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*Committee on Economic and Monetary Affairs
Committee on Civil Liberties, Justice and Home Affairs*

2013/0024(COD)

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DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council
on information accompanying transfers of funds
(COM(2013)0044 – C7-0034/2013 – 2013/0024(COD))

Committee on Economic and Monetary Affairs
Committee on Civil Liberties, Justice and Home Affairs

Rapporteurs: Mojca Kleva Kekuš, Timothy Kirkhope

(Joint committee meetings – Rule 51 of the Rules of Procedure)

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ¶ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on information accompanying transfers of funds
(COM(2013)0044 – C7-0034/2013 – 2013/0024(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0044),
 - having regard to Article 294(2) and Article 114, paragraph 1, of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0034/2013),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Central Bank of 17 May 2013¹,
 - having regard to the opinion of the European Economic and Social Committee of 11 November 2013², – having regard to Rules 55 of its Rules of Procedure,
 - having regard to the joint deliberations of the Committee on Economic and Monetary Affairs and the Committee on Civil Liberties, Justice and Home Affairs under Rule 51 of the Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Development and the Committee on Legal Affairs (A7-0000/2013),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 166, 12.6.2013, p. 2.

² OJ C 271, 19.9.2013, p. 31.

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(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.

Amendment

(1) Flows of dirty money through transfers of funds can damage the stability and reputation of the financial sector, threaten the internal market **and directly or indirectly undermine the confidence of citizens in the rule of law. The funding of terrorism and organised crime remains a significant problem which should be addressed at Union level. Terrorism and organised crime shake** 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.

Or. en

Amendment 2

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) In order to facilitate their criminal activities, money launderers and terrorist financers 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

Amendment

(2) In order to facilitate their criminal activities, money launderers and terrorist financers 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 **as well as the international** level. **International cooperation within the framework of the Financial Action Task Force (FATF) and the global**

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.

implementation of its recommendations are aimed at preventing regulatory arbitrage and the distortion of competition. By its scale, Union action should ensure that ***FATF*** Recommendation 16 on wire transfers 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.

Or. en

Amendment 3

Proposal for a regulation

Recital 5

Text proposed by the Commission

(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.

Amendment

(5) In order to foster a coherent approach in the international context ***and make the fight against*** money laundering and terrorist financing ***more efficient***, 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.

Or. en

Amendment 4

Proposal for a regulation

Recital 6

Text proposed by the Commission

(6) The full traceability of transfers of funds can be a particularly important and valuable tool in the prevention, investigation and detection of money laundering or terrorist financing. It is therefore appropriate, in order to ensure the transmission of information throughout the payment chain, to provide for a system imposing the obligation on payment service providers to have transfers of funds accompanied by information on the payer and the payee.

Amendment

(6) The full traceability of transfers of funds can be a particularly important and valuable tool in the prevention, investigation and detection of money laundering or terrorist financing. It is therefore appropriate, in order to ensure the transmission of information throughout the payment chain, to provide for a system imposing the obligation on payment service providers to have transfers of funds accompanied by information on the payer and the payee. ***In that regard, it is essential for financial institutions to report adequate, accurate and up-to-date information with respect to transfers of funds carried out for their clients to enable the competent authorities to more effectively prevent money laundering and terrorist financing.***

Or. en

Amendment 5

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) The provisions of this Regulation apply without prejudice to national legislation implementing Directive 95/46/EC of the European Parliament and of the Council ***of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data***¹⁹. For example, personal data collected for the purpose of complying with this Regulation should not

Amendment

(7) The provisions of this Regulation apply without prejudice to national legislation implementing Directive 95/46/EC of the European Parliament and of the Council¹⁹. 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

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 (d) of the same Directive.

prohibited. The fight against money laundering and terrorist financing is recognised as an important public interest ground by all Member States. Hence, in the application of this Regulation, the transfer of personal data to a third country which does not ensure an adequate level of protection in the meaning of Article 25 of Directive 95/46/EC should be permitted according to Article 26 (d) of the same Directive. ***It is important that payment service providers operating in multiple jurisdictions with branches or subsidiaries located outside the Union are not unreasonably prevented from sharing information on suspicious transactions within the same organisation. This is without prejudice to international agreements concluded between the Union and third countries on combating money laundering including appropriate safeguards for citizens ensuring an equivalent or adequate level of protection.***

¹⁹ OJ L 281, 23.11.1995, p. 31.

