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2013/0024 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on information accompanying transfers of funds**

(Text with EEA relevance)

{SWD(2013) 21}

{SWD(2013) 22}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### Grounds for and objectives of the proposal

The purpose of this proposal is to revise Regulation (EC) No 1781/2006 on information on the payer accompanying transfers of funds<sup>1</sup> (hereinafter referred to as the "Funds Transfers Regulation") in ways which improve traceability of payments and ensure that the EU framework remains fully compliant with international standards.

#### General context

The Funds Transfers Regulation lays down rules for payment service providers to send information on the payer throughout the payment chain for the purposes of prevention, investigation and detection of money laundering and terrorist financing.

The Regulation was to a large extent based on Special Recommendation VII on wire transfers adopted by the Financial Action Task Force<sup>2</sup> (FATF) and aims to ensure that this international standard is transposed uniformly through the Union and, in particular, that there is no discrimination between national payments within a Member State and cross-border payments between Member States.

Against the background of the changing nature of money laundering and terrorist financing threats, facilitated by a constant evolution of technology and means at the disposal of criminals, the FATF has undertaken a fundamental review of the international standards, which culminated in the adoption of a new set of Recommendations in February 2012.

In parallel to this process, the European Commission has also been undertaking its own review of the EU framework. This review has comprised an external study published by the Commission on the application of the Funds Transfers Regulation, extensive contacts and consultations with private stakeholders and civil society organisations, as well as with representatives of EU Member State regulatory and supervisory authorities.

The implications of this work are that the EU framework, including the Funds Transfers Regulation, will need to evolve and adjust to changes which should see an increased focus placed on (a) the effectiveness of regimes to counter money laundering and terrorist financing, (b) greater clarity and consistency of the rules across Member States, and (c) a broadened scope designed to address new threats and vulnerabilities.

#### Existing provisions in this area

Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing<sup>3</sup> (hereinafter referred to as the "Third AML Directive") sets out the framework designed to protect the soundness, integrity and stability of credit and financial institutions and confidence in the financial system as a whole, against the risks of money laundering and terrorist financing.

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<sup>1</sup> OJ L 345, 8.12.2006, p. 1.

<sup>2</sup> FATF is the international body established by the Paris G7 summit in 1989, and which is considered as the world standard in the fight against money laundering and terrorist financing.

<sup>3</sup> OJ L 309, 25.11.2005, p. 15.

Directive 2006/70/EC<sup>4</sup> (the "implementing Directive") lays down implementing measures for the Third AML Directive as regards the definition of politically exposed persons and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

The Funds Transfers Regulation complements those measures by ensuring that basic information on the payer of transfers of funds is immediately available to appropriate law enforcement and/or prosecutorial authorities to assist them in detecting, investigating, prosecuting terrorists or other criminals and tracing the assets of terrorists.

### **Consistency with other policies and objectives of the Union**

The proposal is consistent with and complements the Proposal for a Directive of the European Parliament and the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. These two legislative instruments pursue the common objective of revising the existing anti-money laundering and counter terrorist financing EU framework in order to improve its effectiveness while ensuring its compliance with international standards.

The proposal is also consistent with the objectives of the EU's Internal Security Strategy<sup>5</sup>, which identifies the most urgent challenges to EU security in the years to come and proposes five strategic objectives and specific actions for 2011-2014 to help make the EU more secure. This includes tackling money laundering and preventing terrorism, in particular, by updating the EU framework with a view to enhancing the transparency of information on beneficial ownership of legal persons.

With regard to data protection, the proposed clarifications on the processing of personal data are in line with the approach set out in the Commission's recent data protection proposals<sup>6</sup>.

With regard to sanctions, the proposal to introduce a set of minimum principle-based rules to strengthen administrative sanctions and measures is consistent with the Commission's policy as outlined in its Communication "Reinforcing sanctioning regimes in the financial services sector"<sup>7</sup>.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

### **Consultation of interested parties**

In April 2012, the Commission adopted a report on the application of Directive 2005/60/EC and solicited comments from all stakeholders<sup>8</sup>. The annex to this report, in particular, focused on cross-border wire transfers and, namely, on the two new requirements of including beneficiary information in wire transfers, and taking freezing action with respect to UN Resolutions.

The Commission received only 4 contributions referring expressly to the annex to the report. Respondents were asking for a consultation of interested parties from all countries and territories affected by the Funds Transfers Regulation, highlighting the need that any

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<sup>4</sup> OJ L 214, 4.8.2006, p. 29.

<sup>5</sup> COM (2010)673 final.

<sup>6</sup> COM(2012)10 final and COM(2012)11 final.

<sup>7</sup> COM(2010)716 final.

<sup>8</sup> The Commission report, the replies from stakeholders and the feedback statement are available at [http://ec.europa.eu/internal\\_market/company/financial-crime/index\\_en.htm](http://ec.europa.eu/internal_market/company/financial-crime/index_en.htm)

additional requirement or obligation imposed on payment service providers would be proportionate and straightforward to meet.

Extensive consultations with interested parties have been undertaken in the context of the external consultants' study<sup>9</sup> carried out on behalf of the European Commission, which approached 108 stakeholders and involved phone interviews and the completion of a structured questionnaire.

