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

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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).

(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.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2018/1672 of the European Parliament and of the Council. (See end of Document for details)*

(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[(6)] 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.