¹⁹ ***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).***

Or. en

Amendment 6

Proposal for a regulation

Recital 10

Text proposed by the Commission

(10) In order not to impair the efficiency of payment systems, the verification requirements for transfers of funds made from an account should be separate from

Amendment

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

those for transfers of funds not made from an account. In order to balance the risk of driving transactions underground by imposing overly strict identification requirements against the potential terrorist threat posed by small transfers of funds, the obligation to check whether the information on the payer is accurate should, in the case of transfers of funds not made from an account, be ***imposed only in respect of*** individual transfers of funds ***that exceed*** EUR 1 000,. For transfers of funds made from an account, payment service providers should not be required to verify information on the payer accompanying each transfer of funds, where the obligations under Directive [xxxx/yyyy] have been met.

efficiency of payment systems, the verification requirements for transfers of funds made from an account should be separate from those for transfers of funds not made from an account. In order to balance the risk of driving transactions underground by imposing overly strict identification requirements against the potential terrorist threat posed by small transfers of funds, the obligation to check whether the information on the payer is accurate should, in the case of transfers of funds not made from an account, be ***restricted only to the name of the payer for*** individual transfers of funds ***of up to*** EUR 1 000. For transfers of funds made from an account, payment service providers should not be required to verify information on the payer accompanying each transfer of funds, where the obligations under Directive [xxxx/yyyy] have been met.

Or. en

Amendment 7

Proposal for a regulation

Recital 14

Text proposed by the Commission

(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.

Amendment

(14) In order to check whether the required information on the payer and the payee accompanies transfers of funds, and to help to identify suspicious transactions, the payment service provider of the payee and the intermediary payment service provider should have effective procedures in place in order to detect whether information on the payer and the payee is missing ***or incomplete. Effective checks of the presence and completeness of information, in particular where several payment service providers are involved, can help make investigation procedures***

less time consuming and more effective, which, in turn, improves the traceability of transfers of funds. Competent authorities in the Member States should thus ensure that payment service providers include the required transaction information with the wire transfer or related message throughout the payment chain.

Or. en

Amendment 8

Proposal for a regulation Recital 15

Text proposed by the Commission

(15) Owing to the potential terrorist financing threat posed by anonymous transfers, it is appropriate to require payment service providers to request information on the payer and the payee. In line with the risk based approach developed by FATF, it is appropriate to identify areas of higher and lower risk with a view to better targeting money laundering and terrorist financing risks. Accordingly, the payment service provider of the payee and the intermediary service provider should establish effective risk-based procedures for cases where a transfer of funds lacks the required payer and payee information, **in order to** decide whether to execute, reject or suspend that transfer and what appropriate follow-up action to take. Where the payment service provider of the payer is established outside the territory of the Union, enhanced customer due diligence should be applied, in accordance with Directive [xxxx/yyyy], in respect of cross-border correspondent banking relationships with that payment service provider.

Amendment

(15) Owing to the potential terrorist financing threat posed by anonymous transfers, it is appropriate to require payment service providers to request information on the payer and the payee. In line with the risk based approach developed by FATF, it is appropriate to identify areas of higher and lower risk with a view to better targeting money laundering and terrorist financing risks. Accordingly, the payment service provider of the payee and the intermediary service provider should establish effective risk-based procedures **and assess and weigh risks so that resources can be explicitly steered towards high-risk areas of money laundering. Such effective risk-based procedures** for cases where a transfer of funds lacks the required payer and payee information **will help payment service providers to better** decide whether to execute, reject or suspend that transfer and what appropriate follow-up action to take. Where the payment service provider of the payer is established outside the territory of the Union, enhanced customer due diligence should be applied, in accordance

with Directive [xxxx/yyyy], in respect of cross-border correspondent banking relationships with that payment service provider.

