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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Position of the Council at first reading with a view to the adoption of a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL on information accompanying transfers of funds and repealing
Regulation (EC) No 1781/2006
- Adopted by the Council on 20 April 2015

REGULATION (EU) 2015/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

**on information accompanying transfers of funds
and repealing Regulation (EC) No 1781/2006**

(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 Central Bank¹,

After consulting the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 166, 12.6.2013, p. 2.

² Position of the European Parliament of 11 March 2014 (not yet published in the Official Journal) and position of the Council at first reading of 20 April 2015 (not yet published in the Official Journal).

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 of the Union as well as international development. Money laundering, terrorist financing 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 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 financiers of terrorism are likely to take advantage of the freedom of capital movements within the Union's 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 terrorist financing while transferring funds.

- (3) By reason of the scale of the action to be undertaken, the Union should ensure that the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by FATF on 16 February 2012 (the ‘revised FATF Recommendations’), and, in particular, FATF Recommendation 16 on wire transfers (the ‘FATF Recommendation 16’) and the revised interpretative note for its implementation, are implemented uniformly throughout the Union and that, in particular, there is no discrimination or discrepancy between, on the one hand, national payments within a Member State and, on the other, cross-border payments between Member States. Uncoordinated action by Member States acting 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 could therefore damage the internal market in the field of financial services.
- (4) In order to foster a coherent approach in the international context and to increase the effectiveness of the fight against money laundering and terrorist financing, further Union action should take account of developments at international level, namely the revised FATF Recommendations.
- (5) The implementation and enforcement of this Regulation, including FATF Recommendation 16, represent relevant and effective means of preventing and combating money-laundering and terrorist financing.

- (6) This Regulation is not intended to impose unnecessary burdens or costs on payment service providers or on persons who use their services. In this regard, the preventive approach should be targeted and proportionate and should be in full compliance with the free movement of capital, which is guaranteed throughout the Union.
- (7) In the Union's Revised Strategy on Terrorist Financing of 17 July 2008 (the 'Revised Strategy'), it was pointed out that efforts must be maintained to prevent terrorist financing and to control the use by suspected terrorists of their own financial resources. It is recognised that FATF is constantly seeking to improve its Recommendations and is working towards a common understanding of how they should be implemented. It is noted in the Revised Strategy that implementation of the revised FATF Recommendations by all FATF members and members of FATF-style regional bodies is assessed on a regular basis and that a common approach to implementation by Member States is therefore important.

- (8) In order to prevent terrorist financing, measures with the purpose of freezing the funds and the economic resources of certain persons, groups and entities have been taken, including Council Regulations (EC) No 2580/2001¹, (EC) No 881/2002² and (EU) No 356/2010³. To the same end, measures with the purpose of protecting the financial system against the channelling of funds and economic resources for terrorist purposes have also been taken. Directive (EU) 2015/... of the European Parliament and of the Council^{4*} contains a number of such measures. Those measures do not, however, fully prevent terrorists or other criminals from accessing payment systems for transferring their funds.

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 the Al-Qaida network (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) 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 or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L ...).

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

- (9) The full traceability of transfers of funds can be a particularly important and valuable tool in the prevention, detection and investigation of money laundering and terrorist financing, as well as in the implementation of restrictive measures, in particular those imposed by Regulations (EC) No 2580/2001, (EC) No 881/2002 and (EU) No 356/2010, and in full compliance with Union regulations implementing such measures. 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 accompany transfers of funds with information on the payer and the payee.
- (10) This Regulation should apply without prejudice to the restrictive measures imposed by regulations based on Article 215 of the Treaty on the Functioning of the European Union (TFEU), such as Regulations (EC) No 2580/2001, (EC) No 881/2002 and (EU) No 356/2010, which may require that payment service providers of payers and of payees, as well as intermediary payment service providers, take appropriate action to freeze certain funds or that they comply with specific restrictions concerning certain transfers of funds.

- (11) This Regulation should also apply without prejudice to national legislation transposing Directive 95/46/EC of the European Parliament and of the Council¹. For example, personal data collected for the purpose of complying with this Regulation should not be further processed in a way that is incompatible with Directive 95/46/EC. In particular, further processing of personal data 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. Therefore, in applying this Regulation, the transfer of personal data to a third country which does not ensure an adequate level of protection in accordance with Article 25 of Directive 95/46/EC should be permitted in accordance with Article 26 thereof. 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, provided that they apply adequate safeguards. In addition, the payment service providers of the payer and of the payee and the intermediary payment service providers should have in place appropriate technical and organisational measures to protect personal data against accidental loss, alteration, or unauthorised disclosure or access.
- (12) Persons that merely convert paper documents into electronic data and are acting under a contract with a payment service provider and persons that provide payment service providers solely with messaging or other support systems for transmitting funds or with clearing and settlement systems do not fall within the scope of this Regulation.