### **Use of expertise**

Over the course of 2012, a study by external consultants was carried out on behalf of the Commission to gather evidence about how the Funds Transfers Regulation is working in Member States and the problems which have arisen<sup>10</sup>.

The study, in particular, provides a number of recommendations, including:

- introduce the obligation for Payment Service Providers to ensure that all originator and beneficiary information is retained with wire transfers;
- define what beneficiary information needs to be verified, and by whom;
- consider introducing a “simplified” regime for cross-border wire transfers amounting to EUR 1 000 or less, unless there is suspicion of money-laundering or terrorist financing;
- further clarify the reporting obligations for Payment Service Providers;
- explicitly prohibit the execution of wire transfers if it does not comply with the necessary requirements (completeness and accuracy of the information);
- beneficiary Payment Service Providers to implement effective risk-based policies and procedures to determine appropriate follow-up actions;
- consider data protection implications.

### **Impact assessment**

This proposal is accompanied by an impact assessment which identifies the main problems in the current EU anti-money laundering/combating terrorist financing legislative framework<sup>11</sup>: (i) inconsistency with the recently revised international standards; (ii) different interpretation of rules across Member States; and (iii) inadequacies and loopholes with respect to the new money laundering and terrorist financing risks. As a consequence, the effectiveness of counter money laundering and terrorist financing regimes is reduced with a negative reputational, economic and financial impact.

The impact assessment analyses the following three scenarios:

- (1) a base-line scenario that the Commission takes no action;
- (2) an adjustment scenario that entails limited changes to the Funds Transfers Regulation necessary to either (i) align the legislative text to the revised international standards, or (ii) to ensure a sufficient level of consistency between national rules, or (iii) to address the most important shortcomings concerning the new emerging threats; and

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<sup>9</sup> The study is available at [http://ec.europa.eu/internal\\_market/company/financial-crime/index\\_en.htm](http://ec.europa.eu/internal_market/company/financial-crime/index_en.htm)

<sup>10</sup> *Ibidem*.

<sup>11</sup> The Impact assessment is available at [http://ec.europa.eu/internal\\_market/company/financial-crime/index\\_en.htm](http://ec.europa.eu/internal_market/company/financial-crime/index_en.htm)

- (3) a full harmonisation scenario that entails major policy changes and additional elements of harmonisation, in recognition of any EU specificities.

The analysis carried out in the impact assessment has demonstrated that the second scenario is the most balanced in aligning the Funds Transfers Regulation with the revised international standards while ensuring sufficient level of consistency between national rules and flexibility in their implementation.

In addition, the impact assessment analysed the impact of the legislative proposals on the Fundamental Rights. In line with the Charter of Fundamental rights, the proposals seek in particular to ensure protection of personal data (Article 8 of the Charter) as regards the storage and transfer of personal data.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **Legal basis**

Article 114 of the Treaty on the Functioning of the European Union.

#### **Subsidiarity and proportionality**

There is a general consensus, emanating from all stakeholders (in particular Member States and the payment industry), that the objectives of the proposal cannot be sufficiently achieved by the Member States and would be better attained by EU action.

Non-coordinated action by Member States alone in the field of cross-border transfers of funds could significantly impact on the smooth functioning of payment systems at EU level, and therefore damage the internal market in the field of financial services (see Recital 2 of the Funds Transfers Regulation).

By the scale of its action, the Union shall guarantee a uniform transposition of new FATF Recommendation 16 through the EU, and, in particular, that there is no discrimination between national payments within a Member State and cross-border payments between Member States.

The proposal therefore complies with the subsidiarity principle.

With regard to the proportionality principle, in conformity with the analysis carried out in the impact assessment the proposal transposes the revised FATF Recommendation on "wire transfers" by introducing the minimum requirements essential to ensure the traceability of transfers of funds without going beyond what is necessary to achieve its objectives.

### **4. BUDGETARY IMPLICATION**

This proposal has no impact on the Union budget.

### **5. ADDITIONAL INFORMATION**

#### **Detailed explanation of the proposal**

In line with new FATF Recommendation 16 on "wire transfers" and the accompanying Interpretative note, the proposed changes are aimed at addressing areas where gaps in transparency still remain.

The intention is to enhance traceability by imposing the following main requirements:

- include information on the payee;

- with regard to the scope of the Regulation, clarify that credit or debit cards, or mobile telephone or any other digital or IT device become subject to the provisions of the regulation if they are used to transfer funds person to person. In addition, clarify that below EUR 1 000, in the case of fund transfers outside the EU, a lighter regime of non-verified information on the payer and the payee applies (as opposed to possible exemptions from scope as in Regulation (EC) No 1781/2006);
- with regard to obligations of the Payment Service Provider (PSP) of the payee, imposing a requirement to verify the identity of the beneficiary (where not previously identified) for payments originating outside the EU and where the amount is more than EUR 1 000. With regard to the PSP of the payee and the intermediary PSP, an obligation to establish risk-based procedures for determining when to execute, reject or suspend a transfer of funds which lacks the required information and to determine appropriate follow-up action;
- with regard to data protection, align the requirements of record keeping of the information with the FATF standards, in accordance with the new regime foreseen by the Directive [xxxx/yyyy];
- with regard to sanctions, reinforcement of sanctioning powers for competent authorities and a requirement to coordinate actions when dealing with cross-border cases; a requirement for sanctions imposed for breaches to be published; and a requirement to establish effective mechanisms to encourage reporting of breaches of the provisions of the Regulation.

