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From:	Presidency
To:	Permanent Representatives Committee
No. Cion doc.:	COM (2013) 44 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on information accompanying transfers of funds

With a view to the Coreper 2 meeting of 15 January 2015, delegations will find below the final compromise text on the abovementioned Commission proposal.

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,

Having regard to the opinion of the European Central Bank,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Flows of illicit money through transfers of funds can damage the integrity, stability and reputation of the financial sector and threaten the internal market as well as international development. Money-laundering, funding of terrorism and organised crime remain significant problems which should be addressed at Union level. 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 criminal activities or terrorist purposes.

(2) In order to facilitate their criminal activities, money launderers and terrorist financiers take advantage of the freedom of capital movements entailed by the integrated financial area, unless certain coordinating measures are adopted at Union level. International cooperation within the framework of the Financial Action Task Force (FATF) and the global implementation of its recommendations aim to prevent money laundering and terrorism financing while transferring funds.

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 or discrepancy 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.

(2a) The implementation and enforcement of this Regulation, including FATF Recommendation 16, represent relevant and effective instruments to prevent and combat money-laundering and terrorism financing.

This Regulation is not meant to impose unnecessary burdens and costs on payment service providers and persons, who use their services, and in this regard, the preventive approach should be targeted, proportionate and in full accordance with the free movement of legal capital guaranteed throughout the Union.

(3) It has been pointed out in the Union's revised Strategy on Terrorist Financing of 17 July 2008 that efforts have to be maintained to prevent terrorist financing and the use by suspected terrorists of their own financial resources. It is recognised that 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 Council Regulation (EC) No 2580/2001¹, [...] Council Regulation (EC) No 881/2002², and Council Regulation (EC) No 356/2010³. 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 (EU) No .../2015^{4*} of the European Parliament and of the Council 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 and increase the effectiveness of the fight against 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 FATF, and in particular Recommendation 16 and the revised interpretative note for its implementation.

¹ Council 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 (*OJ L 344, 28.12.2001, p. 70*).

² Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (*OJ L 139, 29.5.2002, p. 9*).

³ Council Regulation (EU) No 356/2010 of 26 April 2010 imposing certain specific restrictive measures directed against certain natural or legal persons, entities or bodies, in view of the situation in Somalia (*OJ L 105, 27.4.2010, p. 1*).

⁴ Directive (EU) No .../2015 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 (JO L ...).

* ***OJ please insert number of the directive adopted on the basis of COD 2013/0025 and complete the above footnote.***

(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, as well as in the implementation of restrictive measures, in particular those imposed by the Regulations referred to in recital 4, and in full compliance with such Regulations. 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.

(6a) This Regulation should apply without prejudice to the restrictive measures imposed by Regulations based on Article 215 TFEU, such as those referred to in recital 4, which may require that payment service providers of payers and of payees, as well as those of intermediaries, take appropriate action to freeze certain funds or that they comply with specific restrictions concerning certain transfers of funds.

(7) The provisions of this Regulation apply without prejudice to national legislation implementing Directive 95/46/EC of the European Parliament and of the Council⁵. For example, personal data collected for the purpose of complying with this Regulation should not be further processed in a way incompatible 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 of the same Directive. It is important that payment service providers operating in multiple jurisdictions with branches or subsidiaries located outside the Union should not be prevented from transferring data about suspicious transactions within the same organisation, to the extent that they apply adequate safeguards. In addition, the payment service providers of the payer, the payee and the intermediary service providers should have in place appropriate technical and organisational measures to protect personal data against accidental loss, alteration, unauthorised disclosure or access.

⁵ 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 (*OJL 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) In addition to the exclusion from the scope of this Regulation of transfers of funds corresponding to payment services referred to in points (a) to (m) and (o) of Article 3 of the Directive 2007/64/EC, it is appropriate to also exclude transfers of funds that represent a low risk of money laundering or terrorist financing. Such exclusions should cover payment cards, e-money instruments, mobile telephones or other digital or information technology (IT) prepaid or postpaid devices with similar characteristics, exclusively used for the purchase of goods or services, Automated Teller Machine (ATM) withdrawals, payments of taxes, fines or other levies, truncated cheques 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 should be able to exempt:

- a) certain domestic low-value transfers of funds used for the purchase of goods or services,
- b) electronic giro payments, c) transfers of funds carried out through cheque images exchanges, including truncated cheques, or bills of exchange;

provided that it is always possible to trace the transfer of funds back to the payer.

