rules in that area. Member States should be able, for example, to provide that money laundering committed recklessly or by serious negligence constitutes a criminal offence. References in this Directive to money laundering committed by negligence should be understood as such for Member States that criminalise such conduct.
- (14) In order to deter money laundering throughout the Union, Member States should ensure that it is punishable by a maximum term of imprisonment of at least four years. That obligation is without prejudice to the individualisation and application of penalties and the execution of sentences in accordance with the concrete circumstances in each individual case. Member States should also provide for additional sanctions or measures, such as fines, temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions, temporary disqualifications from the practice of commercial activities or temporary bans on running for elected or public office. That obligation is without prejudice to the discretion of the judge or the court to decide whether to impose additional sanctions or measures or not, taking into account all the circumstances of the particular case.
- (15) While there is no obligation to increase sentences, Member States should ensure that the judge or the court is able to take the aggravating circumstances set out in this Directive into account when sentencing offenders. It remains within the discretion of the judge or the court to determine whether to increase the sentence due to the specific aggravating circumstances, taking into account all the facts of the particular case. Member States should not be obliged to provide for aggravating circumstances where national law provides for the criminal offences laid down in Council Framework Decision 2008/841/JHA⁽²⁾ or for offences committed by natural persons acting as obliged entities in the exercise of their professional activities to be punishable as separate criminal offences and this may lead to more severe sanctions.
- (16) The freezing and confiscation of the instrumentalities and proceeds of crime remove the financial incentives which drive crime. Directive 2014/42/EU lays down minimum rules on the freezing and confiscation of the instrumentalities and proceeds of crime in criminal matters. That Directive also requires the Commission to report to the European Parliament and to the Council on its implementation and make adequate proposals if necessary. Member States should, as a minimum, ensure the freezing and confiscation of the instrumentalities and proceeds of crime in all cases provided for in Directive 2014/42/EU. Member States should also strongly consider enabling confiscation in all cases where it is not possible to initiate or conclude criminal proceedings, including in cases where the offender has died. As requested by the European Parliament and the Council in the statement accompanying Directive 2014/42/EU, the Commission will submit a report analysing the feasibility and possible benefits of introducing further common rules on the confiscation of property deriving from activities of a criminal nature, including in the absence of a conviction of a specific person or persons for those activities. Such analysis will take into account the differences between the legal traditions and systems of the Member States.

⁽¹⁾ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39).

⁽²⁾ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

- (17) Given the mobility of perpetrators and proceeds stemming from criminal activities, as well as the complex cross-border investigations required to combat money laundering, all Member States should establish their jurisdiction in order to enable the competent authorities to investigate and prosecute such activities. Member States should thereby ensure that their jurisdiction includes situations where an offence is committed by means of information and communication technology from their territory, whether such technology is based on their territory or not.
- (18) Under Council Framework Decision 2009/948/JHA ⁽¹⁾ and Council Decision 2002/187/JHA ⁽²⁾, the competent authorities of two or more Member States conducting parallel criminal proceedings in respect of the same facts involving the same person are, with the assistance of Eurojust, to enter into direct consultations with one another, in particular to ensure that all offences covered by this Directive are prosecuted.
- (19) To ensure the successful investigation and prosecution of money laundering offences, those responsible for investigating or prosecuting such offences should have the possibility to make use of effective investigative tools such as those which are used in combating organised crime or other serious crimes. It should thereby be ensured that sufficient personnel and targeted training, resources and up-to-date technological capacity are available. The use of such tools, in accordance with national law, should be targeted and take into account the principle of proportionality and the nature and seriousness of the offences under investigation and should respect the right to the protection of personal data.
- (20) This Directive replaces certain provisions of Framework Decision 2001/500/JHA for the Member States bound by this Directive.
- (21) This Directive respects the principles recognised by Article 2 of the Treaty on European Union (TEU), respects fundamental rights and freedoms and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union, including those set out in Titles II, III, V and VI thereof which encompass, inter alia, the right to respect for private and family life and the right to protection of personal data, the principles of legality and proportionality of criminal offences and penalties, covering also the requirement of precision, clarity and foreseeability in criminal law, the presumption of innocence, as well as the rights of suspects and accused persons to have access to a lawyer, the right not to incriminate oneself and the right to a fair trial. This Directive has to be implemented in accordance with those rights and principles, taking also into account the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and other human rights obligations under international law.
- (22) Since the objective of this Directive, namely to subject money laundering in all Member States to effective, proportionate and dissuasive criminal penalties, cannot be sufficiently achieved by Member States but can rather, by reason of the scale and effects of this Directive, 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 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (23) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
- (24) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application. Framework Decision 2001/500/JHA continues to be binding upon and applicable to Denmark,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and scope

1. This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of money laundering.

⁽¹⁾ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).

⁽²⁾ Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1).

2. This Directive does not apply to money laundering as regards property derived from criminal offences affecting the Union's financial interests, which is subject to specific rules laid down in Directive (EU) 2017/1371.

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

- (1) 'criminal activity' means any kind of criminal involvement in the commission of any offence punishable, in accordance with national law, by deprivation of liberty or a detention order for a maximum of more than one year or, as regards Member States that have a minimum threshold for offences in their legal systems, any offence punishable by deprivation of liberty or a detention order for a minimum of more than six months. In any case, offences within the following categories are considered a criminal activity:
 - (a) participation in an organised criminal group and racketeering, including any offence set out in Framework Decision 2008/841/JHA;
 - (b) terrorism, including any offence set out in Directive (EU) 2017/541 of the European Parliament and of the Council ⁽¹⁾;
 - (c) trafficking in human beings and migrant smuggling, including any offence set out in Directive 2011/36/EU of the European Parliament and of the Council ⁽²⁾ and Council Framework Decision 2002/946/JHA ⁽³⁾;
 - (d) sexual exploitation, including any offence set out in Directive 2011/93/EU of the European Parliament and of the Council ⁽⁴⁾;
 - (e) illicit trafficking in narcotic drugs and psychotropic substances, including any offence set out in Council Framework Decision 2004/757/JHA ⁽⁵⁾;
 - (f) illicit arms trafficking;
 - (g) illicit trafficking in stolen goods and other goods;
 - (h) corruption, including any offence set out in the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union ⁽⁶⁾ and in Council Framework Decision 2003/568/JHA ⁽⁷⁾;
 - (i) fraud, including any offence set out in Council Framework Decision 2001/413/JHA ⁽⁸⁾;

⁽¹⁾ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

⁽²⁾ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).

