

New Regulation on Cash Controls



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News

On 12 November 2018, [Regulation \(EU\) 2018/1672](#) was published in the [Official Journal of the EU \(O.J. L 284/6\)](#). The Regulation introduces new rules for controls on cash entering or leaving the Union. It repeals Regulation (EC) No 1889/2005, which laid down the existing harmonized rules for the control of cash flow at the EU's external borders and which has applied since 15 June 2007 (see euclid 1-2/2006, p. 12).

The new Regulation takes over the €10,000 threshold from the 2005 Regulation. Travelers carrying cash of such value or more must declare it to the competent authorities of the Member State through which they are entering or leaving the Union. The new Regulation, however, extends the definition of “cash” to cover not only banknotes but also other means of transfer, extends the obligations of citizens, and widens the control powers of national authorities. Furthermore, rules on the exchange of data and information have been clarified, including provisions on data protection and confidentiality.

By means of the new legal framework, the EU is reacting to shortcomings experienced in the implementation and application of the current rules. The new rules, which will apply from 3 June 2021, are to specifically close loopholes used to circumvent the current system in order to move and launder money.

The main elements of the Regulation are as follows:

- One of the key concepts of the new Regulation is the definition of “cash”. It now comprises four categories, i.e., (1) currency, (2) bearer-negotiable instruments (e.g., cheques or money orders), (3) commodities used as highly liquid stores of value (e.g., gold coins or nuggets), and (4) prepaid cards;
- Natural persons entering or leaving the EU are obliged to declare “cash” as defined in the Directive and to make it available for control. This obligation applies to a cash value of €10,000 or more – a threshold which is deemed appropriate to strike a balance between the right to free movement of capital and the need to reduce administrative burdens. The Regulation further sets out the information that must be declared by the carrier;
- The movement of unaccompanied cash of a value of €10,000, e.g., cash sent by postal packages, courier shipments, unaccompanied luggage, or containerized cargo has also been regulated. The competent authorities of the Member States through which the cash is entering or leaving the Union may require the sender or the recipient of the cash to make a disclosure declaration within 30 days. The declaration must cover a number of elements, such as the origin, destination, economic provenance, and intended use of the cash;
- Where the national authorities detect amounts of cash below the €10,000 threshold, they are entitled to record the information as defined for declarations if there are indications that the cash might be linked to criminal activity;

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- The Regulation confers to the competent authorities, usually (but not only) customs authorities, the power to carry out the requisite controls on both persons and any unaccompanied consignments. They are also entitled to detain cash temporarily, either where the obligation to declare or to disclose cash has not been fulfilled or where there are indications of criminal activity irrespective of the amount of “cash.”
- Member States are obliged to introduce “effective, proportionate and dissuasive” penalties in the event of failure to comply with the obligations to declare/disclose.

Other provisions of the Regulation include the passing/transmission of information to the FIUs of the Member States, which were designed to be information hubs in the fight against money laundering and terrorist financing. Furthermore, the information exchange between the customs/competent authorities and with the Commission have been specified. In this context, information must also be transferred to the European Public Prosecutor’s Office if there are indications that the cash is related to criminal activity that could adversely affect the EU’s financial interests.

By the 4 December 2021 deadline, EU Member States must transmit to the Commission the list of competent authorities, details of the penalties introduced, and anonymised, statistical data on declarations, controls, and infractions. Since the Regulation is based on Arts. 33 and 114 TFEU, it is also applicable to Denmark and Ireland. The Commission has to draft a first report on the application of the Regulation by 3 December 2021.

The new Regulation complements the AML Directives on the prevention of the use of the financial system for purposes of money laundering and terrorist financing (for the 5th AML Directive, see eucrim 2/2018, pp. 93-94). It is considered a necessary tool, since an increase in cash movements for illicit purposes was feared as a repercussion of the tighter transparency and record-keeping rules for financial institutions introduced by the AML Directives. In addition, the new legal framework is an integral part of the EU’s Agenda on Security, which includes the improved fight against money laundering, terrorist financing, and other financial crimes.

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