### **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on information accompanying transfers of funds**

(Text with EEA relevance)

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 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<sup>1</sup>,

Having regard to the opinion of the European Central Bank<sup>2</sup>,

After consulting the European Data Protection Supervisor<sup>3</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Flows of dirty money through transfers of funds can damage the stability and reputation of the financial sector and threaten the internal market. Terrorism shakes the very foundations of our society. The soundness, integrity and stability of the system of transfers of funds and confidence in the financial system as a whole could be seriously jeopardised by the efforts of criminals and their associates either to disguise the origin of criminal proceeds or to transfer funds for terrorist purposes.
- (2) In order to facilitate their criminal activities, money launderers and terrorist financiers could try to take advantage of the freedom of capital movements entailed by the integrated financial area, unless certain coordinating measures are adopted at Union level. By its scale, Union action should ensure that Recommendation 16 on wire transfers of the Financial Action Task Force (FATF), adopted in February 2012 is transposed uniformly throughout the Union, and, in particular, that there is no discrimination between national payments within a Member State and cross border payments between Member States. Uncoordinated action by Member States alone in the field of cross border transfers of funds could have a significant impact on the smooth functioning of payment systems at Union level and therefore damage the internal market in the field of financial services.
- (3) It has been pointed out in the Union's revised Strategy on Terrorist Financing of 17 July 2008<sup>4</sup> that efforts have to be maintained to prevent terrorist financing and the use

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

<sup>4</sup> <http://register.consilium.europa.eu/pdf/en/08/st11/st11778-re01.en08.pdf>

by suspected terrorists of their own financial resources. It is recognised that the FATF is constantly seeking to improve its Recommendations and working towards a common understanding of how these should be implemented. It is noted in the Union's revised Strategy that implementation of those Recommendations by all FATF members and members of FATF-style regional bodies is assessed on a regular basis and that from this point of view a common approach to implementation by Member States is important.

- (4) In order to prevent terrorist funding, measures aimed at the freezing of funds and economic resources of certain persons, groups and entities have been taken, including Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism<sup>5</sup>, and Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network<sup>6</sup>. To that same end, measures aimed at protecting the financial system against the channelling of funds and economic resources for terrorist purposes have been taken. Directive [xxxx/yyyy] of the European Parliament and of the Council of on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing<sup>7</sup> contains a number of such measures. Those measures do not, however, fully prevent terrorists and other criminals from having access to payment systems for moving their funds.
- (5) In order to foster a coherent approach in the international context in the field of combating money laundering and terrorist financing, further Union action should take account of developments at that level, namely the International Standards on combating money-laundering and the financing of terrorism and proliferation adopted in 2012 by the FATF, and in particular Recommendation 16 and the revised interpretative note for its implementation.
- (6) The full traceability of transfers of funds can be a particularly important and valuable tool in the prevention, investigation and detection of money laundering or terrorist financing. It is therefore appropriate, in order to ensure the transmission of information throughout the payment chain, to provide for a system imposing the obligation on payment service providers to have transfers of funds accompanied by information on the payer and the payee.
- (7) The provisions of this Regulation apply without prejudice to national legislation implementing 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<sup>8</sup>. For example, personal data collected for the purpose of complying with this Regulation should not be further processed in a way inconsistent e with Directive 95/46/EC. In particular, further processing for commercial purposes should be strictly prohibited. The fight against money laundering and terrorist financing is recognised as an important public interest ground by all Member States. Hence, in the application of this Regulation, the transfer of personal data to a third country which does not ensure an adequate level of protection in the meaning of Article 25 of Directive 95/46/EC should be permitted according to Article 26 (d) of the same Directive.

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<sup>5</sup> OJ L 344, 28.12.2001, p. 70.

<sup>6</sup> OJ L 139, 29.5.2002, p. 9.

<sup>7</sup> OJ L , , p. .

<sup>8</sup> OJ L 281, 23.11.1995, p. 31.