⁽³⁾ Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 1).

⁽⁴⁾ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).

⁽⁵⁾ Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (OJ L 335, 11.11.2004, p. 8).

⁽⁶⁾ Council Act of 26 May 1997 drawing up, on the basis of Article K.3 (2) (c) of the Treaty on European Union, the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ C 195, 25.6.1997, p. 1).

⁽⁷⁾ Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54).

⁽⁸⁾ Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment (OJ L 149, 2.6.2001, p. 1).

- (j) counterfeiting of currency, including any offence set out in Directive 2014/62/EU of the European Parliament and of the Council ⁽¹⁾;
 - (k) counterfeiting and piracy of products;
 - (l) environmental crime, including any offence set out in Directive 2008/99/EC of the European Parliament and of the Council ⁽²⁾ or in Directive 2009/123/EC of the European Parliament and of the Council ⁽³⁾;
 - (m) murder, grievous bodily injury;
 - (n) kidnapping, illegal restraint and hostage-taking;
 - (o) robbery or theft;
 - (p) smuggling;
 - (q) tax crimes relating to direct and indirect taxes, as laid down in national law;
 - (r) extortion;
 - (s) forgery;
 - (t) piracy;
 - (u) insider trading and market manipulation, including any offence set out in Directive 2014/57/EU of the European Parliament and of the Council ⁽⁴⁾;
 - (v) cybercrime, including any offence set out in Directive 2013/40/EU of the European Parliament and of the Council ⁽⁵⁾.
- (2) 'property' means assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or an interest in, such assets;
- (3) 'legal person' means any entity having legal personality under the applicable law, except for states or public bodies in the exercise of state authority and for public international organisations.

Article 3

Money laundering offences

1. Member States shall take the necessary measures to ensure that the following conduct, when committed intentionally, is punishable as a criminal offence:
- (a) the conversion or transfer of property, knowing that such property is derived from criminal activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's action;
 - (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is derived from criminal activity;
 - (c) the acquisition, possession or use of property, knowing at the time of receipt, that such property was derived from criminal activity.
2. Member States may take the necessary measures to ensure that the conduct referred to in paragraph 1 is punishable as a criminal offence where the offender suspected or ought to have known that the property was derived from criminal activity.

⁽¹⁾ Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA (OJ L 151, 21.5.2014, p. 1).

⁽²⁾ Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28).

⁽³⁾ Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (OJ L 280, 27.10.2009, p. 52).

⁽⁴⁾ Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) (OJ L 173, 12.6.2014, p. 179).

⁽⁵⁾ Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA (OJ L 218, 14.8.2013, p. 8).

3. Member States shall take the necessary measures to ensure that:
- (a) a prior or simultaneous conviction for the criminal activity from which the property was derived is not a prerequisite for a conviction for the offences referred to in paragraphs 1 and 2;
 - (b) a conviction for the offences referred to in paragraphs 1 and 2 is possible where it is established that the property was derived from a criminal activity, without it being necessary to establish all the factual elements or all circumstances relating to that criminal activity, including the identity of the perpetrator;
 - (c) the offences referred to in paragraphs 1 and 2 extend to property derived from conduct that occurred on the territory of another Member State or of a third country, where that conduct would constitute a criminal activity had it occurred domestically.
4. In the case of point (c) of paragraph 3 of this Article, Member States may further require that the relevant conduct constitutes a criminal offence under the national law of the other Member State or of the third country where that conduct was committed, except where that conduct constitutes one of the offences referred to in points (a) to (e) and (h) of point (1) of Article 2 and as defined in the applicable Union law.
5. Member States shall take the necessary measures to ensure that the conduct referred to in points (a) and (b) of paragraph 1 is punishable as a criminal offence when committed by persons who committed, or were involved in, the criminal activity from which the property was derived.

Article 4

Aiding and abetting, inciting and attempting

Member States shall take the necessary measures to ensure that aiding and abetting, inciting and attempting an offence referred to in Article 3(1) and (5) is punishable as a criminal offence.

Article 5

Penalties for natural persons

1. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties.
2. Member States shall take the necessary measures to ensure that the offences referred to in Article 3(1) and (5) are punishable by a maximum term of imprisonment of at least four years.
3. Member States shall also take the necessary measures to ensure that natural persons who have committed the offences referred to in Articles 3 and 4 are, where necessary, subject to additional sanctions or measures.

Article 6

Aggravating circumstances

1. Member States shall take the necessary measures to ensure that, in relation to the offences referred to in Article 3(1) and (5) and Article 4, the following circumstances are to be regarded as aggravating circumstances:
 - (a) the offence was committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841/JHA; or
 - (b) the offender is an obliged entity within the meaning of Article 2 of Directive (EU) 2015/849 and has committed the offence in the exercise of their professional activities.
2. Member States may provide that, in relation to the offences referred to in Article 3(1) and (5) and Article 4, the following circumstances are to be regarded as aggravating circumstances:
 - (a) the laundered property is of considerable value; or
 - (b) the laundered property derives from one of the offences referred to in points (a) to (e) and (h) of point (1) of Article 2.