¹ 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 (OJ L 281, 23.11.1995, p. 31).

- (13) Transfers of funds corresponding to services referred to in points (a) to (m) and (o) of Article 3 of Directive 2007/64/EC of the European Parliament and of the Council¹ do not fall within the scope of this Regulation. It is also 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 payment cards, electronic money instruments, mobile phones or other digital or information technology (IT) prepaid or postpaid devices with similar characteristics, where they are used exclusively for the purchase of goods or services and the number of the card, instrument or device accompanies all transfers. However, the use of a payment card, an electronic money instrument, a mobile phone, or any other digital or IT prepaid or postpaid device with similar characteristics in order to effect a person-to-person transfer of funds, falls within the scope of this Regulation. In addition, Automated Teller Machine withdrawals, payments of taxes, fines or other levies, transfers of funds carried out through cheque images exchanges, including truncated cheques, or bills of exchange, and transfers of funds where both the payer and the payee are payment service providers acting on their own behalf should be excluded from the scope of this Regulation.
- (14) In order to reflect the special characteristics of national payment systems, and provided that it is always possible to trace the transfer of funds back to the payer, Member States should be able to exempt from the scope of this Regulation certain domestic low-value transfers of funds, including electronic giropayments, used for the purchase of goods or services.

¹ 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).

- (15) Payment service providers should ensure that the information on the payer and the payee is not missing or incomplete.
- (16) In order not to impair the efficiency of payment systems, and in order to balance the risk of driving transactions underground as a result of overly strict identification requirements against the potential terrorist threat posed by small transfers of funds, the obligation to check whether 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, the funds have been received or paid out in cash or in anonymous electronic money, or where there are reasonable grounds for suspecting money laundering or terrorist financing.
- (17) 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 laid down in Directive (EU) 2015/...^{*} are met.

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

- (18) In view of the Union legislative acts in respect of payment services, namely Regulation (EC) No 924/2009 of the European Parliament and of the Council¹, Regulation (EU) No 260/2012 of the European Parliament and of the Council² and Directive 2007/64/EC, it should be sufficient to provide that only simplified information accompany transfers of funds within the Union, such as the payment account number(s) or a unique transaction identifier.
- (19) 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, detecting and investigating money laundering and terrorist financing.
- (20) The Member State 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 and the sharing of information and best practices.

¹ 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).

² 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).

- (21) As regards transfers of funds from a single payer to several payees that are 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 payment 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.
- (22) In order to check whether the required information on the payer and the payee accompanies transfers of funds, and to help 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. Those procedures should include ex-post monitoring or real-time monitoring where appropriate. Competent authorities should ensure that payment service providers include the required transaction information with the wire transfer or related message throughout the payment chain.

- (23) Given the potential threat of money laundering and terrorist financing presented 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 the risk of money laundering and terrorist financing. Accordingly, the payment service provider of the payee and the intermediary payment service provider should have effective risk-based procedures that apply where a transfer of funds lacks the required information on the payer or the payee, in order to allow them to decide whether to execute, reject or suspend that transfer and to determine the appropriate follow-up action to take.
- (24) The payment service provider of the payee and the intermediary payment service provider should exercise special vigilance, assessing the risks, when either 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) 2015/...^{*} and with national measures transposing that Directive.
- (25) The provisions on transfers of funds in relation to which information on the payer or the payee is missing or incomplete apply without prejudice to any obligations on payment service providers and intermediary payment service providers to suspend and/or reject transfers of funds which breach a provision of civil, administrative or criminal law.

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

- (26) With the aim of assisting payment service providers to put effective procedures in place to detect cases in which they receive transfers of funds with missing or incomplete payer or payee information and to take follow-up actions, the European Supervisory Authority (European Banking Authority) (EBA), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council¹, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council², and the European Supervisory Authority (European Securities and Markets Authority) (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council³, should issue guidelines.
- (27) To enable prompt action to be taken in the fight against money laundering and terrorist financing, 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 those payment service providers are established.