- (8) Persons who merely convert paper documents into electronic data and are acting under a contract with a payment service provider do not fall within the scope of this Regulation; the same applies to any natural or legal person who provides payment service providers solely with messaging or other support systems for transmitting funds or with clearing and settlement systems.
- (9) It is appropriate to exclude from the scope of this Regulation transfers of funds that represent a low risk of money laundering or terrorist financing. Such exclusions should cover credit or debit cards, mobile telephones or other digital or information technology (IT) devices, Automated Teller Machine (ATM) withdrawals, payments of taxes, fines or other levies, and transfers of funds where both the payer and the payee are payment service providers acting on their own behalf. In addition, in order to reflect the special characteristics of national payment systems, Member States may exempt electronic giro payments, provided that it is always possible to trace the transfer of funds back to the payer. However, there must be no exemption when a debit or credit card, a mobile telephone or other digital or IT prepaid or postpaid device is used in order to effect a person-to-person transfer.
- (10) In order not to impair the efficiency of payment systems, the verification requirements for transfers of funds made from an account should be separate from those for transfers of funds not made from an account. In order to balance the risk of driving transactions underground by imposing overly strict identification requirements against the potential terrorist threat posed by small transfers of funds, the obligation to check whether the information on the payer is accurate should, in the case of transfers of funds not made from an account, be imposed only in respect of individual transfers of funds that exceed EUR 1 000,. For transfers of funds made from an account, payment service providers should not be required to verify information on the payer accompanying each transfer of funds, where the obligations under Directive [xxxx/yyyy] have been met.
- (11) Against the background of the Union payment legislation - Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community<sup>9</sup>, Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro<sup>10</sup> and Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market<sup>11</sup> - it is sufficient to provide for simplified information on the payer to accompany transfers of funds within the Union.
- (12) In order to allow the authorities responsible for combating money laundering or terrorist financing in third countries to trace the source of funds used for those purposes, transfers of funds from the Union to outside the Union should carry complete information on the payer and the payee. Those authorities should be granted access to complete information on the payer only for the purposes of preventing, investigating and detecting money laundering or terrorist financing.
- (13) For transfers of funds from a single payer to several payees to be sent in an inexpensive way in batch files containing individual transfers from the Union to outside the Union, provision should be made for such individual transfers to carry only

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<sup>9</sup> OJ L 266, 9.10.2009, p. 11.

<sup>10</sup> OJ L 94, 30.3.2012, p. 22.

<sup>11</sup> OJ L 319, 5.12.2007, p. 1.

the account number of the payer or his unique transaction identifier provided that complete information on the payer and the payee is contained in the batch file.

- (14) In order to check whether the required information on the payer and the payee accompanies transfers of funds, and to help to identify suspicious transactions, the payment service provider of the payee and the intermediary payment service provider should have effective procedures in place in order to detect whether information on the payer and the payee is missing.
- (15) Owing to the potential terrorist financing threat posed by anonymous transfers, it is appropriate to require payment service providers to request information on the payer and the payee. In line with the risk based approach developed by FATF, it is appropriate to identify areas of higher and lower risk with a view to better targeting money laundering and terrorist financing risks. Accordingly, the payment service provider of the payee and the intermediary service provider should establish effective risk-based procedures for cases where a transfer of funds lacks the required payer and payee information, in order to decide whether to execute, reject or suspend that transfer and what appropriate follow-up action to take. Where the payment service provider of the payer is established outside the territory of the Union, enhanced customer due diligence should be applied, in accordance with Directive [xxxx/yyyy], in respect of cross-border correspondent banking relationships with that payment service provider.
- (16) The payment service provider of the payee and the intermediary payment service provider should exercise special vigilance, assessing the risks, when it becomes aware that information on the payer and the payee is missing or incomplete and should report suspicious transactions to the competent authorities, in accordance with the reporting obligations set out in Directive [xxxx/yyyy] and national implementing measures.
- (17) The provisions on transfers of funds where information on the payer or the payee is missing or incomplete apply without prejudice to any obligations on payment service providers and the intermediary payment service providers to suspend and/or reject transfers of funds which violate provisions of civil, administrative or criminal law.
- (18) Until technical limitations that may prevent intermediary payment service providers from satisfying the obligation to transmit all the information they receive on the payer are removed, those intermediary payment service providers should keep records of that information. Such technical limitations should be removed as soon as payment systems are upgraded.
- (19) Since in criminal investigations it may not be possible to identify the data required or the individuals involved until many months, or even years, after the original transfer of funds and in order to be able to have access to essential evidence in the context of investigations, it is appropriate to require payment service providers to keep records of information on the payer and the payee for the purposes of preventing, investigating and detecting money laundering or terrorist financing. This period should be limited.
- (20) To enable prompt action to be taken in the fight against terrorism, payment service providers should respond promptly to requests for information on the payer from the authorities responsible for combating money laundering or terrorist financing in the Member State where they are established.
- (21) The number of working days in the Member State of the payment service provider of the payer determines the number of days to respond to requests for information on the payer.

- (22) In order to improve compliance with the requirements of this Regulation and following the Commission Communication of 9 December 2010 entitled 'Reinforcing sanctioning regimes in the financial services sector'<sup>12</sup>, the power to adopt supervisory measures and the sanctioning powers of competent authorities should be enhanced. Administrative sanctions should be foreseen and, given the importance of the fight against money laundering and terrorist financing, Member States should lay down sanctions that are effective, proportionate and dissuasive. Member States should notify the Commission thereof, as well as the European Supervisory Authority (European Banking Authority) (hereinafter 'EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC; the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (hereinafter 'EIOPA'), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC; and the European Supervisory Authority (European Securities and Markets Authority) (hereinafter 'ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.
- (23) In order to ensure uniform conditions for the implementation of Articles XXX of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with 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<sup>13</sup>.
- (24) A number of countries and territories which do not form part of the territory of the Union share a monetary union with a Member State, form part of the currency area of a Member State or have signed a monetary convention with the Union represented by a Member State, and have payment service providers that participate directly or indirectly in the payment and settlement systems of that Member State. In order to avoid the application of this Regulation to transfers of funds between the Member States concerned and those countries or territories having a significant negative effect on the economies of those countries or territories, it is appropriate to provide for the possibility for such transfers of funds to be treated as transfers of funds within the Member States concerned.
- (25) In view of the amendments that would need to be made to Regulation (EC) No 1781/2006 of 15 November 2006 on information on the payer accompanying transfers of funds, it should be repealed for reasons of clarity.
- (26) Since the objectives of this Regulation cannot be sufficiently achieved by Member States and can therefore, by reason of the scale or effects of the action, 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. In accordance with the

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<sup>12</sup> COM(2010)716 final.

