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NOTE

From:	Presidency
To:	Permanent Representatives Committee
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on information accompanying transfers of funds <i>- General approach</i>

With a view to the Coreper 2 meeting of 18 June 2014, delegations will find below an updated Presidency compromise on the abovementioned Commission proposal.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on information accompanying transfers of funds

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the European Central Bank²,

After consulting the European Data Protection Supervisor³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

- (1) Flows of dirty money through transfers of funds can damage the stability and reputation of the financial sector and threaten the internal market. Terrorism shakes the very foundations of our society. The soundness, integrity and stability of the system of transfers of funds and confidence in the financial system as a whole could be seriously jeopardised by the efforts of criminals and their associates either to disguise the origin of criminal proceeds or to transfer funds for terrorist purposes.
- (2) In order to facilitate their criminal activities, money launderers and terrorist financiers could try to take advantage of the freedom of capital movements entailed by the integrated financial area, unless certain coordinating measures are adopted at Union level. By its scale, Union action should ensure that Recommendation 16 on wire transfers of the Financial Action Task Force (FATF), adopted in February 2012 is transposed uniformly throughout the Union, and, in particular, that there is no discrimination between national payments within a Member State and cross border payments between Member States. Uncoordinated action by Member States alone in the field of cross border transfers of funds could have a significant impact on the smooth functioning of payment systems at Union level and therefore damage the internal market in the field of financial services.
- (3) It has been pointed out in the Union's revised Strategy on Terrorist Financing of 17 July 2008⁴ 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 the FATF is constantly seeking to improve its Recommendations and working towards a common understanding of how these should be implemented. It is noted in the Union's revised Strategy that implementation of those Recommendations by all FATF members and members of FATF-style regional bodies is assessed on a regular basis and that from this point of view a common approach to implementation by Member States is important.

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

- (4) In order to prevent terrorist funding, measures aimed at the freezing of funds and economic resources of certain persons, groups and entities have been taken, including Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism⁵, 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 network⁶, and Council Regulation (EC) 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. To that same end, measures aimed at protecting the financial system against the channelling of funds and economic resources for terrorist purposes have been taken. Directive [xxxx/yyyy] of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing⁷ 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 OJ L 344, 28.12.2001, p. 70.

⁶ OJ L 139, 29.5.2002, p. 9.

⁷ OJ L , , p. .

- (5) In order to foster a coherent approach in the international context in the field of combating money laundering and terrorist financing, further Union action should take account of developments at that level, namely the International Standards on combating money-laundering and the financing of terrorism and proliferation adopted in 2012 by the FATF, and in particular Recommendation 16 and the revised interpretative note for its implementation.
- (6) The full traceability of transfers of funds can be a particularly important and valuable tool in the prevention, investigation and detection of money laundering or terrorist financing, as well as in the implementation of restrictive measures, in particular those imposed by the Regulations referred to in recital 4. 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 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 data⁸. For example, personal data collected for the purpose of complying with this Regulation should not be further processed in a way inconsistent 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(1)(d) of the same Directive.
- (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.

⁸ OJ L 281, 23.11.1995, p. 31.

- (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 of the European Parliament and of the Council⁹, 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 certain domestic low-value transfers of funds used for the purchase of goods or services, 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.

⁹ Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market (OJ L 319, 5.12.2007, p. 1).

- (10) 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 is 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 [xxxx/yyyy] have been met.
- (11) Without prejudice to the Union payment legislation - Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community¹⁰, 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 euro¹¹ and Directive 2007/64/EC - it is sufficient to provide for the account number(s) or a unique transaction identifier only to accompany transfers of funds within the Union.
- (12) In order to allow the authorities responsible for combating money laundering or terrorist financing in third countries to trace the source of funds used for those purposes, transfers of funds from the Union to outside the Union should carry complete information on the payer and the payee. Those authorities should be granted access to complete information on the payer and the payee only for the purposes of preventing, investigating and detecting money laundering or terrorist financing.

¹⁰ OJ L 266, 9.10.2009, p. 11.

¹¹ OJ L 94, 30.3.2012, p. 22.

- (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. These procedures may include post-event monitoring or real-time monitoring where feasible.
- (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 [xxxx/yyyy] and national implementing measures.

- (17) The provisions on transfers of funds where information on the payer or the payee is missing or incomplete apply without prejudice to any obligations on payment service providers and the intermediary payment service providers to suspend and/or reject transfers of funds which violate provisions of civil, administrative or criminal law.
- (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 Council¹², 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 Council¹³, 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 Council¹⁴, should publish guidelines on this matter.
- (18) *deleted*

¹² 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).

¹³ 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).

¹⁴ 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.
- (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 following the Commission Communication of 9 December 2010 entitled 'Reinforcing sanctioning regimes in the financial services sector'¹⁵, the power to adopt supervisory measures and the sanctioning powers of competent authorities should be enhanced. Administrative sanctions should be foreseen and, given the importance of the fight against money laundering and terrorist financing, Member States should lay down sanctions that are effective, proportionate and dissuasive. Member States should notify the Commission thereof, as well as EBA, EIOPA and ESMA.
- (23) In order to ensure uniform conditions for the implementation of Article 23 of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers¹⁶.