Or. en

Amendment 9

Proposal for a regulation Recital 19

Text proposed by the Commission

(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.

Amendment

(19) Since in criminal investigations it may not be possible to identify the data required or the individuals involved until many months, or even years, after the original transfer of funds and in order to be able to have access to essential evidence in the context of investigations, it is appropriate to require payment service providers to keep records of information on the payer and the payee for the purposes of preventing, investigating and detecting money laundering or terrorist financing. This period should be limited ***to five years, after which all personal data should be deleted, unless otherwise provided for by national law. Further retention should be granted only if necessary for the prevention, detection or investigation of money laundering and terrorist financing and should not exceed ten years. Payment service providers should ensure that data retained under this Regulation is used only for the purposes described herein.***

Or. en

Amendment 10

Proposal for a regulation Recital 23

Text proposed by the Commission

(23) In order to ensure uniform conditions for the implementation of **Articles XXX** of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council **of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers**²⁴.

²⁴ OJ L 55, 28.2.2011, p. 13.

Amendment

(23) In order to ensure uniform conditions for the implementation of **Chapter V** of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council²⁴.

²⁴ **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).

Or. en

Amendment 11

Proposal for a regulation

Article 2 – paragraph 1 – point 3

Text proposed by the Commission

(3) 'payer' means a **natural or legal person who either carries out a transfer of funds from his or her own account or who places an order for a transfer of funds;**

Amendment

(3) 'payer' means a **payer as defined in Article 4(7) of Directive 2007/64/EC of the European Parliament and of the Council**^{24a};

^{24a} **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**

Amendment 12

Proposal for a regulation Article 2 – paragraph 1 – point 4

Text proposed by the Commission

(4) ‘payee’ means a *natural or legal person who is the intended recipient of transferred funds*;

Amendment

(4) ‘payee’ means a *payee as defined in Article 4(8) of Directive 2007/64/EC*;

Amendment 13

Proposal for a regulation Article 2 – paragraph 1 – point 5

Text proposed by the Commission

(5) ‘payment service provider’ means a *natural or legal person who provides the service of transferring funds in his or her professional capacity*;

Amendment

(5) ‘payment service provider’ means a *payment service provider as defined in Article 4(9) of Directive 2007/64/EC*;

Amendment 14

Proposal for a regulation Article 2 – paragraph 1 – point 10

Text proposed by the Commission

(10) ‘a person-to-person’ transfer of funds means a transaction between two natural persons.

Amendment

(10) ‘a person-to-person’ transfer of funds means a transaction between two natural persons, *who, as consumers, act for*

purposes other than their trade, business or profession.

Or. en

Amendment 15

Proposal for a regulation

Article 3 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

This Regulation shall not apply to transfers of funds carried out using a credit *or debit card*, or a mobile telephone or any other digital or information technology (IT) device, where the following conditions are fulfilled:

Amendment

This Regulation shall not apply to transfers of funds carried out using a credit, *debit or prepaid card or voucher*, or a mobile telephone or any other digital or information technology (IT) device, where the following conditions are fulfilled:

Or. en

Amendment 16

Proposal for a regulation

Article 3 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

(a) the card or device is used to pay goods and services;

Amendment

(a) the card or device is used to pay goods and services *to a company within professional trade or business*;

Or. en

Amendment 17

Proposal for a regulation

Article 3 – paragraph 2 – subparagraph 2

Text proposed by the Commission

However, this Regulation shall apply when

Amendment

However, this Regulation shall apply when

a credit or debit card, or a mobile telephone, or any other digital or IT device is used in order to effect a person-to-person transfer of funds.

a credit or debit card, or a mobile telephone, or any other digital or ***prepaid or postpaid*** IT device is used in order to effect a person-to-person transfer of funds.

Or. en

Amendment 18

Proposal for a regulation

Article 3 – paragraph 2 – subparagraph 2

Text proposed by the Commission

However, this Regulation shall apply when a credit or debit card, or a mobile telephone, or any other digital or IT device is used in order to effect a person-to-person transfer of funds.