<sup>13</sup> OJ L 55, 28.2.2011, p. 13.

principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

- (27) This Regulation respects the fundamental rights and observes the principles recognized by the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life (Article 7), the right to the protection of personal data (Article 8) and the right to an effective remedy and to a fair trial (Article 47) and the principle of *ne bis in idem*.
- (28) In order to ensure a smooth introduction of the new anti-money laundering and terrorist financing framework, it is appropriate to coincide the application date of this Regulation with the end of the transposition deadline for Directive [xxxx/yyyy],

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### SUBJECT MATTER, DEFINITIONS AND SCOPE

#### *Article 1*

##### *Subject matter*

This Regulation lays down rules on the information on the payer and the payee accompanying transfers of funds for the purposes of prevention, detection and investigation of money laundering and terrorist financing, when transferring funds.

#### *Article 2*

##### *Definitions*

For the purposes of this Regulation, the following definitions shall apply:

- (1) ‘terrorist financing’ means terrorist financing as defined in Article 1(4) of Directive [xxxx/yyyy];
- (2) ‘money laundering’ means the money laundering activities referred to in Article 1(2) or (3) of Directive [xxxx/yyyy];
- (3) ‘payer’ means a natural or legal person who either carries out a transfer of funds from his or her own account or who places an order for a transfer of funds;
- (4) ‘payee’ means a natural or legal person who is the intended recipient of transferred funds;
- (5) ‘payment service provider’ means a natural or legal person who provides the service of transferring funds in his or her professional capacity;
- (6) ‘intermediary payment service provider’ means a payment service provider, neither of the payer nor of the payee, who receives and transmits a fund transfer on behalf of the payment service provider of the payer or of the payee or of another intermediary payment service provider;

- (7) 'transfer of funds' means any transaction carried out by electronic means on behalf of a payer through a payment service provider, with a view to making funds available to a payee through a payment service provider, irrespective of whether the payer and the payee are the same person;
- (8) 'batch file transfer' means a bundle of several individual transfers of funds put together for transmission;
- (9) 'unique transaction identifier' means a combination of letters or symbols determined by the payment service provider, in accordance with the protocols of the payment and settlement systems or messaging systems used for the fund transfer, which permits traceability of the transaction back to the payer and the payee;
- (10) 'a person-to-person' transfer of funds means a transaction between two natural persons.

### *Article 3*

#### *Scope*

1. This Regulation shall apply to transfers of funds, in any currency, which are sent or received by a payment service provider established in the Union.
2. This Regulation shall not apply to transfers of funds carried out using a credit or debit card, or a mobile telephone or any other digital or information technology (IT) device, where the following conditions are fulfilled:
  - (a) the card or device is used to pay goods and services;
  - (b) the number of the abovementioned card or device accompanies all transfers flowing from the transaction.

However, this Regulation shall apply when a credit or debit card, or a mobile telephone, or any other digital or IT device is used in order to effect a person-to-person transfer of funds.
3. This Regulation shall not apply to transfers of funds:
  - (a) where the transfer of funds entails the payer withdrawing cash from his or her own account;
  - (b) where funds are transferred to public authorities as payment for taxes, fines or other levies within a Member State;
  - (c) where both the payer and the payee are payment service providers acting on their own behalf.

## CHAPTER II

### OBLIGATIONS ON PAYMENT SERVICE PROVIDERS

#### SECTION 1

##### OBLIGATIONS ON THE PAYMENT SERVICE PROVIDER OF THE PAYER

###### *Article 4*

###### *Information accompanying transfers of funds*

1. The payment service provider of the payer shall ensure that the transfer of funds is accompanied by the following information on the payer:
  - (a) the name of the payer;
  - (b) the payer's account number, where such an account is used to process the transfer of funds, or a unique transaction identifier where no such account is used for that purpose;
  - (c) the payer's address, or national identity number, or customer identification number, or date and place of birth.
2. The payment service provider of the payer shall ensure that transfers of funds are accompanied by the following information on the payee:
  - (a) the name of the payee; and
  - (b) the payee's account number, where such an account is used to process the transaction, or a unique transaction identifier where no such account is used for that purpose.
3. Before transferring the funds, the payment service provider of the payer shall verify the accuracy of the information referred in paragraph 1 on the basis of documents, data or information obtained from a reliable and independent source.
4. Where funds are transferred from the payer's account, the verification referred to in paragraph 3 shall be deemed to have taken place in the following cases:
  - (a) where a payer's identity has been verified in connection with the opening of the account in accordance with Article 11 of Directive [xxxx/yyyy] and the information obtained by this verification has been stored in accordance with Article 39 of that Directive ;
  - or
  - (b) where Article 12(5) of Directive [xxxx/yyyy] applies to the payer.
5. However, by way of derogation from paragraph 3, in the case of transfers of funds not made from an account, the payment service provider of the payer shall not verify the information referred to in paragraph 1 if the amount does not exceed EUR 1 000

and it does not appear to be linked to other transfers of funds which, together with the transfer in question, exceed EUR 1 000.