¹ 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).

² 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).

³ 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).

- (28) 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.
- (29) As it may not be possible in criminal investigations to identify the data required or the individuals involved in a transaction 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 a period of time for the purposes of preventing, detecting and investigating money laundering and terrorist financing. That 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 preventing, detecting or investigating money laundering or terrorist financing, and after carrying out an assessment of the necessity and proportionality of the measure, Member States should be able to allow or require retention of records for a further period of no more than five years, without prejudice to national criminal law on evidence applicable to ongoing criminal investigations and legal proceedings.

- (30) In order to improve compliance with 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 and measures should be provided for and, given the importance of the fight against money laundering and terrorist financing, Member States should lay down sanctions and measures that are effective, proportionate and dissuasive. Member States should notify the Commission and the Joint Committee of EBA, EIOPA and ESMA (the ‘ESAs’) thereof.
- (31) 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 Council¹.

¹ 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).

- (32) 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.
- (33) Given the number of amendments that would need to be made to Regulation (EC) No 1781/2006 of the European Parliament and of the Council¹ pursuant to this Regulation, that Regulation should be repealed for reasons of clarity.
- (34) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, 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 on European Union (TEU). 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.

¹ 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).

- (35) This Regulation respects the fundamental rights and observes the principles recognised 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), the right to an effective remedy and to a fair trial (Article 47) and the principle of *ne bis in idem*.
- (36) In order to ensure the smooth introduction of the anti-money laundering and terrorist financing framework, it is appropriate that the date of application of this Regulation be the same as the deadline for transposition of Directive (EU) 2015/...^{*}.
- (37) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council¹ and delivered an opinion on 4 July 2013²,

HAVE ADOPTED THIS REGULATION:

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

¹ 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).

² OJ C 32, 4.2.2014, p. 9.

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Regulation lays down rules on the information on payers and payees, accompanying transfers of funds, in any currency, for the purposes of preventing, detecting and investigating money laundering and terrorist financing, where at least one of the payment service providers involved in the transfer of funds is established in the Union.

Article 2

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

3. This Regulation shall not apply to 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 met:
- (a) that card, instrument or device is used exclusively to pay for goods or 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, an electronic money instrument or a mobile phone, 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.

4. This Regulation shall not apply to persons that have no activity other than to convert paper documents into electronic data and that do so pursuant to a contract with a payment service provider, or to persons that 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) that involve the payer withdrawing cash from the payer's own payment account;
- (b) that transfer funds to a public authority 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;
 - (d) that are carried out through cheque images exchanges, including truncated cheques.
5. A Member State may decide not to apply this Regulation to transfers of funds within its territory to a payee's payment account permitting payment exclusively for the provision of goods or services where all of the following conditions are met:
- (a) the payment service provider of the payee is subject to Directive (EU) 2015/...*;
 - (b) the payment service provider of the payee is able to trace back, through the payee, by means of a unique transaction identifier, the transfer of funds from the person who has an agreement with the payee for the provision of goods or services;
 - (c) the amount of the transfer of funds does not exceed EUR 1 000.

Article 3
Definitions

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

- (1) 'terrorist financing' means terrorist financing as defined in Article 1(5) of Directive (EU) 2015/...*;

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

- (2) ‘money laundering’ means the money laundering activities referred to in Article 1(3) and (4) of Directive (EU) 2015/... *;
- (3) ‘payer’ means a person that holds a payment account and allows a transfer of funds from that payment account, or, where there is no payment account, that gives a transfer of funds order;
- (4) ‘payee’ means a person that is the intended recipient of the transfer of funds;
- (5) ‘payment service provider’ means the categories of payment service provider referred to in Article 1(1) of Directive 2007/64/EC, natural or legal persons benefiting from a waiver pursuant to Article 26 thereof and legal persons benefiting from a waiver pursuant to Article 9 of Directive 2009/110/EC of the European Parliament and of the Council¹, providing transfer of funds services;
- (6) ‘intermediary payment service provider’ means a payment service provider that is not the payment service provider of the payer or of the payee and that receives and transmits a transfer of funds on behalf of the payment service provider of the payer or of the payee or of another intermediary payment service provider;

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

¹ 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).