However, there must be no exemption when a payment card, an e-money instrument, a mobile telephone or other digital or IT prepaid or postpaid device with similar characteristics is used in order to effect a person-to-person transfer.

(10) Payment service providers should ensure that the information on the payer and the payee is not missing or incomplete.

In order not to impair the efficiency of payment systems, and 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 or the payee is accurate should, in the case of transfers of funds where verification has not yet taken place, be imposed only in respect of individual transfers of funds that exceed EUR 1 000, unless the transfer appears to be linked to other transfers of funds which together would exceed EUR 1 000, or the funds have been received in cash or in anonymous electronic money or where there are reasonable grounds for a suspicion of money laundering or terrorist financing.

For transfers of funds where verification is deemed to have taken place, payment service providers should not be required to verify information on the payer or the payee accompanying each transfer of funds, provided that the obligations under Directive (EU) No .../2015* have been met.

(11) Against the background of the Union payment legislative acts – Regulation (EC) No 924/2009 of the European Parliament and of the Council⁶, Regulation (EU) No 260/2012 of the European Parliament and of the Council⁷ and Directive 2007/64/EC of the European Parliament and of the Council⁸ – it is sufficient to provide for simplified information on the payer only to accompany transfers of funds within the Union, such as the account number(s) or a unique transaction identifier.

(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 and the payee only for the purposes of preventing, investigating and detecting money laundering or terrorist financing.

* ***OJ please insert number of the directive adopted on the basis of COD 2013/0025.***

⁶ Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (*OJ L 266, 9.10.2009, p. 11*).

⁷ 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 and amending Regulation (EC) No 924/2009 (*OJ L 94, 30.3.2012, p. 22*).

⁸ Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (*OJ L 319, 5.12.2007, p. 1*).

(12a) The authorities responsible for combating money laundering and terrorist financing, and relevant judicial and law enforcement agencies in the Member States, should intensify cooperation with each other and with relevant third-country authorities, including those in developing countries, in order further to strengthen transparency, the sharing of information and best practices.

(13) For transfers of funds from a single payer to several payees to be sent in batch files containing individual transfers from the Union to outside the Union, provision should be made for such individual transfers to carry only the account number of the payer or the unique transaction identifier, as well as complete information on the payee, provided that the batch file contains complete information on the payer that is verified for accuracy and complete information on the payee that is fully traceable.

(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 or incomplete. These procedures may include post-event monitoring or real-time monitoring where feasible.

Competent authorities in the Member States should thus ensure that payment service providers include the required transaction information with the wire transfer or related message throughout the payment chain.

(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 have effective risk-based procedures for cases where a transfer of funds lacks the required payer or payee information, in order to decide whether to execute, reject or suspend that transfer and what appropriate follow-up action to take.

(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 or 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 (EU) No .../2015* 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.

(17a) With the aim of assisting payment service providers to put effective procedures in place in order to detect cases where they receive transfers of funds with missing or incomplete payer or payee information and to take follow-up actions, European Supervisory Authority (European Banking Authority) (hereinafter 'EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁹, 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 Council¹⁰, and European Supervisory Authority (European Securities and Markets Authority) (hereinafter 'ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council¹¹, should publish guidelines on this matter.

* ***OJ please insert number of the directive adopted on the basis of COD 2013/0025.***

⁹ 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 (*OJ L 331, 15.12.2010, p. 12*).

¹⁰ 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 (*OJ L 331, 15.12.2010, p. 48*).

¹¹ 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 (*OJ L 331, 15.12.2010, p. 84*).