Amendment

However, this Regulation shall apply when a credit or debit card, or a mobile telephone, or any other digital or ***prepaid or postpaid*** IT device is used in order to effect a person-to-person transfer of funds.

Or. en

Amendment 19

Proposal for a regulation

Article 3 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

This Regulation shall not apply to persons who have no activity other than to convert paper documents into electronic data and are acting 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.

Or. en

Amendment 20

Proposal for a regulation

Article 4 – paragraph 1 – point c

Text proposed by the Commission

(c) the payer's address, or ***national identity number, or*** customer identification number, or date and place of birth.

Amendment

(c) the payer's address, or customer identification number, or date and place of birth.

Or. en

Amendment 21

Proposal for a regulation

Article 4 – paragraph 5

Text proposed by the Commission

5. However, by way of derogation from paragraph 3, in the case of transfers of funds not made from an account, the payment service provider of the payer ***shall not verify the information referred to in paragraph 1 if the amount does not exceed EUR 1 000 and it does not appear to be linked to other transfers of funds which, together with the transfer in question, exceed EUR 1 000.***

Amendment

5. However, by way of derogation from paragraph 3, in the case of transfers of funds not made from an account, the payment service provider of the payer ***is required to verify at least the name of the payer for transfers of funds of up to EUR 1 000, but shall verify the complete information relating to the payer and the payee referred to in paragraph 1 where the transaction is carried out in several operations that appear to be linked or where they exceed EUR 1 000.***

Or. en

Amendment 22

Proposal for a regulation

Article 5 – paragraph 1

Text proposed by the Commission

1. By way of derogation from Article 4(1) and (2), where the payment service provider(s) of both the payer and the payee

Amendment

1. By way of derogation from Article 4(1) and (2), where the payment service provider(s) of both the payer and the payee

are established in the Union, only the account number of the payer or his unique transaction *identifier* shall be provided at the time of the transfer of funds.

are established in the Union, only the account number of the payer or his unique *identifier, allowing the transaction to be tracked back to the payer*, shall be provided at the time of the transfer of funds.

Or. en

Amendment 23

Proposal for a regulation Article 5 – paragraph 2

Text proposed by the Commission

2. Notwithstanding paragraph 1, the payment service provider of the payer shall, upon request from the payment service provider of the payee or the intermediary payment service provider, make available the information on the payer or the payee in accordance with Article 4, within three working days of receiving that request.

Amendment

2. Notwithstanding paragraph 1, the payment service provider of the payer shall, *in the case of an identified higher risk as referred to in the Article 16(2) or (3), or in Annex III to Directive [xxxx/yyyy], require the complete information relating to the payer and to the payee or*, upon request from the payment service provider of the payee or the intermediary payment service provider, make available the information on the payer or the payee in accordance with Article 4, within three working days of receiving that request.

Or. en

Amendment 24

Proposal for a regulation Article 7 – paragraph 1

Text proposed by the Commission

1. The payment service provider of the payee shall detect whether the fields relating to the information on the payer and the payee in the messaging system or the

Amendment

1. The payment service provider of the payee shall detect whether the fields relating to the information on the payer and the payee in the messaging system or the

payment and settlement system used to effect the transfer of funds, have been filled in using the characters or inputs admissible within the conventions of that system.

payment and settlement system used to effect the transfer of funds, have been filled in using the characters or inputs admissible within the conventions of that ***messaging or payment and settlement*** system.

Or. en

Amendment 25

Proposal for a regulation

Article 7 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Where the payment service provider of the payer is established in a third country which presents an increased level of risk, enhanced customer due diligence shall be applied, in accordance with Directive [xxxx/yyyy], in respect of cross-border correspondent banking relationships with that payment service provider.

Or. en

Amendment 26

Proposal for a regulation

Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

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

The payment service provider of the payee shall establish effective risk-based procedures, ***based on the identified risks in Article 16(2) and Annex III to Directive [xxxx/yyyy]***, for determining when to execute, reject or suspend a transfer of funds lacking the required payer and payee information and the appropriate follow up action.

