



**AGENZIA DI
INFORMAZIONE FINANZIARIA**

FINANCIAL INTELLIGENCE AGENCY

AGENZIA DI INFORMAZIONE FINANZIARIA
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DELEGATED DECREE No. 74 of 19 June 2009

as amended by DECREE LAW no. 187 of 26 November 2010 (*Ratifying Decree Law no. 181 of 11 November 2010*)

RATIFICATION OF DELEGATED DECREE NO. 62 OF 4 MAY 2009 - CROSS-BORDER TRANSPORTATION OF CASH AND SIMILAR INSTRUMENTS

UNOFFICIAL TEXT

NOTICE

This document, drawn up by the Financial Intelligence Agency – FIA of the Republic of San Marino, is aimed at facilitating the consultation of Delegated Decree no. 74 of 19 June 2009 and subsequent amendments, as specified below.

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TRANSPORTATION OF CASH AND SIMILAR INSTRUMENTS**

Article 1
(*Definitions*)

1. For the purposes of this Decree, the following definitions shall apply:

- a) Financial Intelligence Agency: the Financial Intelligence Agency referred to in Article 2 of Law no. 92 of 17 June 2008 (“Provisions on Preventing and Combating Money Laundering and Terrorist Financing”);
- b) Police Forces: the Gendarmerie Corps, the Civil Police Corps and the Fortress Guard Uniformed Unit;
- c)¹;
- d) cash: banknotes and coins in Euro or other currency;
- e) similar instruments: bearer-negotiable instruments, including travellers cheques, cheques, bills of exchange and payment orders, issued to the bearer or without endorsement restrictions, instruments issued in a form such that the related title is transferred on delivery as well as signed instruments that do not specify the name of the beneficiary or which specify a fictitious beneficiary.

Article 2

(*Transfers of money, securities and stocks and shares to and from foreign Countries*)

1. Any natural person entering or leaving the territory of the Republic of San Marino shall be required to declare the transport of cash and similar instruments in Euro or foreign currencies for a total amount exceeding € 10,000 or the equivalent value.

2². The declaration, made in writing, shall be filed in compliance with the model attached to this Delegated Decree; it shall be submitted to the Commands or branch offices of the Police Forces. The declaration, duly completed, shall be carried by the declarant.

A copy of the declaration, with acknowledgement of receipt, shall be returned to the declarant, who shall carry such copy with him.

The obligation to declare shall not have been fulfilled if the information provided is incorrect or incomplete

3. The obligation of declaration shall not apply to transfers by postal orders or promissory notes, or giro cheques, bank cheques or bank drafts, which specify the name of the beneficiary and the clause “non-negotiable” and are drawn on or issued by authorised parties under Law no. 165 of 17 November 2005, or drawn on or issued by foreign parties that mainly carry out an activity falling under the reserved activities indicated in Attachment 1 to Law no. 165 of 17 November 2005, established in a State applying obligations equivalent to those set forth by this Decree and imposing

¹ Letter c) has been repealed by Art. 32 of Decree Law no. 187 of 26 November 2010 (Ratifying Decree Law no. 181 of 11 November 2010).

² As superseded by Art. 33 of Decree Law no. 187 of 26 November 2010 (Ratifying Decree Law no. 181 of 11 November 2010).

supervision and control over compliance with such obligations for the purposes of preventing and countering money laundering and terrorist financing.

4³. The obligation to declare shall also apply to transfers of cash and similar instruments, to and from foreign Countries, carried out by post. Even in such a case, the declaration shall be provided in writing, through the model attached hereto, by delivering it to the Commands or branch offices of the Police Forces within 48 hours of receipt or sending.

Article 3⁴
(Police checks)

1. During regular border controls, Police officers may verify the identity of persons, as well as inspect and search vehicles, luggage and things in order to ensure that the obligations referred to in Article 2 above are complied with.

2. Police authorities shall also subject persons, vehicles and their contents to control measures, if there are reasonable grounds to believe that the transportation of cash or similar instruments is connected with money laundering or terrorist financing.

3. Police authorities shall immediately inform the Financial Intelligence Agency of any cross-border movements of gold, precious stones or metals considered to be suspect.

Article 4
(Administrative violations)

1⁵. Anyone failing to file the declaration or providing inaccurate or incomplete information shall be punished with an administrative sanction up to 40% of the amount transferred or attempted to be transferred, exceeding the equivalent value of 10.000 euro, with a minimum of 200 euro. If a similar instrument, although bearing the drawer's signature, does not contain an indication of the amount, the fixed administrative sanction of 200 euro shall be applied for each instrument.

2. The pecuniary administrative sanction shall be applied even if the facts are envisaged as an offence by another provision of this Decree or other laws.

3. If the administrative violation is connected to an offence, the Financial Intelligence Agency shall separately prosecute the administrative violation.

Article 5
(Omitted and false declaration on the personal details of the beneficiary)

1. Unless the act constitutes a more serious offence, anyone who in making the declaration provided for in Article 2 omits to provide the personal details of the person on whose behalf they are transferring cash or similar instruments to and from foreign Countries or provides false information shall be punished by terms of imprisonment or second degree arrest or with a third degree daily fine.

³ As superseded by Art. 34 of Decree Law no. 187 of 26 November 2010 (Ratifying Decree Law no. 181 of 11 November 2010).

⁴ As replaced by Art. 35 of Decree Law no. 187 of 26 November 2010 (Ratifying Decree Law no. 181 of 11 November 2010).

⁵ As amended by Art. 36 of Decree Law no. 187 of 26 November 2010 (Ratifying Decree Law no. 181 of 11 November 2010).