(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 to five years, after which all personal data should be deleted, unless national law provides otherwise. If necessary for the purposes of prevention, detection or investigation of money laundering and terrorist financing, and after carrying out an assessment of the necessity and proportionality, Member States should be able to allow or require further retention of records without exceeding an additional period of 5 years, without prejudice to national criminal law provisions on evidence applicable to ongoing criminal investigations and legal proceedings.

(20) To enable prompt action to be taken in the fight against money laundering and the financing of terrorism, payment service providers should respond promptly to requests for information on the payer and the payee 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 in accordance with the Commission Communication of 9 December 2010 entitled 'Reinforcing sanctioning regimes in the financial services sector', the power to adopt supervisory measures and the sanctioning powers of competent authorities should be enhanced. Administrative sanctions should be provided for 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) ('EBA'), established by Regulation (EU) No 1093/2010, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) ('EIOPA'), established by Regulation (EU) No 1094/2010, and the European Supervisory Authority (European Securities and Markets Authority) ('ESMA'), established by Regulation (EU) No 1095/2010.

(23) In order to ensure uniform conditions for the implementation of Chapter V 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 Council¹².

(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 the European Parliament and of the Council¹³, that regulation 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 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*.

¹² 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 (*OJ L 55*, 28.2.2011, p. 13).

¹³ Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds (*OJ L 345*, 8.12.2006, p. 1).

(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 transposition deadline for Directive (EU) No .../2015*.

(28a) The European Data Protection Supervisor delivered an opinion on 4 July 2013,

* *OJ please insert number of the directive adopted on the basis of COD 2013/0025.*

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, in any currency, for the purposes of prevention, detection and investigation of money laundering and terrorist financing, when at least one of the payment service providers involved in the transfer of funds is established in the Union.

Article 2

Definitions

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

- (1) ‘terrorist financing’ means terrorist financing as defined in Article 1(4) of Directive (EU) No .../2015*;
- (2) ‘money laundering’ means the money laundering activities referred to in Article 1(2) or (3) of Directive (EU) No .../2015*;
- (3) ‘payer’ means a natural or legal person who holds a payment account and allows a transfer of funds from that payment account, or, where there is no payment account, a natural or legal person who gives a transfer of funds order;
- (4) ‘payee’ means a natural or legal person who is the intended recipient of the transfer of funds;

* *OJ please insert number of the directive adopted on the basis of COD 2013/0025.*

(5) ‘payment service provider’ means bodies and natural persons referred to in Article 1(1) of Directive 2007/64/EC and those benefiting from the waiver referred to in Article 26 of that Directive and, where appropriate, legal persons benefiting from the waiver under Article 9 of Directive 2009/110/EC of the European Parliament and of the Council¹⁴, providing transfer of funds services;

(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;

(6a) ‘payment account’ means an account as defined in Article 4(14) of Directive 2007/64/EC;

(6b) ‘funds’ means funds as defined in Article 4(15) of Directive 2007/64/EC;

(7) ‘transfer of funds’ means any transaction at least partially 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 and irrespective of whether the payment service provider of the payer and the payment service provider of the payee are one and the same, including:

(aa) credit transfers as defined in Article 2(1) of Regulation (EU) No 260/2012;

(ab) direct debits as defined in Article 2(2) of Regulation (EU) No 260/2012;

(ac) national or cross-border money remittances as defined in Article 4(13) of Directive 2007/64/EC;

(ad) transfers ordered by a payment card, an electronic money instrument, or a mobile telephone or other digital or IT prepaid or postpaid device with similar characteristics.

¹⁴ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

(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, numbers, 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) 'person-to-person' transfer of funds means a transaction between natural persons acting, as consumers, for purposes other than trade, business or profession.

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 or an intermediary payment service provider established in the Union.

1a. This Regulation shall not apply to the services listed in points (a) to (m) and (o) of Article 3 of Directive 2007/64/EC.

2. This Regulation shall not apply to the transfers of funds carried out using a payment card, an electronic money instrument or a mobile phone, or any other digital or IT prepaid or postpaid device with similar characteristics, where the following conditions are fulfilled:

(a) that card, instrument or device is used exclusively to pay goods and services; and

(b) the number of that card, instrument or device accompanies all transfers flowing from the transaction.