- (7) ‘payment account’ means a payment account as defined in point (14) of Article 4 of Directive 2007/64/EC;
- (8) ‘funds’ means funds as defined in point (15) of Article 4 of Directive 2007/64/EC;
- (9) ‘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 that of the payee are one and the same, including:
- (a) a credit transfer as defined in point (1) of Article 2 of Regulation (EU) No 260/2012;
 - (b) a direct debit as defined in point (2) of Article 2 of Regulation (EU) No 260/2012;
 - (c) a money remittance as defined in point (13) of Article 4 of Directive 2007/64/EC, whether national or cross border;
 - (d) a transfer 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;
- (10) ‘batch file transfer’ means a bundle of several individual transfers of funds put together for transmission;

- (11) ‘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 transfer of funds, which permits the traceability of the transaction back to the payer and the payee;
- (12) ‘person-to-person transfer of funds’ means a transaction between natural persons acting, as consumers, for purposes other than trade, business or profession.

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 transfers of funds are accompanied by the following information on the payer:
 - (a) the name of the payer;
 - (b) the payer’s payment account number; and

- (c) the payer's address, official personal document number, 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 payment account number.
3. By way of derogation from point (b) of paragraph 1 and point (b) of paragraph 2, in the case of a transfer not made from or to a payment account, the payment service provider of the payer shall ensure that the transfer of funds is accompanied by a unique transaction identifier rather than the payment account number(s).
4. Before transferring funds, the payment service provider of the payer shall verify the accuracy of the information referred to in paragraph 1 on the basis of documents, data or information obtained from a reliable and independent source.
5. Verification as referred to in paragraph 4 shall be deemed to have taken place where:
- (a) a payer's identity has been verified in accordance with Article 13 of Directive (EU) 2015/...^{*} and the information obtained pursuant to that verification has been stored in accordance with Article 40 of that Directive; or
 - (b) Article 14(5) of Directive (EU) 2015/...^{*} applies to the payer.

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

6. Without prejudice to the derogations provided for in Articles 5 and 6, the payment service provider of the payer shall not execute any transfer of funds before ensuring full compliance with this Article.

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 payment account number of both the payer and the payee or, where Article 4(3) applies, 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, within three working days of receiving a request for information from the payment service provider of the payee or from the intermediary payment service provider, make available the following:
 - (a) for transfers of funds exceeding EUR 1 000, whether those transfers are carried out in a single transaction or in several transactions which appear to be linked, the information on the payer or the payee in accordance with Article 4;

(b) for transfers of funds not exceeding EUR 1 000 that do not appear to be linked to other transfers of funds which, together with the transfer in question, exceed EUR 1 000, at least:

(i) the names of the payer and of the payee; and

(ii) the payment account numbers of the payer and of the payee or, where Article 4(3) applies, the unique transaction identifier.

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

(a) has received the funds to be transferred in cash or in anonymous electronic money;
or

(b) has reasonable grounds for suspecting money laundering or terrorist financing.

Article 6

Transfers of funds to outside the Union

1. In the case of a batch file transfer 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 Article 4(1), (2) and (3), that that information has been verified in accordance with Article 4(4) and (5), and that the individual transfers carry the payment account number of the payer or, where Article 4(3) applies, the unique transaction identifier.

2. By way of derogation from Article 4(1), and, where applicable, without prejudice to the information required in accordance with Regulation (EU) No 260/2012, where the payment service provider of the payee is established outside the Union, transfers of funds not exceeding EUR 1 000 that do not appear 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 names of the payer and of the payee; and
 - (b) the payment account numbers of the payer and of the payee or, where Article 4(3) applies, the unique transaction identifier.

By way of derogation from Article 4(4), the payment service provider of the payer need not verify the information on the payer referred to in this paragraph unless the payment service provider of the payer:

- (a) has received the funds to be transferred in cash or in anonymous electronic money;
or
- (b) has reasonable grounds for suspecting 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 or payment and settlement system used to effect the transfer of funds have been filled in using characters or inputs admissible in accordance with the conventions of that 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 referred to in Article 5;
 - (b) for transfers of funds where the payment service provider of the payer is established outside the Union, the information 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 that batch file transfer.

3. In the case of transfers of funds exceeding EUR 1 000, whether those transfers are carried out in a single transaction or in several transactions which appear to be linked, before crediting the payee's payment account or making the funds available to the payee, the payment service provider of the payee shall verify the accuracy of the information on the payee referred to in paragraph 2 of this Article on the basis of documents, data or information obtained from a reliable and independent source, without prejudice to the requirements laid down in Articles 69 and 70 of Directive 2007/64/EC.