#### *Article 5*

##### ***Transfers of funds within the Union***

1. By way of derogation from Article 4(1) and (2), where the payment service provider(s) of both the payer and the payee are established in the Union, only the account number of the payer or his unique transaction identifier shall be provided at the time of the transfer of funds.
2. Notwithstanding paragraph 1, the payment service provider of the payer shall, upon request from the payment service provider of the payee or the intermediary payment service provider, make available the information on the payer or the payee in accordance with Article 4, within three working days of receiving that request.

#### *Article 6*

##### ***Transfers of funds to outside the Union***

1. In the case of batch file transfers from a single payer where the payment service providers of the payees are established outside the Union, Article 4(1) and (2) shall not apply to the individual transfers bundled together therein, provided that the batch file contains the information referred to in that Article and that the individual transfers carry the account number of the payer or his unique transaction identifier.
2. By way of derogation from Article 4(1) and (2), where the payment service provider of the payee is established outside the Union, transfers of funds amounting to EUR 1 000 or less shall be accompanied only by:
  - (a) the name of the payer;
  - (b) the name of the payee;
  - (c) the account number of both the payer and the payee or the unique transaction identifier.

This information need not be verified for accuracy, unless there is a suspicion of money laundering or terrorist financing.

## **SECTION 2**

### **OBLIGATIONS ON THE PAYMENT SERVICE PROVIDER OF THE PAYEE**

#### *Article 7*

##### ***Detection of missing information on the payer and the payee***

1. The payment service provider of the payee shall detect whether the fields relating to the information on the payer and the payee in the messaging system or the payment and settlement system used to effect the transfer of funds, have been filled in using the characters or inputs admissible within the conventions of that system.

2. The payment service provider of the payee shall have effective procedures in place in order to detect whether the following information on the payer and the payee is missing:
  - (a) for transfers of funds where the payment service provider of the payer is established in the Union, the information required under Article 5;
  - (b) for transfers of funds where the payment service provider of the payer is established outside the Union, the information on the payer and the payee referred to in Article 4(1) and (2) and where applicable, the information required under Article 14;  
and
  - (c) for batch file transfers where the payment service provider of the payer is established outside the Union the information referred to in Article 4(1) and (2) in respect of the batch file transfer.
3. For transfers of funds amounting to more than EUR 1 000, where the payment service provider of the payer is established outside the Union, the payment service provider of the payee shall verify the identity of the payee if his or her identity has not already been verified.
4. For transfers amounting to EUR 1 000 or less, where the payment service provider of the payer is established outside the Union, the payment service provider of the payee need not verify the information pertaining to the payee, unless there is a suspicion of money laundering or terrorist financing.

#### *Article 8*

##### ***Transfers of funds with missing or incomplete information on the payer and the payee***

1. The payment service provider of the payee shall establish effective risk-based procedures for determining when to execute, reject or suspend a transfer of funds lacking the required payer and payee information and the appropriate follow up action.  
  
If the payment service provider of the payee becomes aware, when receiving transfers of funds, that information on the payer and the payee required under Articles 4(1) and (2), 5(1) and 6 is missing or incomplete, it shall either reject the transfer or ask for complete information on the payer and the payee.
2. Where a payment service provider regularly fails to supply the required information on the payer, the payment service provider of the payee shall take steps, which may initially include the issuing of warnings and setting of deadlines, before either rejecting any future transfers of funds from that payment service provider or deciding whether or not to restrict or terminate its business relationship with that payment service provider.  
  
The payment service provider of the payee shall report that fact to the authorities responsible for combating money laundering or terrorist financing.

## Article 9

### ***Assessment and Reporting***

The payment service provider of the payee shall consider missing or incomplete information on the payer and the payee as a factor in assessing whether the transfer of funds, or any related transaction, is suspicious, and whether it must be reported to the Financial Intelligence Unit.

## SECTION 3

### **OBLIGATIONS ON INTERMEDIARY PAYMENT SERVICE PROVIDERS**

## Article 10

### ***Keeping information on the payer and the payee with the transfer***

Intermediary payment service providers shall ensure that all the information received on the payer and the payee that accompanies a transfer of funds is kept with the transfer.

## Article 11

### ***Detection of missing information on the payer and the payee***

1. The intermediary payment service provider shall detect whether the fields relating to the information on the payer and the payee in the messaging system or the payment and settlement system used to effect the transfer of funds, have been filled in using the characters or inputs admissible within the conventions of that system.
2. The intermediary payment service provider shall have effective procedures in place in order to detect whether the following information on the payer and the payee is missing:
  - (a) for transfers of funds where the payment service provider of the payer is established in the Union, the information required under Article 5;
  - (b) for transfers of funds where the payment service provider of the payer is established outside the Union, the information on the payer and the payee referred to in Article 4(1) and (2) or, where applicable, the information required under Article 14;and
  - (c) for batch file transfers, where the payment service provider of the payer is established outside the Union, the information referred to in Article 4(1) and (2) in respect of the batch file transfer.