¹⁵ COM(2010)716 final.

¹⁶ OJ L 55, 28.2.2011, p. 13.

- (24) A number of countries and territories which do not form part of the territory of the Union share a monetary union with a Member State, form part of the currency area of a Member State or have signed a monetary convention with the Union represented by a Member State, and have payment service providers that participate directly or indirectly in the payment and settlement systems of that Member State. In order to avoid the application of this Regulation to transfers of funds between the Member States concerned and those countries or territories having a significant negative effect on the economies of those countries or territories, it is appropriate to provide for the possibility for such transfers of funds to be treated as transfers of funds within the Member States concerned.
- (25) In view of the amendments that would need to be made to Regulation (EC) No 1781/2006 of 15 November 2006 on information on the payer accompanying transfers of funds, it should be repealed for reasons of clarity.
- (26) Since the objectives of this Regulation cannot be sufficiently achieved by Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (27) This Regulation respects the fundamental rights and observes the principles recognized by the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life (Article 7), the right to the protection of personal data (Article 8) and the right to an effective remedy and to a fair trial (Article 47) and the principle of *ne bis in idem*.

- (28) In order to ensure a smooth introduction of the new anti-money laundering and terrorist financing framework, it is appropriate to coincide the application date of this Regulation with the end of the transposition deadline for Directive [xxxx/yyyy],

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, DEFINITIONS AND SCOPE

Article 1

Subject matter

This Regulation lays down rules on the information on the payer and the payee accompanying transfers of funds, 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 shall apply:

- (1) ‘terrorist financing’ means terrorist financing as defined in Article 1(4) of Directive [xxxx/yyyy];
- (2) ‘money laundering’ means the money laundering activities referred to in Article 1(2) or (3) of Directive [xxxx/yyyy];
- (3) ‘payer’ means a natural or legal person who 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;
- (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 Directive 2007/64/EC and, where appropriate, legal persons benefiting from the waiver under Article 9 of Directive 2009/110/EC, 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 banknotes and coins, scriptural money, as well as electronic money as defined in Article 2(2) of Directive 2009/110/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:
 - (a) credit transfers as defined in Article 2(1) of Regulation (EU) No 260/2012;
 - (b) direct debits as defined in Article 2(2) of Regulation (EU) No 260/2012;

- (c) national or cross-border money remittances as defined in Article 4(13) of Directive 2007/64/EC;
 - (d) 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.
- (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) ‘a person-to-person’ transfer of funds means a transfer of funds between two consumers as defined in Article 2(24) of Regulation 260/2012.

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 telephone, or any other digital or IT prepaid or postpaid device with similar characteristics, where the following conditions are fulfilled:
- (a) the card or device is used exclusively to pay for the provision of goods and services; and
 - (b) the number of the abovementioned card 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 transfers of funds:
- (a) *deleted*
 - (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;
 - (d) where truncated checks are used.
4. This Regulation shall not apply to natural or legal persons who have no activity other than to convert paper documents into electronic data and who act under a contract with a payment service provider as well as any natural or legal persons 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.

5. 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 [xxxx/yyyy];
 - (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 national identity number, or customer identification number, or date and place of birth.

2. The payment service provider of the payer shall ensure that transfers of funds are accompanied by the following information on the payee:
 - (a) the name of the payee; and
 - (b) the payee's account number, where such an account is used to process the 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 [xxxx/yyyy] and the information obtained by this verification has been stored in accordance with Article 39 of that Directive; or
 - (b) where Article 12(5) of Directive [xxxx/yyyy] applies to the payer.
- 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.
5. *deleted*

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, where appropriate, to the information required in accordance with Regulation (EU) No 260/2012.
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:
 - (a) the information on the payer or the payee in accordance with Article 4, for transfers of funds amounting to more than EUR 1 000;
 - (b) 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.

3. 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 2b of this Article, the information pertaining to the payer, unless the funds to be transferred have been received by the payment service provider of the payer in cash or in anonymous electronic money or where there is 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 which 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, where appropriate, 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 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 the funds to be transferred have been received by the payment service provider of the payer in cash or in anonymous electronic money or where there is a suspicion of money laundering or terrorist financing.

SECTION 2

OBLIGATIONS ON THE PAYMENT SERVICE PROVIDER OF THE PAYEE

Article 7

Detection of missing information on the payer or the payee

1. The payment service provider of the payee shall have effective procedures in place 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 payment service provider of the payee shall have effective procedures in place, 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); and
 - (c) for batch file transfers where the payment service provider of the payer is established outside the Union the information referred to in Article 4(1) and (2) in respect of the batch file transfer.