Article 7

Liability of legal persons

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for any of the offences referred to in Article 3(1) and (5) and Article 4 committed for their benefit by any person, acting either individually or as part of an organ of the legal person and having a leading position within the legal person, based on any of the following:
 - (a) a power of representation of the legal person;

- (b) an authority to take decisions on behalf of the legal person; or
- (c) an authority to exercise control within the legal person.

2. Member States shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 of this Article has made possible the commission of any of the offences referred to in Article 3(1) and (5) and Article 4 for the benefit of that legal person by a person under its authority.

3. Liability of legal persons under paragraphs 1 and 2 of this Article shall not preclude criminal proceedings from being brought against natural persons who are perpetrators, inciters or accessories in any of the offences referred to in Article 3(1) and (5) and Article 4.

Article 8

Sanctions for legal persons

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 7 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions;
- (c) temporary or permanent disqualification from the practice of commercial activities;
- (d) placing under judicial supervision;
- (e) a judicial winding-up order;
- (f) temporary or permanent closure of establishments which have been used for committing the offence.

Article 9

Confiscation

Member States shall take the necessary measures to ensure, as appropriate, that their competent authorities freeze or confiscate, in accordance with Directive 2014/42/EU, the proceeds derived from and instrumentalities used or intended to be used in the commission or contribution to the commission of the offences as referred to in this Directive.

Article 10

Jurisdiction

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 and 4 where:

- (a) the offence is committed in whole or in part on its territory;
- (b) the offender is one of its nationals.

2. A Member State shall inform the Commission where it decides to extend its jurisdiction to offences referred to in Articles 3 and 4 which have been committed outside its territory where:

- (a) the offender is a habitual resident on its territory;
- (b) the offence is committed for the benefit of a legal person established on its territory.

3. Where an offence referred to in Articles 3 and 4 falls within the jurisdiction of more than one Member State and where any of the Member States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offender, with the aim of centralising proceedings in a single Member State.

Account shall be taken of the following factors:

- (a) the territory of the Member State on which the offence was committed;
- (b) the nationality or residency of the offender;
- (c) the country of origin of the victim or victims; and
- (d) the territory on which the offender was found.

The matter shall, where appropriate and in accordance with Article 12 of Framework Decision 2009/948/JHA, be referred to Eurojust.

*Article 11***Investigative tools**

Member States shall take the necessary measures to ensure that effective investigative tools, such as those used in combating organised crime or other serious crimes are available to the persons, units or services responsible for investigating or prosecuting the offences referred to in Article 3(1) and (5) and Article 4.

*Article 12***Replacement of certain provisions of Framework Decision 2001/500/JHA**

Point (b) of Article 1 and Article 2 of Framework Decision 2001/500/JHA are replaced with regard to the Member States bound by this Directive, without prejudice to the obligations of those Member States with regard to the date for transposition of that Framework Decision into national law.

With regard to the Member States bound by this Directive, references to the provisions of Framework Decision 2001/500/JHA referred to in the first paragraph shall be construed as references to this Directive.

*Article 13***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 3 December 2020. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 14***Reporting**

The Commission shall, by 3 December 2022, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive.

The Commission shall, by 3 December 2023, submit a report to the European Parliament and to the Council assessing the added value of this Directive with regard to combating money laundering as well as its impact on fundamental rights and freedoms. On the basis of that report, the Commission shall, if necessary, present a legislative proposal to amend this Directive. The Commission shall take into account the information provided by Member States.

*Article 15***Entry into force**

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

*Article 16***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 23 October 2018.

For the European Parliament

The President

A. TAJANI

For the Council

The President

K. EDTSTADLER

REGULATION (EU) 2018/1672 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 23 October 2018
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 ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

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 reintroduction of illicit proceeds into the economy and the diversion of money to finance illicit activities create distortions and unfair competitive disadvantages for law-abiding citizens and companies, and are therefore a threat to the functioning of the internal market. Moreover, those practices foster criminal and terrorist activities which endanger the security of citizens of the Union. Accordingly, the Union has taken action to protect itself.
- (3) One of the main pillars of the action taken by the Union was Council Directive 91/308/EEC ⁽³⁾, which laid down a series of measures and obligations on financial institutions, legal persons and certain professions as regards, inter alia, transparency and record-keeping, as well as 'know-your-customer' provisions, and laid down an obligation to report suspicious transactions to national Financial Intelligence Units (FIUs). FIUs were established as hubs to assess such transactions, interact with their counterparts in other countries and, where required, contact judicial authorities. Directive 91/308/EEC has since been amended and replaced by successive measures. The provisions for the prevention of money laundering are currently laid down in Directive (EU) 2015/849 of the European Parliament and of the Council ⁽⁴⁾.
- (4) In light of the risk that the application of Directive 91/308/EEC would lead to an increase in cash movements for illicit purposes, which could pose a threat to the financial system and the internal market, that Directive was complemented by Regulation (EC) No 1889/2005 of the European Parliament and of the Council ⁽⁵⁾. That Regulation aims to prevent and detect money laundering and terrorist financing by laying down a system of controls applicable to natural persons who enter or leave the Union carrying amounts of cash or bearer-negotiable instruments equal to or greater than EUR 10 000 or its equivalent in other currencies. The term 'entering or leaving the Union' should be defined by reference to the territory of the Union as defined in Article 355 of the Treaty on the Functioning of the European Union (TFEU) in order to ensure that this Regulation has the broadest possible scope of application and that no areas would be exempt from its application and present opportunities to circumvent applicable controls.
- (5) Regulation (EC) No 1889/2005 implemented within the Community the international standards on combating money laundering and terrorist financing developed by the Financial Action Task Force (FATF).

⁽¹⁾ OJ C 246, 28.7.2017, p. 22.

⁽²⁾ Position of the European Parliament of 12 September 2018 (not yet published in the Official Journal) and Decision of the Council of 9 October 2018.