## Article 12

### ***Transfers of funds with missing or incomplete information on the payer and the payee***

1. The intermediary payment service provider shall establish effective risk-based procedures for determining when to execute, reject or suspend a transfer of funds lacking the required payer and payee information and the appropriate follow up action.

If the intermediary payment service provider becomes aware, when receiving transfers of funds, that information on the payer and the payee required under Articles 4(1) and (2), 5(1) and 6 is missing or incomplete, it shall either reject the transfer or ask for complete information on the payer and the payee.

2. Where a payment service provider regularly fails to supply the required information on the payer, the intermediary payment service provider shall take steps, which may initially include the issuing of warnings and setting of deadlines, before either rejecting any future transfers of funds from that payment service provider or deciding whether or not to restrict or terminate its business relationship with that payment service provider.

The intermediary payment service provider shall report that fact to the authorities responsible for combating money laundering or terrorist financing.

### *Article 13*

#### ***Assessment and Reporting***

The intermediary payment service provider shall consider missing or incomplete information on the payer and the payee as a factor in assessing whether the transfer of funds, or any related transaction, is suspicious, and whether it must be reported to the Financial Intelligence Unit.

### *Article 14*

#### ***Technical limitations***

1. This Article shall apply where the payment service provider of the payer is established outside the Union and the intermediary payment service provider is situated within the Union.
2. Unless the intermediary payment service provider becomes aware, when receiving a transfer of funds, that information on the payer required under this Regulation is missing or incomplete, it may use a payment system with technical limitations which prevents information on the payer from accompanying the transfer of funds to send transfers of funds to the payment service provider of the payee.
3. Where the intermediary payment service provider becomes aware, when receiving a transfer of funds, that information on the payer required under this Regulation is missing or incomplete, it shall only use a payment system with technical limitations if it is able to inform the payment service provider of the payee thereof, either within a messaging or payment system that provides for communication of this fact or through another procedure, provided that the manner of communication is accepted by, or agreed between, both payment service providers.
4. Where the intermediary payment service provider uses a payment system with technical limitations, the intermediary payment service provider shall, upon request from the payment service provider of the payee, make available to that payment service provider all the information on the payer which it has received, irrespective of whether it is complete or not, within three working days of receiving that request.

## **CHAPTER III**

### **COOPERATION AND RECORD KEEPING**

#### *Article 15*

##### ***Cooperation obligations***

Payment service providers shall respond fully and without delay, in accordance with the procedural requirements established in the national law of the Member State in which they are established, to enquiries from the authorities responsible for combating money laundering or terrorist financing of that Member State concerning the information required under this Regulation.

#### *Article 16*

##### ***Record keeping***

The payment service provider of the payer and the payment service provider of the payee shall keep records of the information referred to in Articles 4, 5, 6 and 7 for five years. In the cases referred to in Article 14(2) and (3), the intermediary payment service provider must keep records of all information received for five years. Upon expiry of this period, personal data must be deleted, unless otherwise provided for by national law, which shall determine under which circumstances payment service providers may or shall further retain data. Member States may allow or require further retention only if necessary for the prevention, detection or investigation of money laundering and terrorist financing. The maximum retention period following carrying-out of the transfer of funds shall not exceed ten years.

## **CHAPTER IV**

### **SANCTIONS AND MONITORING**

#### *Article 17*

##### ***Sanctions***

1. Member States shall lay down the rules on administrative measures and sanctions applicable to breaches of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The sanctions provided for must be effective, proportionate and dissuasive.
2. Member States shall ensure that where obligations apply to payment services providers, in case of a breach sanctions may be applied to the members of the management body and to any other individuals who under national law are responsible for the breach.
3. By [24 months after entry into force of this Regulation] Member States shall notify the rules referred to in paragraph 1 to the Commission and to the Joint Committee of the EBA, EIOPA and ESMA. They shall notify the Commission and the Joint

Committee of the EBA, EIOPA and ESMA without delay of any subsequent amendment thereto.

4. Competent authorities shall have all investigatory powers that are necessary for the exercise of their functions. In the exercise of their sanctioning powers, competent authorities shall cooperate closely to ensure that sanctions or measures produce the desired results and coordinate their action when dealing with cross border cases.

### *Article 18*

#### ***Specific provisions***

1. This Article shall apply to the following breaches:
  - (a) repeated non-inclusion of required information on the payer and payee, in breach of Articles 4, 5 and 6;
  - (b) serious failure of payment service providers to ensure record keeping in conformity with Article 16;
  - (c) failure of the payment service provider to put in place effective risk-based policies and procedures required under Articles 8 and 12.
2. In the cases referred to in paragraph 1, administrative measures and sanctions that can be applied include at least the following:
  - (a) a public statement which indicates the natural or legal person and the nature of the breach;
  - (b) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;
  - (c) in case of a payment service provider, withdrawal of the authorisation of the provider;
  - (d) a temporary ban against any member of the payment service provider's management body or any other natural person, who is held responsible, to exercise functions with the payment service provider;
  - (e) in case of a legal person, administrative pecuniary sanctions of up to 10 % of the total annual turnover of that legal person in the preceding business year; where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year;
  - (f) in case of a natural person, administrative pecuniary sanctions of up to EUR 5 000 000, or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry into force of this Regulation;
  - (g) administrative pecuniary sanctions of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined.