However, this Regulation shall apply when a payment card, electronic money instrument or a mobile telephone, or any other digital or IT prepaid or postpaid device with similar characteristics is used in order to effect a person-to-person transfer of funds.

3. This Regulation shall not apply to natural or legal persons that have no activity other than to convert paper documents into electronic data and who act under a contract with a payment service provider or to those who have no activity other than to provide payment service providers with messaging or other support systems for transmitting funds or with clearing and settlement systems.

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.

(ca) where transfers of funds are carried out through cheque images exchanges, including truncated cheques.

3b. A Member State may decide not to apply this Regulation to transfers of funds within its territory to a payee account permitting payment exclusively for the provision of goods or services if all of the following conditions are met:

(a) the payment service provider of the payee is subject to the obligations set out in Directive (EU) No .../2015*;

* *OJ please insert number of the directive adopted on the basis of COD 2013/0025.*

(b) the payment service provider of the payee is able by means of a unique transaction identifier to trace back, through the payee, the transfer of funds from the natural or legal person who has an agreement with the payee for the provision of goods and services; and

(c) the amount of the transfer of funds is EUR 1 000 or less.

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; and

(c) the payer's address, or official personal document 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 transfer of funds.

2a. In case of transfers not made either from or to an account, the payment service provider of the payer shall ensure that the transfer of funds is accompanied by a unique transaction identifier instead of the account number(s).

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. 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 accordance with Article 11 of Directive (EU) No .../2015* and the information obtained by that verification has been stored in accordance with Article 39 of that Directive; or

(b) where Article 12(5) of Directive (EU) No .../2015* applies to the payer.

4a. Without prejudice to the derogations in Articles 5 and 6, the payment service provider of the payer shall be prohibited from executing any transfer of funds before ensuring full compliance with the obligations contained in paragraphs 1 through 4 of this Article.

* *OJ please insert number of the directive adopted on the basis of COD 2013/0025.*

Article 5
Transfers of funds within the Union

1. By way of derogation from Article 4(1) and (2), where all payment service providers involved in the payment chain are established in the Union, transfers of funds shall be accompanied by at least the account number of both the payer and the payee or the unique transaction identifier without prejudice to the information requirements laid down in Regulation (EU) No 260/2012 where applicable.

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 within three working days of receiving that request:

(aa) the information on the payer or the payee in accordance with Article 4, for transfers of funds amounting to more than EUR 1 000;

(ab) at least the name of the payer, the name of the payee, and the account number of both the payer and the payee or the unique transaction identifier, for transfers of funds amounting to EUR 1 000 or less and not appearing to be linked to other transfers of funds which, together with the transfer in question, exceed EUR 1 000.

2a. By way of derogation from Article 4(3), the payment service provider of the payer need not verify in the case of transfers of funds referred to in paragraph 2(ab) of this Article, the information pertaining to the payer unless:

(a) the payment service provider of the payer has received the funds to be transferred in cash or in anonymous electronic money; or where

(b) the payment service provider of the payer has reasonable grounds for a suspicion of money laundering or terrorist financing.

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) 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 information has been verified in accordance with Article 4(3) and (4), and that the individual transfers carry the account number of the payer or the unique transaction identifier.

2. By way of derogation from Article 4(1) and without prejudice, to the information required in accordance with Regulation (EU) No 260/2012, where applicable, where the payment service provider of the payee is established outside the Union, transfers of funds amounting to EUR 1 000 or less and not appearing to be linked to other transfers of funds which, together with the transfer in question, exceed EUR 1 000, shall be accompanied by at least:

- (a) the name of the payer;
- (b) the name of the payee; and
- (c) the account number of both the payer and the payee or the unique transaction identifier.

The above information pertaining to the payer need not be verified for accuracy in accordance with Article 4(3), unless:

- (a) the payment service provider of the payer has received the funds to be transferred in cash or in anonymous electronic money; or where
- (b) the payment service provider of the payer has reasonable grounds for 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 or the payee

1. The payment service provider of the payee shall implement effective procedures to 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 messaging or payment and settlement system.