4. In the case of transfers of funds not exceeding EUR 1 000 that do not appear 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 on the payee, unless the payment service provider of the payee:
 - (a) effects the pay-out of the funds in cash or in anonymous electronic money; or
 - (b) has reasonable grounds for suspecting money laundering or terrorist financing.

5. Verification as referred to in paragraphs 3 and 4 shall be deemed to have taken place where:
 - (a) a payee's identity has been verified in accordance with Article 13 of Directive (EU) 2015/...* and the information obtained pursuant to that verification has been stored in accordance with Article 40 of that Directive; or
 - (b) Article 14(5) of Directive (EU) 2015/...* applies to the payee.

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

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 procedures based on the risk-sensitive basis referred to in Article 13 of Directive (EU) 2015/...*, for determining whether 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.

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

2. Where a payment service provider repeatedly fails to provide 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 restricting or terminating its business relationship with that payment service provider.

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

The payment service provider of the payee shall report that failure, and the steps taken, 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 take into account missing or incomplete information on the payer or the payee as a factor when assessing whether a transfer of funds, or any related transaction, is suspicious and whether it is to be reported to the Financial Intelligence Unit (FIU) in accordance with Directive (EU) 2015/...^{*}.

SECTION 3

OBLIGATIONS ON INTERMEDIARY PAYMENT SERVICE PROVIDERS

Article 10

Retention of 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 retained with the transfer.

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

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 or payment and settlement system used to effect the transfer of funds have been filled in using characters or inputs admissible in accordance with 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 referred to in 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 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 that 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 whether to execute, reject or suspend a transfer of funds lacking the required payer and payee information and for taking the appropriate follow up action.

Where the intermediary payment service provider becomes aware, when receiving transfers of funds, that the information referred to in Article 4(1) or (2), Article 5(1) or Article 6 is missing or has not been filled in using characters or inputs admissible in accordance with the conventions of the messaging or payment and settlement system as referred to in Article 7(1) it shall reject the transfer or ask for the required information on the payer and the payee before or after the transmission of the transfer of funds, on a risk-sensitive basis.

2. Where a payment service provider repeatedly fails to provide 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 restricting or terminating its business relationship with that payment service provider.

The intermediary payment service provider shall report that failure, and the steps taken, 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 take into account missing information on the payer or the payee as a factor when assessing whether a transfer of funds, or any related transaction, is suspicious, and whether it is to be reported to the FIU in accordance with Directive (EU) 2015/...^{*}.

CHAPTER III
INFORMATION, DATA PROTECTION
AND RECORD-RETENTION

Article 14

Provision of information

Payment service providers shall respond fully and without delay, including by means of a central contact point in accordance with Article 45(9) of Directive (EU) 2015/...^{*}, where such a contact point has been appointed, and in accordance with the procedural requirements laid down 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.

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

Article 15

Data protection

1. The processing of personal data under this Regulation is subject to Directive 95/46/EC, as transposed into national law. Personal data that is processed pursuant to this Regulation by the Commission or by the ESAs is subject to Regulation (EC) No 45/2001.
2. Personal data shall be processed by payment service providers on the basis of this Regulation only for the purposes of the prevention of money laundering and terrorist financing and shall not be further processed in a way that is incompatible with those purposes. The processing of personal data on the basis of this Regulation for commercial purposes shall be prohibited.
3. Payment service providers shall provide new clients with the information required pursuant to Article 10 of Directive 95/46/EC before establishing a business relationship or carrying out an occasional transaction. That information shall, in particular, include a general notice concerning the legal obligations of payment service providers under this Regulation 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 retention

1. Information on the payer and the payee shall not be retained for longer than strictly necessary. Payment service providers of the payer and of the payee shall retain records of the information referred to in Articles 4 to 7 for a period of five years.
2. Upon expiry of the retention period referred to in paragraph 1, payment service providers shall ensure that the personal data is deleted, unless otherwise provided for by national law, which shall determine under which circumstances payment service providers may or shall further retain the 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 further retention, and where they consider it to be justified as necessary for the prevention, detection or investigation of money laundering or terrorist financing. That further retention period shall not exceed five years.