⁽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, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

⁽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).

- (6) The FATF, established at the G7 summit held in Paris in 1989, is an inter-governmental body that sets standards and promotes the effective implementation of legal, regulatory and operational measures to combat money laundering, terrorist financing and other related threats to the integrity of the international financial system. Several Member States are members of the FATF or are represented in the FATF through regional bodies. The Union is represented in the FATF by the Commission and has committed itself to the effective implementation of the FATF's recommendations. FATF Recommendation 32 on cash couriers specifies that measures should be in place with regard to adequate controls on cross-border movements of cash.
- (7) Directive (EU) 2015/849 identifies and describes a number of criminal activities the proceeds of which might be subject to money laundering or might be used for terrorist financing. The proceeds of those criminal activities are often transported across the external borders of the Union for the purpose of being laundered or used for terrorist financing. This Regulation should take that into account and lay down a system of rules that, in addition to contributing to the prevention of money laundering, and especially predicate offences such as tax crimes as defined in national law, and terrorist financing as such, facilitate the prevention, detection, and investigation of the criminal activities defined in Directive (EU) 2015/849.
- (8) Advances have been made regarding insights into the mechanisms used for transferring illicitly acquired value across borders. As a result, the FATF recommendations have been updated, Directive (EU) 2015/849 has introduced changes to the Union's legal framework and new best practices have been developed. In light of those developments and on the basis of the evaluation of existing Union legislation, Regulation (EC) No 1889/2005 needs to be amended. However, considering the extensive nature of the amendments that would be required, Regulation (EC) No 1889/2005 should be repealed and replaced with a new Regulation.
- (9) This Regulation does not affect the ability of Member States to provide, under their national law, for additional national controls on movements of cash within the Union, provided that those controls are in accordance with the Union's fundamental freedoms, in particular Articles 63 and 65 TFEU.
- (10) A set of rules at Union level which would allow comparable controls on cash within the Union would greatly facilitate efforts to prevent money laundering and terrorist financing.
- (11) This Regulation does not concern measures taken by the Union or Member States under Article 66 TFEU to restrict movements of capital that cause, or threaten to cause, serious difficulties for the operation of economic and monetary union or under Articles 143 and 144 TFEU as a result of a sudden crisis in the balance of payments.
- (12) Considering their presence at the external borders of the Union, their expertise in carrying out controls on passengers and freight crossing the external borders and their experience gained in the application of Regulation (EC) No 1889/2005, customs authorities should continue to act as the competent authorities for the purposes of this Regulation. At the same time, Member States should continue to be able also to designate other national authorities present at the external borders to act as competent authorities. Member States should continue to provide adequate training for the staff of customs authorities and other national authorities for the carrying out of those controls, including on cash-based money laundering.
- (13) One of the key concepts used in this Regulation is that of 'cash', which should be defined as comprising four categories: currency, bearer-negotiable instruments, commodities used as highly-liquid stores of value and certain types of prepaid cards. Given their characteristics, certain bearer-negotiable instruments, commodities used as highly-liquid stores of value, and prepaid cards which are not linked to a bank account and which can store an amount of money which is difficult to detect are likely to be used in place of currency as an anonymous means of transferring value across the external borders in a manner that is not traceable using the classic system of supervision by the public authorities. This Regulation should, therefore, lay down the essential components of the definition of 'cash', while at the same time enabling the Commission to amend the non-essential components of this Regulation in response to the attempts by criminals and their associates to circumvent a measure which controls only one type of highly-liquid store of value by bringing another type across the external borders. If evidence of such behaviour on a considerable scale is detected, it is essential that measures be taken swiftly to remedy the situation. Despite the high level of risk posed by virtual currencies, as evidenced in the Commission's report of 26 June 2017 on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border activities, customs authorities do not have competence to monitor them.

- (14) Bearer-negotiable instruments enable the physical holder to claim a payment of a financial amount without being registered or mentioned by name. They can be easily used to transfer considerable amounts of value and present salient similarities with currency in terms of liquidity, anonymity and risks for abuse.
- (15) Commodities used as highly-liquid stores of value present a high ratio between their value and their volume, for which an easily accessible international trading market exists, allowing them to be converted into currency while incurring only modest transaction costs. Such commodities are mostly presented in a standardised way that allows for quick verification of their value.
- (16) Prepaid cards are non-nominal cards that store or provide access to a monetary value or funds which can be used for payment transactions, for acquiring goods or services or for redemption of currency. They are not linked to a bank account. Prepaid cards encompass anonymous prepaid cards as referred to in the Directive (EU) 2015/849. They are widely used for a variety of legitimate purposes and some of those instruments also present a clear social interest. Such prepaid cards are easily transferrable and can be used to transfer considerable value across the external borders. It is therefore necessary to include prepaid cards in the definition of cash, in particular if they can be bought without customer due diligence procedures. This will allow for the possibility to extend the controls to certain types of prepaid cards, taking into account the available technology, if justified by the evidence, provided that such controls are extended with due regard to proportionality and practical enforceability.
- (17) For the prevention of money laundering and terrorist financing, an obligation to declare cash should be imposed on natural persons entering or leaving the Union. In order not to restrict free movement unduly or overburden citizens and authorities with administrative formalities, the obligation should be subject to a threshold of EUR 10 000. It should apply to carriers carrying such amounts on their person, in their luggage or in the means of transport in which they cross the external borders. They should be required to make the cash available to the competent authorities for control and, if necessary, to present it to those authorities. The definition of 'carrier' should be understood as excluding those carriers who undertake the professional conveyance of goods or people.
- (18) As regards movements of unaccompanied cash, for example cash entering or leaving the Union in postal packages, courier shipments, unaccompanied luggage or containerised cargo, the competent authorities should have the power to require the sender or the recipient, or a representative thereof, to make a disclosure declaration, systematically or on a case-by-case basis, in accordance with national procedures. Such disclosure should cover a number of elements, which are not covered by the usual documentation submitted to customs, such as shipping documents and customs declarations. Such elements are the origin, destination, economic provenance and intended use of the cash. The obligation to disclose unaccompanied cash should be subject to a threshold identical to that for cash carried by carriers.
- (19) A number of standardised data elements regarding the movement of cash such as the personal details of the declarant, the owner or the recipient, the economic provenance and the intended use of the cash, should be recorded in order to achieve the objectives of this Regulation. In particular, it is necessary that the declarant, the owner or the recipient provide their personal details as contained in their identification documents, in order to reduce to a minimum the risk of errors regarding their identities and the delays due to the possible subsequent need for verification.
- (20) As regards the obligation to declare accompanied cash and the obligation to disclose unaccompanied cash, competent authorities should be empowered to carry out all requisite controls on persons, their luggage, the means of transport used to cross the external borders and any unaccompanied consignment or receptacle crossing that border which may contain cash, or a means of transport carrying them. In the event of failure to comply with those obligations, the competent authorities should compose an *ex officio* declaration for subsequent transmission of the relevant information to other authorities.
- (21) In order to ensure their uniform application by competent authorities, controls should be based primarily on a risk analysis, with the purpose of identifying and evaluating the risks and developing the necessary countermeasures.