2. The payment service provider of the payee shall implement effective procedures, including, where appropriate, ex-post monitoring or real-time monitoring, in order to detect whether the following information on the payer or 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 or the payee referred to in Article 4(1) and (2).

 - (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, before crediting the payee's account or making the funds available to the payee, the payment service provider of the payee shall verify the accuracy of the information referred in paragraph 2 pertaining to the payee on the basis of documents, data or information obtained from a reliable and independent source, without prejudice to the requirements for credit transfer and direct debit transactions laid down in Articles 69 and 70 of Directive 2007/64/CE.

4. For transfers of funds amounting to EUR 1 000 or less, and not appearing to be linked to other transfers of funds which, together with the transfer in question, exceed EUR 1 000, the payment service provider of the payee need not verify the accuracy of the information pertaining to the payee, unless:

(a) the payment service provider of the payee has received the funds in cash or in anonymous electronic money; or where

(b) the payment service provider of the payee has reasonable grounds for a suspicion of money laundering or terrorist financing.

4a. The verification referred to in paragraphs 3 and 4 shall be deemed to have taken place in the following cases:

(a) where a payee's identity has been verified in accordance with Article 11 of Directive (EU) No .../2015* 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 (EU) No .../2015* applies to the payee.

Article 8

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

1. The payment service provider of the payee shall implement effective risk-based procedures, including based on the risk sensitive basis referred to in Article 11 of Directive (EU) No .../2015*, for determining when to execute, reject or suspend a transfer of funds lacking the required complete payer and payee information and for taking the appropriate follow-up action.

* *OJ please insert number of the directive adopted on the basis of COD 2013/0025.*

If the payment service provider of the payee becomes aware, when receiving transfers of funds, that information on the payer or the payee required under Article 4(1) and (2), Article 5(1) and Article 6 is missing or incomplete or has not been completed using the characters or inputs admissible within the conventions of the messaging or payment and settlement system, as referred in Article 7(1), it shall, either reject the transfer or, ask for complete information on the payer and the payee, prior to or after crediting the payee's account or making the funds available to the payee, on a risk sensitive basis.

2. Where a payment service provider repetitively fails to supply any of the required information on the payer or the payee, 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 competent authority responsible for monitoring compliance with anti-money laundering and counter terrorist financing provisions.

Article 9

Assessment and Reporting

The payment service provider of the payee shall consider missing or incomplete information on the payer or 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 or the payee

1. The intermediary payment service provider shall implement effective procedures to 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 implement effective procedures, including, where appropriate, ex-post monitoring or real-time monitoring, in order to detect whether the following information on the payer or the payee is missing:
 - (a) for transfers of funds where the payment service providers of the payer and the payee are established in the Union, the information required under Article 5;

 - (b) for transfers of funds where the payment service provider of the payer or of the payee is established outside the Union, the information on the payer and the payee referred to in Article 4(1) and (2);

 - (c) for batch file transfers, where the payment service provider of the payer or of the payee 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 information on the payer or 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 or payee information and for taking the appropriate follow up action.

If the intermediary payment service provider becomes aware, when receiving transfers of funds, that information on the payer or the payee required under Article 4(1) and (2), Article 5(1) and Article 6 is missing or has not been completed using the characters or inputs admissible within the conventions of the messaging or payment and settlement system, as referred in Article 7(1), it shall either reject the transfer or, ask for required information on the payer and the payee, prior to or after crediting the payee's account or making the funds available to the payee, on a risk sensitive basis.

2. Where a payment service provider repetitively fails to supply the required information on the payer or the payee, 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 competent authority responsible for monitoring compliance with anti-money laundering and counter terrorist financing provisions.

Article 13

Assessment and Reporting

The intermediary payment service provider shall consider missing information on the payer or 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.