3. For transfers of funds amounting to more than EUR 1 000, 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.
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 the funds transferred are payable to the payee in cash or in anonymous electronic money or where there is a suspicion of money laundering or terrorist financing.
5. 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 [xxxx/yyyy] and the information obtained by this verification has been stored in accordance with Article 39 of that Directive; or
 - (b) where Article 12(5) of Directive [xxxx/yyyy] applies to the 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 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 payment service provider of the payee becomes aware, when receiving transfers of funds, that information on the payer or the payee required under Articles 4(1) and (2), 5(1) and 6 is missing or incomplete, it shall, either reject the transfer or, ask for complete information on the payer and the payee, 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 payment service provider of the payee shall take steps, which may include the issuing of warnings and setting of deadlines, or 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, in accordance with Chapter IV of the Directive [xxxx/yyyy].

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 monitor, with the aim of detecting, whether the fields relating to the information on the payer and the payee in the messaging system or the payment and settlement system used to effect the transfer of funds, have been filled in using the characters or inputs admissible within the conventions of that system.
2. The intermediary payment service provider shall have effective procedures in place, 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 and the payee is 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); and
 - (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 Articles 4(1) and (2), 5(1) and 6 is missing, it shall either reject the transfer or ask for complete information on the payer and the payee, prior to or after the execution of the transfer, 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, in accordance with Chapter IV of the Directive [xxxx/yyyy].

Article 14

Technical limitations

deleted

CHAPTER III

PROVISION OF INFORMATION AND RECORD KEEPING

Article 15

Provision of information

Payment service providers shall respond fully and without delay, including through a central contact point in accordance with Article 42(8) of the Directive [xxxx/yyyy], where such a contact point has been appointed, and in accordance with the procedural requirements established in the national law of the Member State in which they are established, to enquiries from competent authorities and to direct or indirect requests by the FIU of that Member State concerning the information required under this Regulation.

Article 16

Record keeping

The payment service provider of the payer and the payment service provider of the payee shall keep records of the information referred to in Articles 4, 5, 6 and 7 for five years. Upon expiry of this period, personal data shall be deleted, unless otherwise provided for by national law, which shall determine under which circumstances payment service providers may or shall further retain data. Member States may allow or require further retention if necessary for the prevention, detection or investigation of money laundering and terrorist financing. In such a case the retention period following carrying-out of the transfer of funds shall not exceed the limitation period provided for in their national law and, in any case, fifteen years.

CHAPTER IV

SANCTIONS AND MONITORING

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 [xxxx/yyyy].

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.
3. *deleted*

4. In accordance with Article 55(4) of the Directive [xxxx/yyyy], competent authorities shall have all the supervisory and investigatory powers that are necessary for the exercise of their functions.
5. 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.
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 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.
7. 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 failings:
 - (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 failure of payment service providers to ensure record keeping in conformity with Article 16;
 - (c) failure of the payment service provider to put in place effective risk-based policies and procedures required under Articles 8 and 12.
2. In the cases referred to in paragraph 1, administrative measures and sanctions that can be applied include at least those laid down by Article 56(2) and 56(2a) of the Directive [xxxx/yyyy].
 - (a) *deleted*
 - (b) *deleted*
 - (c) *deleted*
 - (d) *deleted*
 - (e) *deleted*
 - (f) *deleted*
 - (g) *deleted*

Article 19

Publication of sanctions

Administrative measures and sanctions imposed in the cases referred to in Articles 17 and 18(1) shall be published without undue delay, in accordance with the provisions of Articles 57(1), 57(1a) and 57(1b) of the Directive [xxxx/yyyy].

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 [xxxx/yyyy].
 - (a) *deleted*
 - (b) *deleted*
 - (c) *deleted*
 - (d) *deleted*
 - (e) *deleted*
 - (f) *deleted*
 - (g) *deleted*
2. Article 58a of the Directive [xxxx/yyyy] 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.
2. The mechanisms referred to in paragraph 1 shall include at least those referred to Article 58 (2) of the Directive [xxxx/yyyy]:
 - (a) *deleted*
 - (b) *deleted*
 - (c) *deleted*
3. The payment service providers shall have in place appropriate procedures for their employees or persons in a comparable position to report breaches internally through a specific, independent and anonymous channel, proportionate to the nature and size of the obliged entity concerned.

Article 22

Monitoring

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

CHAPTER V

IMPLEMENTING POWERS

Article 23

Committee procedure

1. The Commission shall be assisted by the Committee on the Prevention of Money Laundering and Terrorist Financing, hereinafter referred to as ‘the Committee’. The Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

CHAPTER VI

DEROGATIONS

Article 24

Agreements with territories or countries 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 determined in accordance with Article 355 of the Treaty, which contain derogations from this Regulation, in order to allow for transfers of funds between that country or territory and the Member State concerned to be treated as transfers of funds within that Member State.

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

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

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

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

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

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

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

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

- 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 20th day following that of its publication in the *Official Journal of the European Union*.

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

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

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President

ANNEX

Correlation table referred to in Article 25.

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