- (22) The establishment of a common risk management framework should not prevent competent authorities from performing random checks or spontaneous controls whenever they deem necessary.
- (23) Where they detect amounts of cash below the threshold but there are indications that the cash might be linked to criminal activity as covered by this Regulation, the competent authorities should be able to record, in the case of accompanied cash, information about the carrier, the owner and, where available, the intended recipient of the cash, including full name, contact details, details concerning the nature and the amount or value of the cash, its economic provenance and intended use.
- (24) In the case of unaccompanied cash, competent authorities should be able to record information on the declarant, the owner, the sender, and the recipient or intended recipient of the cash, including full name, contact details, details concerning the nature and the amount or value of the cash, its economic provenance and intended use.
- (25) That information should be passed on to the FIU of the Member State in question, which should ensure that the FIU transmit any relevant information spontaneously or upon request to the FIUs of the other Member States. Those units are designated as the hub elements in the fight against money-laundering and terrorist financing who receive and process information from various sources such as financial institutions and analyse that information in order to determine if there are grounds for further investigation that may not be apparent to the competent authorities who collect the declarations and perform controls under this Regulation. To guarantee the effective flow of information, FIUs should all be connected to the Customs Information System (the 'CIS') established by Council Regulation (EC) No 515/97 ⁽¹⁾ and the data produced or exchanged by competent authorities and FIUs should be compatible and comparable.
- (26) Recognising the importance for the successful follow-up of this Regulation of having an effective exchange of information between the relevant authorities, including FIUs within the legal framework covering those entities, and the need to strengthen the cooperation between FIUs within the Union, the Commission should assess by 1 June 2019 the possibility of establishing a common mechanism to fight money laundering and terrorist financing.
- (27) The detection of sub-threshold amounts of cash in situations where there are indications of criminal activity is highly relevant in this context. Consequently, it should also be possible to share information relating to sub-threshold amounts with the competent authorities in other Member States if there are indications of criminal activity.
- (28) Considering that the movements of cash that are subject to controls under this Regulation take place across the external borders, and given the difficulty of acting once the cash has left the point of entry or exit and the associated risk if even small amounts are used illicitly, the competent authorities should be able to detain cash temporarily in certain circumstances, subject to checks and balances: first, where the obligation to declare or to disclose cash has not been met and, second, where there are indications of criminal activity, irrespective of the amount or whether the cash is accompanied or unaccompanied. In view of the nature of such temporary detention and the impact that it might have on the freedom of movement and the right to property, the period of detention should be limited to the absolute minimum time that other competent authorities require to determine whether there are grounds for further intervention, such as investigations or seizure of the cash based on other legal instruments. A decision to detain cash temporarily under this Regulation should be accompanied by a statement of reasons and should adequately describe the specific factors that have given rise to the action. It should be possible to extend the period of temporary detention of the cash in specific and duly assessed cases, for instance when competent authorities encounter difficulties in obtaining information on a potential criminal activity, inter alia, when communication with a third country is required, when documents have to be translated or when it is difficult to identify and contact the sender or the recipient in the case of unaccompanied cash. If, at the end of the period of detention, no decision concerning further intervention is taken or if the competent authority decides that there are no grounds to further detain the cash, it should immediately be released, depending on the situation, to the person from whom the cash was temporarily detained, the carrier or the owner.

⁽¹⁾ Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997, p. 1).