CHAPTER III

Article 15

Provision of information

1. Payment service providers shall respond fully and without delay, including through a central contact point in accordance with Article 42(8) of the Directive (EU) No .../2015*, where such a contact point has been appointed, in accordance with the procedural requirements established in the national law of the Member State in which they are established, to enquiries exclusively from the authorities responsible for preventing and combating money laundering or terrorist financing of that Member State concerning the information required under this Regulation.

Article 15a

Data Protection

1. Directive 95/46/EC, as transposed into national law, applies to the processing of personal data in Member States within the framework of this Regulation. Regulation (EC) No 45/2001 of the European Parliament and of the Council¹⁵ applies to the processing of personal data by the Commission, and EBA, EIOPA and ESMA.
2. Personal data shall only be processed by obliged entities on the basis of this Regulation for the purposes of the prevention of money laundering and terrorist financing as referred to in Article 1 of Directive (EU) No .../2015* and not further processed in a way incompatible with those purposes. The processing of personal data on the basis of this Regulation for commercial purposes shall be prohibited.

* ***OJ please insert number of the directive adopted on the basis of COD 2013/0025.***

¹⁵ 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 (*OJ L 8, 12.1.2001, p. 1*).

* ***OJ please insert number of the directive adopted on the basis of COD 2013/0025.***

3. Payment service providers shall provide new clients with the information required in Article 10 of Directive 95/46/EC before establishing a business relationship or carrying out an occasional transaction. This information shall in particular include a general notice as to the legal obligations of the obliged entities under that Directive when processing personal data for the purposes of the prevention of money laundering and terrorist financing.

4. Payment service providers shall ensure that the confidentiality of the data processed is respected.

Article 16

Record keeping

1. Information on the payer and the payee shall not be kept any longer than strictly necessary. 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 a maximum period of 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 shall be deleted, unless otherwise provided for by national law, which shall determine under which circumstances obliged entities may or shall further retain data. Member States may allow or require further retention only after they have carried out a thorough assessment of the necessity and proportionality of such extension and it has been justified as 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.

2. Where, on the date of entry into force of this Directive, legal proceedings concerned with the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing are pending in a Member State, and an obliged entity holds information or documents relating to those pending proceedings, such information or documents may be stored by the obliged entity in accordance with national law for a period of five years from the date of entry into force of this Directive. Member States may, without prejudice to national criminal law provisions on evidence applicable to ongoing criminal investigations and legal proceedings, allow or require retention of such data or information for a further period of five years, where the necessity and proportionality of such extension has been established for the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing.

Article 17

Sanctions

1. Without prejudice to the right to provide for and impose criminal penalties, 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 shall be effective, proportionate and dissuasive and be consistent with those laid down in accordance with Chapter VI, Section 4, of the Directive (EU) No .../2015*.

Where Member States decide not to lay down rules for administrative measures and sanctions for breaches which are subject to national criminal law they shall communicate to the Commission the relevant criminal law provisions.

2. Member States shall ensure that where obligations apply to payment services providers, in the event of a breach of provisions of this Regulation, measures and sanctions can be applied, subject to the conditions laid down in national law, to the members of the management body and to any other natural person who under national law is responsible for the breach.

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. In accordance with Article 55(4) of the Directive (EU) No .../2015* competent authorities shall have all the supervisory and 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.

* *OJ please insert number of the directive adopted on the basis of COD 2013/0025.*

* *OJ please insert number of the directive adopted on the basis of COD 2013/0025.*

4a. Member States shall ensure that legal persons can be held liable for infringements referred to in Article 18(1) committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person based on any of the following:

- (a) a power of representation of the legal person;
- (b) an authority to take decisions on behalf of the legal person; or
- (c) an authority to exercise control within the legal person.

4b. Member States shall also ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 5 has made possible the commission of the infringements referred to in Article 18(1) for the benefit of the legal person by a person under its authority.

(4c) Competent authorities shall exercise their powers to impose measures and sanctions in accordance with this Regulation, in any of the following ways:

- (a) directly;
- (b) in collaboration with other authorities;
- (c) under their responsibility by delegation to such authorities;
- (d) by application to the competent judicial authorities.