Article 6 (Seizure)

1. When the provisions envisaged by Article 2 of this Decree are violated, cash and similar instruments transferred or attempted to be transferred exceeding the equivalent value of € 10,000 shall be subject to administrative seizure.
2. Police officers shall draw up an official report on the seizures made and the declarations submitted by the persons involved, who shall be invited to sign the official report and shall be entitled to receive a copy thereof. A copy of the official report shall be forwarded to the Financial Intelligence Agency. Police personnel shall deposit the sums or the assets seized with the Financial Intelligence Agency within the next working day.
3. By means of the official report referred to in paragraph 2, or a separate deed, the violations which can be punished with administrative sanctions shall be claimed and the provisions under Article 33 of Law no. 68 of 28 June 1989 shall be applied.
4. Seizure shall be executed within the limit of 40% of the amount exceeding € 10,000.
5. Seizure shall be executed without the limit specified in paragraph 4 of this Article when the object of the seizure is indivisible.
6. Seizure shall be executed without the limit specified in paragraph 4 also when, owing to the nature and amount of the assets transferred or attempted to be transferred, the related value in Euro cannot be easily assessed at the time of seizure. In such case, seized assets exceeding the limit specified in paragraph 4 shall be returned to the persons entitled within thirty days of the date on which seizure was executed.
7. The interested party may obtain return of cash, instruments and securities seized by depositing collateral equal to the maximum amount of the applicable administrative sanction with the State Treasury. The collateral may be replaced by a guarantee in the same amount provided by a bank operating in the Republic of San Marino.
8. The provisions for return referred to in previous paragraphs shall be established by the Financial Intelligence Agency.
9. The interested parties may lodge an appeal against the seizure order to the Financial Intelligence Agency under Article 12 of Law no. 68 of 28 June 1989.
10. Cash or similar instruments subject to seizure under paragraph 1 of this Article shall be returned to the persons entitled when:
 - a) the interested party demonstrates that one of the conditions envisaged by Article 2, paragraph 3 of this Decree applies;
 - b) they are not retained as payment of the administrative sanction provided for by Article 4 of this Decree;
 - c)⁶.
11. Cash and similar instruments seized shall guarantee, with preference over any other credit, the payment of the pecuniary administrative sanctions applied.
12. The Financial Intelligence Agency shall order the return of cash and similar instruments seized, which are not retained as payment of the administrative sanction referred to in Article 4 of this Decree, to the persons entitled requesting them within five years from the date of seizure.

⁶ Letter c) has been repealed by Art. 37 of Decree Law no. 187 of 26 November 2010 (Ratifying Decree Law no. 181 of 11 November 2010).

Article 7
(Ascertainment of violations)

1. The Financial Intelligence Agency shall ascertain the administrative violations and apply the sanctions envisaged by this Decree.
2. The provisions referred to in Title VI, Chapter III of Law no. 92 of 17 June 2008 (Provisions on Preventing and Combating Money Laundering and Terrorist Financing) shall be applied.

Article 8
(Voluntary settlement)

1. The person charged with the violation referred to in Article 4 of this Decree, by way of derogation from Article 33, paragraph 1, letter a) of Law no. 68 of 28 June 1989, may exercise the right to voluntary settlement, which consists in the immediate payment equal to 10% of the money or similar instruments exceeding the threshold of € 10,000, with a minimum of € 200.
2. The payment shall be executed, in the modalities specified in the provision for the ascertainment of the violation, within 20 days of its notification. The Financial Intelligence Agency shall order the return of money or similar instruments within ten days following receipt of proof of payment.
3. When the payment of the administrative sanction is made simultaneously with the official report by Police officers, the seizure referred to in Article 6, paragraph 4 of this Decree shall not be executed. Police officers shall deposit the equivalent amount with the State Treasury within the next working day.
4. Voluntary settlement shall not be allowed when cash or similar instruments transferred or attempted to be transferred exceed the value of € 250,000.

Article 9
(Communication to the Financial Intelligence Agency)

- 1⁷. Without prejudice to Article 6, paragraph 2 of this Decree, the Police Forces shall transmit a copy of all declarations received under Article 2 above to the Financial Intelligence Agency.
2. The transmission of declarations to the Financial Intelligence Agency, carried out every month, shall take place within the tenth day following the reference month.
- 3⁸. By way of derogation from the provision enshrined in paragraph 2 above, the Police Forces shall forward, within the next working day, a copy of the declarations referred to in paragraph 1 of this Article in the event of facts and circumstances from which it is inferred that sums of cash are related to money laundering and terrorist financing.

Article 10
(National and International Cooperation)

1. All data and information acquired by the Financial Intelligence Agency under this Delegated Decree may be exchanged with other competent national Authorities, when facts and circumstances

⁷ As amended by Art. 38 of Decree Law no. 187 of 26 November 2010 (Ratifying Decree Law no. 181 of 11 November 2010).

⁸ As amended by Art. 39 of Decree Law no. 187 of 26 November 2010 (Ratifying Decree Law no. 181 of 11 November 2010).

arise from which it is inferred that sums of cash or similar instruments are connected to money laundering and terrorist financing.

2. The Financial Intelligence Agency may also exchange the information acquired with foreign financial intelligence units, under Article 16 of Law no. 92 of 17 June 2008.

Article 11
(Repeals)

1. This Delegated Decree shall completely supersede Delegated Decree no. 138 of 31 October 2008, which is therefore repealed.

Done at Our Residence, on 19 June 2009

THE CAPTAINS REGENT
Massimo Cenci – Oscar Mina

THE SECRETARY OF STATE FOR
INTERNAL AFFAIRS
Valeria Ciavatta

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