- (29) In order to raise awareness about this Regulation, Member States should, in cooperation with the Commission, develop appropriate materials regarding the obligation to declare or disclose cash.
- (30) It is essential that the competent authorities that collect information pursuant to this Regulation transmit it in a timely manner to the national FIU in order to enable it to further analyse and compare the information with other data as provided for in Directive (EU) 2015/849.
- (31) For the purpose of this Regulation, where the competent authorities register a failure to declare or disclose cash or where there are indications of criminal activity, they should promptly share that information with competent authorities of other Member States through appropriate channels. Such exchange of data would be proportionate considering that persons who have breached the obligation to declare or disclose cash and who have been apprehended in one Member State would be likely to select another Member State of entry or exit where the competent authorities would have no knowledge of their earlier breach. The exchange of such information should be mandatory in order to ensure that this Regulation is applied consistently across the Member States. Where there are indications that the cash is related to criminal activity which could adversely affect the financial interests of the Union, that information should also be made available to the Commission, to the European Public Prosecutor's Office as established by Council Regulation (EU) 2017/1939 ⁽¹⁾ by the Member States participating in enhanced cooperation pursuant to that Regulation and to Europol as established by Regulation (EU) 2016/794 of the European Parliament and of the Council ⁽²⁾. In order to achieve the objectives of this Regulation of preventing and deterring the circumvention of the obligation to declare or disclose cash, anonymised risk information and risk analysis results should also mandatorily be exchanged between Member States and with the Commission, in accordance with standards to be set out in implementing acts adopted pursuant to this Regulation.
- (32) It should be possible to exchange information between a competent authority of a Member State or the Commission and the authorities of a third country provided that there are appropriate safeguards. Such exchange should only be permissible where relevant national and Union provisions on fundamental rights and the transfer of personal data are complied with, following authorisation by the authorities which originally obtained the information. The Commission should be informed of any occurrence of information exchange with third countries pursuant to this Regulation and should report thereon to the European Parliament and to the Council.
- (33) Given the nature of the information collected and the legitimate expectations of carriers and declarants that their personal data and information regarding the value of cash that they have brought into or taken out of the Union will be treated confidentially, the competent authorities should provide sufficient safeguards to ensure that agents who require access to the information respect professional secrecy, and adequately protect such information against unauthorised access, use or communication. Unless otherwise provided for by this Regulation or national law, particularly in the context of legal proceedings, such information should not be disclosed without the permission of the authority which obtained it.

The processing of data under this Regulation may also cover personal data and should be carried out in accordance with Union law. Member States and the Commission should process personal data only in a manner compatible with the purposes of this Regulation. Any collection, disclosure, transmission, communication and other processing of personal data within the scope of this Regulation should be subject to the requirements of Regulations (EC) No 45/2001 ⁽³⁾ and (EU) 2016/679 ⁽⁴⁾ of the European Parliament and of the Council. The processing of personal data for the purposes of this Regulation should also respect the fundamental right to respect for private and family life recognised by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, as well as the right to respect for private and family life, and the right to the protection of personal data recognised, respectively, by Articles 7 and 8 of the Charter of Fundamental Rights of the European Union (the 'Charter').

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

⁽²⁾ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

⁽³⁾ 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).

⁽⁴⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

- (34) For the purposes of the analysis carried out by the FIUs and in order to enable authorities in other Member States to control and enforce the obligation to declare cash, particularly with respect to persons who have previously breached that obligation, it is necessary that the data contained in declarations made under this Regulation are stored for a sufficiently long period. In order for the FIU to effectively carry out their analysis and for the competent authorities to control and effectively enforce the obligation to declare or disclose cash, the period for the retention of data contained in declarations made under this Regulation should not exceed five years with a possible further extension, after a thorough assessment of the necessity and proportionality of such further retention, which should not exceed three additional years.
- (35) In order to encourage compliance and deter circumvention, Member States should introduce penalties for non-compliance with the obligations to declare or disclose cash. Those penalties should apply only to the failure to declare or disclose cash under this Regulation and should not take into account the potential criminal activity associated with the cash, which may be the object of further investigation and measures that fall outside the scope of this Regulation. Those penalties should be effective, proportionate and dissuasive, and should not go beyond what is required to encourage compliance. Penalties introduced by Member States should have an equivalent deterrent effect across the Union on the infringement of this Regulation.
- (36) While most Member States already use a harmonised declaration form, the EU Cash Declaration Form (EU-CDF), on a voluntary basis, in order to ensure the uniform application of controls and the efficient processing, transmission and analysis by competent authorities of the declarations, implementing powers should be conferred on the Commission to adopt the templates for the declaration form and the disclosure form, to determine the criteria for a common risk management framework, to establish the technical rules for the exchange of information and the template for the form to be used for the transmission of information, and to establish the rules and the format to be used for the provision of statistical information to the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹⁾.
- (37) In order to improve the current situation in which there is limited access to statistical information and there are only some indications available on the extent of cash being smuggled across the Union's external borders by criminals, more effective cooperation via information exchange between competent authorities and with the Commission should be introduced. To guarantee that this exchange of information is effective and efficient, the Commission should review whether the system established fulfils the purpose or whether there are obstacles to the timely and direct exchange of information. Furthermore, the Commission should publish statistical information on its website.
- (38) In order to be able to quickly take account of future modifications of international standards such as standards established by the FATF or to address the circumvention of this Regulation through reliance on commodities used as highly-liquid stores of value or reliance on prepaid cards, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amendments to Annex I to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽²⁾. 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.
- (39) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States, but can rather, by reason of the transnational scale of money laundering and terrorist financing, and the specificities of the internal market and its fundamental freedoms, which can only be fully implemented by ensuring that no excessively disparate treatment based on national legislation is imposed on cash crossing the external borders of the Union, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.

⁽¹⁾ 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 Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

⁽²⁾ OJ L 123, 12.5.2016, p. 1.