## *Article 19*

### ***Publication of sanctions***

Administrative sanctions and measures imposed in the cases referred to in Articles 17 and 18(1) shall be published without undue delay including information on the type and nature of the breach and the identity of persons responsible for it, unless such publication would seriously jeopardise the stability of financial markets.

Where publication would cause a disproportionate damage to the parties involved, competent authorities shall publish the sanctions on an anonymous basis.

## *Article 20*

### ***Application of sanctions by the competent authorities***

When determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities shall take into account all relevant circumstances, including:

- (a) the gravity and the duration of the breach;
- (b) the degree of responsibility of the responsible natural or legal person;
- (c) the financial strength of the responsible natural or legal person, as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;
- (d) the importance of profits gained or losses avoided by the responsible natural or legal person, insofar as they can be determined;
- (e) the losses for third parties caused by the breach, insofar as they can be determined;
- (f) the level of cooperation of the responsible natural or legal person with the competent authority;
- (g) previous breaches by the responsible natural or legal person.

## *Article 21*

### ***Reporting of breaches***

1. Member States shall establish effective mechanisms to encourage reporting of breaches of the provisions of this Regulation to competent authorities.
2. The mechanisms referred to in paragraph 1 shall include at least:
  - (a) specific procedures for the receipt of reports on breaches and their follow-up;
  - (b) appropriate protection for persons who report potential or actual breaches;
  - (c) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in compliance with the principles laid down in Directive 95/46/EC.
3. The payment service providers shall establish appropriate procedures for their employees to report breaches internally through a specific channel.

*Article 22*

***Monitoring***

Member States shall require competent authorities to effectively monitor, and take necessary measures with a view to ensuring, compliance with the requirements of this Regulation.

## **CHAPTER V**

### **IMPLEMENTING POWERS**

*Article 23*

***Committee procedure***

1. The Commission shall be assisted by the Committee on the Prevention of Money Laundering and Terrorist Financing, hereinafter referred to as ‘the Committee’. The 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.

## **CHAPTER VI**

### **DEROGATIONS**

*Article 24*

***Agreements with territories or countries mentioned in Article 355 of the Treaty***

1. The Commission may authorise any Member State to conclude agreements with a country or territory which does not form part of the territory of the Union mentioned in Article 355 of the Treaty, which contain derogations from this Regulation, in order to allow for transfers of funds between that country or territory and the Member State concerned to be treated as transfers of funds within that Member State.

Such agreements may be authorised only if all the following conditions are met:

- (a) the country or territory concerned shares a monetary union with the Member State concerned, forms part of the currency area of that Member State or has signed a Monetary Convention with the Union represented by a Member State;
- (b) payment service providers in the country or territory concerned participate directly or indirectly in payment and settlement systems in that Member State;  
and
- (c) the country or territory concerned requires payment service providers under its jurisdiction to apply the same rules as those established under this Regulation.

2. Any Member State wishing to conclude an agreement as referred to in paragraph 1 shall send an application to the Commission and provide it with all the necessary information.

Upon receipt by the Commission of an application from a Member State, transfers of funds between that Member State and the country or territory concerned shall be provisionally treated as transfers of funds within that Member State, until a decision is reached in accordance with the procedure set out in this Article.

If the Commission considers that it does not have all the necessary information, it shall contact the Member State concerned within two months of receipt of the application and specify the additional information required.

Once the Commission has all the information it considers necessary for appraisal of the request, it shall notify the requesting Member State accordingly within one month and shall transmit the request to the other Member States.

3. Within three months of the notification referred to in the fourth subparagraph of paragraph 2, the Commission shall decide, in accordance with the procedure referred to in Article 23(2) whether to authorise the Member State concerned to conclude the agreement referred to in paragraph 1 of this Article.

In any event, a decision as referred to in the first subparagraph shall be adopted within 18 months of receipt of the application by the Commission.

## **CHAPTER VII**

### **FINAL PROVISIONS**

#### *Article 25*

##### ***Repeal***

Regulation (EC) No 1781/2006 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 the Annex.

#### *Article 26*

##### ***Entry into force***

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [*coincide with the date of transposition of Directive xxxx/yyyy*].

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

Done at Strasbourg,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## ANNEX

Correlation table referred to in Article 25.

<b>Regulation (EC) No 1781/2006</b>	<b>This Regulation</b>
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4	Article 4(1)
Article 5	Article 4
Article 6	Article 5
Article 7	Article 7
Article 8	Article 7
Article 9	Article 8
Article 10	Article 9
Article 11	Article 16
Article 12	Article 10
	Article 11
	Article 12
	Article 13
Article 13	Article 14
Article 14	Article 15
Article 15	Articles 17 to 22
Article 16	Article 23
Article 17	Article 24
Article 18	-
Article 19	-
	Article 25
Article 20	Article 26