3. Where, on ...*, legal proceedings concerned with the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing are pending in a Member State, and a payment service provider holds information or documents relating to those pending proceedings, the payment service provider may retain that information or those documents in accordance with national law for a period of five years from ...*. Member States may, without prejudice to national criminal law on evidence applicable to ongoing criminal investigations and legal proceedings, allow or require the retention of such information or documents for a further period of five years where the necessity and proportionality of such further retention has been established for the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing.

* OJ : please insert date : the date of entry into force of this Regulation.

CHAPTER IV

SANCTIONS AND MONITORING

Article 17

Administrative sanctions and measures

1. Without prejudice to the right to provide for and impose criminal sanctions, Member States shall lay down the rules on administrative sanctions and measures applicable to breaches of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The sanctions and measures provided for shall be effective, proportionate and dissuasive and shall be consistent with those laid down in accordance with Chapter VI, Section 4, of Directive (EU) 2015/... *.

Member States may decide not to lay down rules on administrative sanctions or measures for breach of the provisions of this Regulation which are subject to criminal sanctions in their national law. In that case, Member States 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, sanctions or measures can, subject to national law, be applied to the members of the management body and to any other natural person who, under national law, is responsible for the breach.

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

3. By...^{*}, Member States shall notify the rules referred to in paragraph 1 to the Commission and to the Joint Committee of the ESAs. They shall notify the Commission and the Joint Committee of the ESAs without delay of any subsequent amendments thereto.
4. In accordance with Article 58(4) of Directive (EU) 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 powers to impose administrative sanctions and measures, competent authorities shall cooperate closely to ensure that those administrative sanctions or measures produce the desired results and coordinate their action when dealing with cross-border cases.
5. Member States shall ensure that legal persons can be held liable for the breaches referred to in Article 18 committed for their benefit by any person acting individually or as part of an organ of that legal person, and having a leading position within the legal person based on any of the following:
 - (a) power to represent the legal person;
 - (b) authority to take decisions on behalf of the legal person; or
 - (c) authority to exercise control within the legal person.

^{*} OJ please insert the date: 24 months after entry into force of this Regulation.

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

6. 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 of this Article has made it possible to commit one of the breaches referred to in Article 18 for the benefit of that legal person by a person under its authority.
7. Competent authorities shall exercise their powers to impose administrative sanctions and measures 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 other authorities;
 - (d) by application to the competent judicial authorities.

In the exercise of their powers to impose administrative sanctions and measures, competent authorities shall cooperate closely in order to ensure that those administrative sanctions or measures produce the desired results and coordinate their action when dealing with cross-border cases.

Article 18
Specific provisions

Member States shall ensure that their administrative sanctions and measures include at least those laid down by Article 59(2) and (3) of Directive (EU) 2015/...* in the event of the following breaches of this Regulation:

- (a) repeated or systematic failure by a payment service provider to include the required information on the payer or the payee, in breach of Article 4, 5 or 6;
- (b) repeated, systematic or serious failure by a payment service provider to retain records, in breach of Article 16;
- (c) failure by a payment service provider to implement effective risk-based procedures, in breach of Articles 8 or 12;
- (d) serious failure by an intermediary payment service provider to comply with Article 11 or 12.

Article 19
Publication of sanctions and measures

In accordance with Article 60(1), (2) and (3) of Directive (EU) 2015/...*, the competent authorities shall publish administrative sanctions and measures imposed in the cases referred to in Articles 17 and 18 of this Regulation without undue delay, including information on the type and nature of the breach and the identity of the persons responsible for it, if necessary and proportionate after a case-by-case evaluation.

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

Article 20

Application of sanctions and measures by the competent authorities

1. 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 those listed in Article 60(4) of Directive (EU) 2015/...*.
2. As regards administrative sanctions and measures imposed in accordance with this Regulation, Article 62 of Directive (EU) 2015/...* shall apply.

Article 21

Reporting of breaches

1. Member States shall establish effective mechanisms to encourage the reporting to competent authorities of breaches of this Regulation.

Those mechanisms shall include at least those referred to in Article 61(2) of Directive (EU) 2015/...*.
2. Payment service providers, in cooperation with the competent authorities, shall establish appropriate internal 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 payment service provider concerned.

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

Article 22

Monitoring

1. Member States shall require competent authorities to monitor effectively and to take the measures necessary to ensure compliance with this Regulation and encourage, through effective mechanisms, the reporting of breaches of the provisions of this Regulation to competent authorities.
2. After Member States have notified the rules referred to in paragraph 1 of this Article to the Commission and to the Joint Committee of the ESAs in accordance with Article 17(3), 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.