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

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

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

Article 2

Definitions

1. For the purposes of this Regulation, the following definitions apply:
- (a) 'cash' means:
- (i) currency;
 - (ii) bearer-negotiable instruments;
 - (iii) commodities used as highly-liquid stores of value;
 - (iv) prepaid cards;
- (b) 'entering or leaving the Union' means coming from a territory which is outside the territory covered by Article 355 TFEU to the territory which is covered by that Article, or departing the territory covered by that Article;
- (c) 'currency' means banknotes and coins that are in circulation as a medium of exchange or that have been in circulation as a medium of exchange and can still be exchanged through financial institutions or central banks for banknotes and coins that are in circulation as a medium of exchange;
- (d) 'bearer-negotiable instruments' means instruments other than currency which entitle their holders to claim a financial amount upon presentation of the instruments without having to prove their identity or entitlement to that amount. Those instruments are:
- (i) traveller's cheques; and
 - (ii) cheques, promissory notes or money orders that are either in bearer form, signed but with the payee's name omitted, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery;
- (e) 'commodity used as a highly-liquid store of value' means a good, as listed in point 1 of Annex I, that presents a high ratio between its value and its volume and that can easily be converted into currency through accessible trading markets while incurring only modest transaction costs;
- (f) 'prepaid card' means a non-nominal card, as listed in point 2 of Annex I, that stores or provides access to monetary value or funds which can be used for payment transactions, for acquiring goods or services or for the redemption of currency where such card is not linked to a bank account;
- (g) 'competent authorities' means the customs authorities of the Member States and any other authorities empowered by the Member States to apply this Regulation;
- (h) 'carrier' means any natural person entering or leaving the Union carrying cash on their person, in their luggage or in their means of transport;
- (i) 'unaccompanied cash' means cash making up part of a consignment without a carrier;
- (j) 'criminal activity' means any of the activities listed in point (4) of Article 3 of Directive (EU) 2015/849;
- (k) 'Financial Intelligence Unit (FIU)' means the entity established in a Member State for the purposes of implementing Article 32 of Directive (EU) 2015/849.

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

Article 3

Obligation to declare accompanied cash

1. Carriers who carry cash of a value of EUR 10 000 or more shall declare that cash to the competent authorities of the Member State through which they are entering or leaving the Union and make it available to them for control. The obligation to declare cash shall not be deemed to be fulfilled if the information provided is incorrect or incomplete or if the cash is not made available for control.

2. The declaration referred to in paragraph 1 shall provide details about the following:

- (a) the carrier, including full name, contact details, including address, date and place of birth, nationality and identification document number;
- (b) the owner of the cash, including the full name, contact details, including address, date and place of birth, nationality and identification document number, where the owner is a natural person, or the full name, contact details, including address, registration number and, where available, value added tax (VAT) identification number, where the owner is a legal person;
- (c) where available, the intended recipient of the cash, including the full name, contact details, including address, date and place of birth, nationality and identification document number, where the intended recipient is a natural person, or the full name, contact details, including address, registration number and, where available, VAT identification number, where the intended recipient is a legal person;
- (d) the nature and the amount or value of the cash;
- (e) the economic provenance of the cash;
- (f) the intended use of the cash;
- (g) the transport route; and
- (h) the means of transport.

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

Article 4

Obligation to disclose unaccompanied cash

1. Where unaccompanied cash of a value of EUR 10 000 or more is entering or leaving the Union, the competent authorities of the Member State through which the cash is entering or leaving the Union may require the sender or the recipient of the cash, or a representative thereof, as the case may be, to make a disclosure declaration within a deadline of 30 days. The competent authorities may detain the cash until the sender or the recipient, or a representative thereof, makes the disclosure declaration. The obligation to disclose unaccompanied cash shall not be deemed to be fulfilled where the declaration is not made before the deadline expires, the information provided is incorrect or incomplete, or the cash is not made available for control.

2. The disclosure declaration shall provide details about the following:

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

- (c) the sender of the cash, including the full name, contact details, including address, date and place of birth, nationality and identification document number, where the sender is a natural person, or the full name, contact details, including address, registration number and where available, VAT identification number, where the sender is a legal person;
- (d) the recipient or intended recipient of the cash, including the full name, contact details, including address, date and place of birth, nationality and identification document number, where the recipient or intended recipient is a natural person, or the full name, contact details, including address, registration number and, where available, VAT identification number, where the recipient or intended recipient is a legal person;
- (e) the nature and the amount or value of the cash;
- (f) the economic provenance of the cash; and
- (g) the intended use of the cash.

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

Article 5

Powers of the competent authorities

1. In order to verify compliance with the obligation to declare accompanied cash laid down in Article 3, the competent authorities shall have the power to carry out controls on natural persons, their luggage and their means of transport, in accordance with the conditions laid down in national law.
2. For the purposes of implementing the obligation to disclose unaccompanied cash laid down in Article 4, the competent authorities shall have the power to carry out controls on any consignments, receptacles or means of transport which may contain unaccompanied cash, in accordance with the conditions laid down in national law.
3. If the obligation to declare accompanied cash under Article 3 or the obligation to disclose unaccompanied cash under Article 4 has not been fulfilled, the competent authorities shall compose, in writing or in an electronic form, an *ex officio* declaration which shall contain to the extent possible the details listed in Article 3(2) or 4(2), as the case may be.
4. The controls shall be based primarily on risk analysis, with the purpose of identifying and evaluating the risks and developing the necessary countermeasures, and shall be performed within a common risk management framework in accordance with the criteria referred to in point (b) of Article 16(1) which shall also take into account the risk assessments established by the Commission and the FIUs under Directive (EU) 2015/849.
5. For the purposes of Article 6, the competent authorities shall also exercise the powers conferred on them under this Article.

Article 6

Sub-threshold amounts suspected to be related to criminal activity

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

Article 7

Temporary detention of cash by competent authorities

1. The competent authorities may temporarily detain cash by means of an administrative decision in accordance with the conditions laid down in national law where:
 - (a) the obligation to declare accompanied cash under Article 3 or the obligation to disclose unaccompanied cash under Article 4 has not been fulfilled; or
 - (b) there are indications that the cash, irrespective of the amount, is related to criminal activity.

2. The administrative decision referred to in paragraph 1 shall be subject to an effective remedy in accordance with procedures provided for in national law. The competent authorities shall notify a statement of reasons for the administrative decision to:

- (a) the person required to make the declaration in accordance with Article 3 or the disclosure declaration in accordance with Article 4; or
- (b) the person required to provide the information in accordance with Article 6(1) or (2).

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

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

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

Article 8

Information campaigns

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

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

Article 9

Provision of information to the FIU

1. The competent authorities shall record the information obtained under Article 3 or 4, Article 5(3) or Article 6 and transmit it to the FIU of the Member State in which it was obtained, in accordance with the technical rules referred to in point (c) of Article 16(1).

