Changes to legislation: *There are outstanding changes not yet made to Regulation (EC) No 1889/2005 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 95 and 135 thereof,

Having regard to the proposal from the Commission[(1)],

After consulting the European Economic and Social Committee,

Acting in accordance with the procedure referred to in Article 251 of the Treaty[(2)],

Whereas:

(1) One of the Community's tasks is to promote harmonious, balanced and sustainable development of economic activities throughout the Community by establishing a common market and an economic and monetary union. To that end the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured.

(2) The introduction of the proceeds of illegal activities into the financial system and their investment after laundering are detrimental to sound and sustainable economic development. Accordingly, Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering[(3)] introduced a Community mechanism to prevent money laundering by monitoring transactions through credit and financial institutions and certain types of professions. As there is a risk that the application of that mechanism will lead to an increase in cash movements for illicit purposes, Directive 91/308/EEC should be supplemented by a control system on cash entering or leaving the Community.

(3) At present such control systems are applied by only a few Member States, acting under national legislation. The disparities in legislation are detrimental to the proper functioning of the internal market. The basic elements should therefore be harmonised at Community level to ensure an equivalent level of control on movements of cash crossing the borders of the Community. Such harmonisation should not, however, affect the possibility for Member States to apply, in accordance with the existing provisions of the Treaty, national controls on movements of cash within the Community.

(4) Account should also be taken of complementary activities carried out in other international fora, in particular those of the Financial Action Task Force on Money Laundering (FATF), which was established by the G7 Summit held in Paris in 1989.

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Special Recommendation IX of 22 October 2004 of the FATF calls on governments to take measures to detect physical cash movements, including a declaration system or other disclosure obligation.

(5) Accordingly, cash carried by any natural person entering or leaving the Community should be subject to the principle of obligatory declaration. This principle would enable the customs authorities to gather information on such cash movements and, where appropriate, transmit that information to other authorities. Customs authorities are present at the borders of the Community, where controls are most effective, and some have already built up practical experience in the matter. Use should be made of 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[(4)]. This mutual assistance should ensure both the correct application of cash controls and the transmission of information that might help to achieve the objectives of Directive 91/308/EEC.

(6) In view of its preventive purpose and deterrent character, the obligation to declare should be fulfilled upon entering or leaving the Community. However, in order to focus the authorities' action on significant movements of cash, only those movements of EUR 10 000 or more should be subject to such an obligation. Also, it should be specified that the obligation to declare applies to the natural person carrying the cash, regardless of whether that person is the owner.

(7) Use should be made of a common standard for the information to be provided. This will enable competent authorities to exchange information more easily.

(8) It is desirable to establish the definitions needed for a uniform interpretation of this Regulation.

(9) Information gathered under this Regulation by the competent authorities should be passed on to the authorities referred to in Article 6(1) of Directive 91/308/EEC.

(10) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[(5)] and 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[(6)] apply to the processing of personal data by the competent authorities of the Member States pursuant to this Regulation.

(11) Where there are indications that the sums of cash are related to any illegal activity, associated with the movement of cash, as referred to in Directive 91/308/EEC, information gathered under this Regulation by the competent authorities may be passed on to competent authorities in other Member States and/or to the Commission. Similarly, provision should be made for certain information to be transmitted whenever there are indications of cash movements involving sums lower than the threshold laid down in this Regulation.

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(12) Competent authorities should be vested with the powers needed to exercise effective control on movements of cash.

(13) The powers of the competent authorities should be supplemented by an obligation on the Member States to lay down penalties. However, penalties should be imposed only for failure to make a declaration in accordance with this Regulation.

(14) Since the objective of this Regulation cannot be sufficiently achieved by the Member States and can therefore, by reason of the transnational scale of money laundering in the internal market, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(15) This Regulation respects the fundamental rights and observes the principles recognised in Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, in particular in Article 8 thereof,

HAVE ADOPTED THIS REGULATION:

Article 1

Objective

1 This Regulation complements the provisions of Directive 91/308/EEC concerning transactions through financial and credit institutions and certain professions by laying down harmonised rules for the control, by the competent authorities, of cash entering or leaving the Community.

2 This Regulation shall be without prejudice to national measures to control cash movements within the Community, where such measures are taken in accordance with Article 58 of the Treaty.

Article 2

Definitions

For the purposes of this Regulation:

1. ‘competent authorities’ means the customs authorities of the Member States or any other authorities empowered by Member States to apply this Regulation;

2. ‘cash’ means:

   (a) bearer-negotiable instruments including monetary instruments in bearer form such as travellers cheques, negotiable instruments (including cheques, promissory notes and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery and incomplete instruments (including cheques, promissory notes and money orders) signed, but with the payee's name omitted;

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(b) currency (banknotes and coins that are in circulation as a medium of exchange).

Article 3

Obligation to declare

1 Any natural person entering or leaving the Community and carrying cash of a value of EUR 10 000 or more shall declare that sum to the competent authorities of the Member State through which he is entering or leaving the Community in accordance with this Regulation. The obligation to declare shall not have been fulfilled if the information provided is incorrect or incomplete.

2 The declaration referred to in paragraph 1 shall contain details of:

a the declarant, including full name, date and place of birth and nationality;
b the owner of the cash;
c the intended recipient of the cash;
d the amount and nature of the cash;
e the provenance and intended use of the cash;
f the transport route;
g the means of transport.

3 Information shall be provided in writing, orally or electronically, to be determined by the Member State referred to in paragraph 1. However, where the declarant so requests, he shall be entitled to provide the information in writing. Where a written declaration has been lodged, an endorsed copy shall be delivered to the declarant upon request.

Article 4

Powers of the competent authorities

1 In order to check compliance with the obligation to declare laid down in Article 3, officials of the competent authorities shall be empowered, in accordance with the conditions laid down under national legislation, to carry out controls on natural persons, their baggage and their means of transport.

2 In the event of failure to comply with the obligation to declare laid down in Article 3, cash may be detained by administrative decision in accordance with the conditions laid down under national legislation.

Article 5

Recording and processing of information

1 The information obtained under Article 3 and/or Article 4 shall be recorded and processed by the competent authorities of the Member State referred to in Article 3(1) and shall be made available to the authorities referred to in Article 6(1) of Directive 91/308/EEC of that Member State.

2 Where it appears from the controls provided for in Article 4 that a natural person is entering or leaving the Community with sums of cash lower than the threshold fixed in Article 3