CHAPTER VI

DEROGATIONS

Article 24

Agreements with countries and territories

which do not form part of the territory of the Union

1. The Commission may authorise any Member State to conclude an agreement with a third country or with a territory outside the territorial scope of the TEU and the TFEU as referred to in Article 355 TFEU (the ‘country or territory concerned’), which contains derogations from this Regulation, in order to allow 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 where 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. A Member State wishing to conclude an agreement as referred to in paragraph 1 shall submit a request to the Commission and provide it with all the information necessary for the appraisal of the request.
 3. Upon receipt by the Commission of such a request, 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 this Article.
 4. If, within two months of receipt of the request, the Commission considers that it does not have all the information necessary for the appraisal of the request, it shall contact the Member State concerned and specify the additional information required.
 5. Within one month of receipt of all the information that it considers to be necessary for the appraisal of the request, the Commission shall notify the requesting Member State accordingly and shall transmit copies of the request to the other Member States.
 6. Within three months of the notification referred to in paragraph 5 of this Article, the Commission shall decide, in accordance with Article 23(2), whether to authorise the Member State concerned to conclude the agreement that is the subject of the request.

The Commission shall, in any event, adopt a decision as referred to in the first subparagraph within 18 months of receipt of the request.

7. By ...*, Member States that have been authorised to conclude agreements with a country or territory concerned pursuant to Commission Implementing Decision 2012/43/EU¹, Commission Decision 2010/259/EU², Commission Decision 2009/853/EC³ or Commission Decision 2008/982/EC⁴ shall provide the Commission with updated information necessary for an appraisal under point (c) of the second subparagraph of paragraph 1.

* OJ please insert the date corresponding to 21 months after the entry into force of the directive adopted on the basis of COD 2013/0025.

¹ Commission Implementing Decision 2012/43/EU of 25 January 2012 authorising the Kingdom of Denmark to conclude agreements with Greenland and the Faroe Islands for transfers of funds between Denmark and each of these territories to be treated as transfers of funds within Denmark, pursuant to Regulation (EC) No 1781/2006 of the European Parliament and of the Council (OJ L 24, 27.1.2012, p. 12).

² Commission Decision 2010/259/EU of 4 May 2010 authorising the French Republic to conclude an agreement with the Principality of Monaco for transfers of funds between the French Republic and the Principality of Monaco to be treated as transfers of funds within the French Republic, pursuant to Regulation (EC) No 1781/2006 of the European Parliament and of the Council (OJ L 112, 5.5.2010, p. 23).

³ Commission Decision 2009/853/EC of 26 November 2009 authorising France to conclude an agreement with Saint-Pierre-et-Miquelon, Mayotte, New Caledonia, French Polynesia and Wallis and Futuna respectively for transfers of funds between France and each of these territories to be treated as transfers of funds within France, pursuant to Regulation (EC) No 1781/2006 of the European Parliament and of the Council (OJ L 312/71, 27.11.2009, p. 71).

⁴ Commission Decision 2008/982/EC of 8 December 2008 authorising the United Kingdom to conclude an agreement with the Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man for transfers of funds between the United Kingdom and each of these territories to be treated as transfers of funds within the United Kingdom, pursuant to Regulation (EC) No 1781/2006 of the European Parliament and of the Council (OJ L 352, 31.12.2008, p. 34).

Within three months of 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, after such examination, the Commission considers that the condition laid down in point (c) of the second subparagraph of paragraph 1 is no longer met, it shall repeal the relevant Commission Decision or Commission Implementing Decision.

Article 25

Guidelines

By...^{*}, the ESAs shall issue guidelines addressed to the 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 measures to be taken in accordance with this Regulation, in particular as regards the implementation of Articles 7, 8, 11 and 12.

CHAPTER VII

FINAL PROVISIONS

Article 26

Repeal of Regulation (EC) No 1781/2006

Regulation (EC) No 1781/2006 is repealed.

* OJ please insert the date : two years after the entry into force of this Regulation.

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 27

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.

Done at ...,

For the European Parliament

The President

...

For the Council

The President

...

* OJ please insert the date : two years after the entry into force of the directive adopted on the basis of COD 2013/0025.

ANNEX

Correlation table

Regulation (EC) No 1781/2006	This Regulation
Article 1	Article 1
Article 2	Article 3
Article 3	Article 2
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 26
Article 20	Article 27