Amendment 27

Proposal for a regulation

Article 8 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In any event, the payment service provider of the payer and the payment service provider of the payee shall comply with any applicable law or administrative provisions relating to money laundering and terrorist financing, in particular Directive [xxxx/yyyy], Regulation (EC) No 2580/2001, Regulation (EC) No 881/2002, and any national transposition or implementing measures.

Or. en

Amendment 28

Proposal for a regulation

Article 8 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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

If the payment service provider becomes aware, when receiving transfers of funds, that information on the payer and the payee required under Articles 4(1) and (2), 5(1) and 6 is missing or incomplete ***or has not been completed using the characters or inputs admissible within the conventions of the messaging or payment and settlement system***, it shall either reject the transfer or ***suspend it and*** ask for complete information on the payer and the payee ***before executing the payment transaction.***

Or. en

Amendment 29

Proposal for a regulation

Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

The payment service provider of the payee shall consider missing or incomplete information on the payer and the payee as **one of the factors** in assessing whether the transfer of funds, or any related transaction, is suspicious, and whether it must be reported to the Financial Intelligence Unit. ***The payment service provider shall, in its effective risk-based procedures, also focus on, and take appropriate measures regarding, other risk factors as identified in the Article 16(3) and in Annex III to Directive [xxxx/yyyy].***

Or. en

Amendment 30

Proposal for a regulation

Article 11 – paragraph 2 – introductory part

Text proposed by the Commission

The intermediary payment service provider shall have effective procedures in place in order to detect whether the following information on the payer and the payee is missing:

Amendment

The intermediary payment service provider shall have effective procedures in place in order to detect whether the following information on the payer and the payee is missing ***or incomplete***:

Or. en

Amendment 31

Proposal for a regulation

Article 12 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

The intermediary payment service provider shall establish effective risk-based procedures for determining ***whether the received information on the payer and the payee is missing or incomplete and shall put in place an*** appropriate follow up action.

Or. en

Amendment 32

**Proposal for a regulation
Article 12 – paragraph 1 – subparagraph 2**

Text proposed by the Commission

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

Amendment

If the intermediary payment service provider becomes aware, when receiving transfers of funds, that information on the payer and the payee required under Articles 4(1) and (2), 5(1) and 6 is missing or incomplete ***or has not been completed using the characters or inputs admissible within the conventions of the messaging or payment and settlement system,*** it shall either reject the transfer or ***suspend it and*** ask for complete information on the payer and the payee ***before executing the payment transaction.***

Or. en

Amendment 33

**Proposal for a regulation
Article 15 – paragraph 1**

Text proposed by the Commission

Payment service providers shall respond

Amendment

Payment service providers shall respond

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

fully and without delay, in accordance with the procedural requirements established in the national law of the Member State in which they are established, to enquiries ***exclusively*** from the authorities responsible for combating money laundering or terrorist financing of that Member State concerning the information required under this Regulation. ***Specific safeguards shall be put in place in order to ensure that such exchanges of information respect data protection requirements.***

Or. en

Amendment 34

Proposal for a regulation Article 15 a (new)

Text proposed by the Commission

Amendment

Article 15a

Data Protection

1. With regard to the processing of personal data within the framework of this Regulation, payment service providers shall carry out their tasks for the purposes of this Regulation in accordance with national law implementing Directive 95/46/EC.

2. Payment service providers shall ensure that data retained under this Regulation is used only for the purposes described herein and in no case for commercial purposes.

Or. en

Amendment 35

Proposal for a regulation Article 16 introductory part

Text proposed by the Commission

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

Amendment

The payment service provider of the payer and the payment service provider of the payee shall keep records of the information referred to in Articles 4, 5, 6 and 7 for five years. In the cases referred to in Article 14(2) and (3), the intermediary payment service provider must keep records of all information received for five years. Upon expiry of this period, personal data must be deleted, unless otherwise provided for by national law, which shall determine under which circumstances payment service providers may or shall further retain data. Member States may allow or require further retention only if necessary for the prevention, detection or investigation of money laundering and terrorist financing. The maximum retention period following carrying-out of the transfer of funds shall not exceed ten years. ***In any event, the storage of personal data shall comply with Directive 95/46/EC.***

Or. en

Amendment 36

**Proposal for a regulation
Article 16 a (new)**

Text proposed by the Commission

Amendment

Article 16a

Access to information and confidentiality

1. Payment service providers shall ensure that the information collected for the purposes of this Regulation is only accessible to designated persons or limited to those persons strictly necessary for the completion of the undertaken task.