2. The Member States shall ensure that the FIU of the Member State in question exchange such information with the relevant FIUs of the other Member States in accordance with Article 53(1) of Directive (EU) 2015/849.

3. The competent authorities shall transmit the information referred to in paragraph 1 as soon as possible, and in any event no later than 15 working days after the date on which the information was obtained.

Article 10

Exchange of information between competent authorities and with the Commission

1. The competent authority of each Member State shall, by electronic means, transmit the following information to the competent authorities of all the other Member States:

- (a) *ex officio* declarations composed under Article 5(3);
- (b) information obtained under Article 6;
- (c) declarations obtained under Article 3 or 4, where there are indications that the cash is related to criminal activity;
- (d) anonymised risk information and risk analysis results.

2. Where there are indications that the cash is related to criminal activity which could adversely affect the financial interests of the Union, the information referred to in paragraph 1 shall also be transmitted to the Commission, to the European Public Prosecutor's Office by the Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939 and where it is competent to act under Article 22 of that Regulation, and to Europol where it is competent to act under Article 3 of Regulation (EU) 2016/794.

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

Article 11

Exchange of information with third countries

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

Article 12

Professional secrecy and confidentiality and data security

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

Article 13

Personal data protection and retention periods

1. The competent authorities shall act as controllers of the personal data they obtain by operation of Articles 3 and 4, Article 5(3) and Article 6.
2. The processing of personal data on the basis of this Regulation shall take place only for the purposes of the prevention and fight against criminal activities.
3. The personal data obtained by operation of Articles 3 and 4, Article 5(3) and Article 6 shall be accessed only by duly authorised staff of the competent authorities and shall be adequately protected against unauthorised access or transmission. Unless otherwise provided for in Articles 9, 10 and 11, the data may not be disclosed or transmitted without the express authorisation of the competent authority which originally obtained them. However, that authorisation shall not be necessary where the competent authorities are required to disclose or transmit that data pursuant to the national law of the Member State in question, particularly in connection with legal proceedings.
4. The competent authorities and the FIU shall store personal data obtained by operation of Articles 3 and 4, Article 5(3) and Article 6 for a period of five years from the date on which the data were obtained. The personal data shall be erased upon the expiry of that period.
5. The period of retention may be extended once by another period which shall not exceed three additional years if:
 - (a) after it has carried out a thorough assessment of the necessity and proportionality of such further retention and considers it to be justified for the fulfilment of its tasks with respect to the fight against money laundering or terrorist financing, the FIU determines that further retention is required; or
 - (b) after they have carried out a thorough assessment of the necessity and proportionality of such further retention and consider it to be justified for the fulfilment of their tasks with respect to providing effective controls as regards the obligation to declare accompanied cash or the obligation to disclose unaccompanied cash, competent authorities determine that further retention is required.

Article 14

Penalties

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

Article 15

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 2(2) shall be conferred on the Commission for an indeterminate period of time from 2 December 2018.
3. The delegation of power referred to in Article 2(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 2(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 16

Implementing acts

1. The Commission shall adopt, by means of implementing acts, the following measures to ensure the uniform application of controls by competent authorities:
 - (a) the templates for the declaration form referred to in Article 3(3) and for the disclosure form referred to in Article 4(3);
 - (b) the criteria for the common risk management framework referred to in Article 5(4) and, more specifically, the risk criteria, standards, and priority control areas, based on the information exchanged pursuant to point (d) of Article 10(1), and Union and international policies and best practice;
 - (c) the technical rules for the effective exchange of information under Article 9(1) and (3) and Article 10 of this Regulation via the CIS established by Article 23 of Regulation (EC) No 515/97;
 - (d) the template for the form for the transmission of information referred to in Article 10(3); and
 - (e) the rules and the format to be used by Member States for providing to the Commission with anonymised statistical information on declarations and infractions pursuant to Article 18.
2. The implementing acts referred to in paragraph 1 of this Article shall be adopted in accordance with the examination procedure referred to in Article 17(2).

Article 17

Committee procedure

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

*Article 18***Transmission of information relating to the implementation of this Regulation**

1. By 4 December 2021, Member States shall transmit the following to the Commission:

- (a) the list of competent authorities;
- (b) the details of the penalties introduced pursuant to Article 14;
- (c) anonymised statistical information regarding declarations, controls and infractions, using the format referred to in point (e) of Article 16(1).

2. Member States shall notify the Commission of any subsequent changes to the information referred to in points (a) and (b) of paragraph 1 at the latest one month after those changes take effect.

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

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

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

*Article 19***Evaluation**

1. By 3 December 2021, and every five years thereafter, the Commission shall, on the basis of the information regularly received from the Member States, submit a report to the European Parliament and to the Council on the application of this Regulation.

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

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

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

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

*Article 20***Repeal of Regulation (EC) No 1889/2005**

Regulation (EC) No 1889/2005 is repealed.

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

*Article 21***Entry into force and application**

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

It shall apply from 3 June 2021. However, Article 16 shall apply from 2 December 2018.

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

Done at Strasbourg, 23 October 2018.

For the European Parliament

The President

A. TAJANI

For the Council

The President

K. EDTSTADLER

ANNEX I

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

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

CORRELATION TABLE

Regulation (EC) No 1889/2005	This Regulation
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
—	Article 4
Article 4(1)	Article 5
Article 5(2)	Article 6
Article 4(2)	Article 7
—	Article 8
Article 5(1)	Article 9
Article 6	Article 10
Article 7	Article 11
Article 8	Article 12
—	Article 13
Article 9	Article 14
—	Article 15
—	Article 16
—	Article 17
—	Article 18
Article 10	Article 19
—	Article 20
Article 11	Article 21
—	Annex I
—	Annex II