In the exercise of their powers to impose measures and sanctions , competent authorities shall cooperate closely to ensure that measures or sanctions 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) repetitive or systematic failure to include the required information on the payer or the payee by a payment service provider, in breach of Articles 4, 5 and 6;

(b) repetitive or systematic, or 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.

(ca) serious failure by intermediary payment service providers to comply with Articles 11 and 12.

2. In the cases referred to in paragraph 1, administrative measures and sanctions that can be applied include at least those laid down by Article 56(2) and 56(2a) of the Directive (EU) No .../2015*.

Article 19
Publication of sanctions

The competent authorities shall publish administrative sanctions and measures imposed in the cases referred to in Article 17 and Article 18(1) without undue delay, including information on the type and nature of the breach and the identity of persons responsible for it, if necessary and proportionate after a case-by-case evaluation, in accordance with the provisions of Articles 57(1), 57(1a) and 57(1b) of the Directive AMLD.

* *OJ please insert number of the directive adopted on the basis of COD 2013/0025.*

Article 20

Application of sanctions by the competent authorities

1. When determining the type of administrative measures or sanctions and the level of administrative pecuniary sanctions, the competent authorities shall take into account all relevant circumstances, including those listed in article 57(2) of the Directive (EU) No .../2015*,

(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 natural or legal person responsible.

1a. Article 58a of the Directive (EU) No .../2015* shall apply, as regards measures and sanctions imposed in accordance with this Regulation.

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.

* ***OJ please insert number of the directive adopted on the basis of COD 2013/0025.***

* ***OJ please insert number of the directive adopted on the basis of COD 2013/0025.***

2. The mechanisms referred to in paragraph 1 shall include at least those referred to Article 58 (2) of the Directive (EU) No .../2015*.

3. The payment service providers in cooperation with the competent authorities shall establish internal appropriate procedures for their employees or persons in a comparable position, to report breaches internally through a secure, independent, specific and anonymous channel, proportionate to the nature and size of the obliged entity concerned.

Article 22

Monitoring

1. 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, and encourage through effective mechanisms the reporting of breaches of the provisions of this Regulation to competent authorities.

1a. After Member States will notify the rules referred to in paragraph 1 to the Commission and to the Joint Committee of the EBA, EIOPA and ESMA, in accordance with art. 17 para 3 of this Regulation, the Commission shall submit a report to the European Parliament and to the Council on the application of Chapter IV, with particular regard to cross-border cases.

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 ('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.

* ***OJ please insert number of the directive adopted on the basis of COD 2013/0025.***

CHAPTER VI
DEROGATIONS

Article 24

Agreements with territories or countries which do not form part of the territory of the Union

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 as defined 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 of 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 to be 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.

3a. Member States who have been authorised to conclude agreements with territories or countries which do not form part of the territory of the Union by Commission Implementing Decision 2012/43/EU, Commission Decision 2010/259/EC, Commission Decision 2009/853/EC or Commission Decision 2008/982/EC shall provide the Commission with all the updated information necessary for an appraisal of the condition stipulated in paragraph 1(c) by [date that is 3 months prior to the date of transposition of the 4AMLD] at the latest.

Within three months of the receipt of such information, the Commission shall examine the information provided to ensure that the country or territory concerned requires payment service providers under its jurisdiction to apply the same rules as those established under this Regulation. If the Commission considers after such examination that the condition stipulated in paragraph 1(c) is no longer met, it shall repeal the relevant Commission Decision.

Article 24a
Implementation guidelines

The European Banking Authority , The European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority shall issue guidelines addressed to competent authorities and the payment service providers in accordance with Article 16 of Regulation (EU) No 1093/2010 , of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010, on the measures to be taken in accordance with this Regulation, especially as regards the implementation of Articles 7, 8, 11 and 12. These guidelines shall be issued within 2 years from the date of entry into force of this Regulation.

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 twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from ...*.

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

* ***OJ please insert the date of transposition of the directive adopted on the basis of COD 2013/0025.***

ANNEX

Correlation table referred to in Article 25.

Regulation (EC) No 1781/2006	This Regulation
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 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