2. Payment service providers shall ensure that the confidentiality of the data

processed is respected.

Or. en

Amendment 37

Proposal for a regulation Article 18 – paragraph 1 – point a

Text proposed by the Commission

(a) repeated non-inclusion of required information on the payer and payee, in breach of Articles 4, 5 and 6;

Amendment

(a) repeated non-inclusion of required information on the payer and payee ***by a payment service provider***, in breach of Articles 4, 5 and 6;

Or. en

Amendment 38

Proposal for a regulation Article 19 – paragraph 1

Text proposed by the Commission

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

Amendment

The competent authorities shall publish administrative sanctions and measures imposed in the cases referred to in Articles 17 and 18(1) without undue delay including information on the type and nature of the breach and the identity of persons responsible for it.

Or. en

Amendment 39

Proposal for a regulation Article 19 – paragraph 2 a (new)

2a. Where a competent authority of a Member State imposes or applies an administrative sanction or measure in accordance with Articles 17 and 18 it shall notify EBA of that sanction or measure and the circumstances under which it was imposed or applied. EBA shall include such notification in the central database of administrative sanctions established in accordance with Article 69 of Directive 2013/36/EU of the European Parliament and of the Council^{24b} and shall apply to it the same procedures as for all other published sanctions.

^{24b} **Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).**

Or. en

Amendment 40

Proposal for a regulation Article 21 – paragraph 3

Text proposed by the Commission

3. The payment service providers shall establish appropriate procedures for their employees to report breaches internally through a specific channel.

Amendment

3. The payment service providers shall establish appropriate procedures for their employees to report breaches internally through a specific, **independent and anonymous** channel.

Or. en

Amendment 41

Proposal for a regulation

Article 22

Text proposed by the Commission

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.

Amendment

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.

Or. en

Amendment 42

Proposal for a regulation

Article 22 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The Commission shall coordinate and carefully monitor the application of this Regulation with regard to payment service providers outside the Union and shall strengthen cooperation, where appropriate, with third-country competent authorities responsible for investigating and penalising breaches under Article 18.

Or. en

Amendment 43

Proposal for a regulation

Article 22 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. By 1 January 2017, the Commission

shall present a report to the European Parliament and to the Council on the application of Chapter IV with special regard on the cross-border cases, the third-country payment service providers and their corresponding national competent authorities' execution of investigatory and penalising powers. Should there be a risk of a breach relating to the storage of data, the Commission shall take appropriate and effective action, including submitting a proposal to amend this Regulation.

Or. en

Amendment 44

Proposal for a regulation Article 23 – paragraph 2

Text proposed by the Commission

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Amendment

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply, ***provided that implementing provisions adopted under the procedure set out therein do not alter the basic provisions of this Regulation.***

Or. en

Amendment 45

Proposal for a regulation Article 24 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. For authorised decisions relating to dependent or associated territories already in place, uninterrupted continuation shall be ensured, namely Commission Implementing Decision 2012/43/EU^{24c},

***Commission Decision 2010/259/EC^{24d},
and Commission Decision
2008/982/EC^{24e}.***

***^{24c} Commission Implementing Decision
2012/43/EU of 25 January 2012
authorising the Kingdom of Denmark to
conclude agreements with Greenland and
the Faeroe 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).***

***^{24d} Commission Decision 2010/259/EC 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).***

***^{24e} 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, pursuant to Regulation (EC)
No 1781/2006 of the European
Parliament and of the Council (OJ L 352,
31.12.2008, p. 34).***

Or. en

EXPLANATORY STATEMENT

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

A coordinated response from law enforcement bodies in the Member States and a standardised procedure for financial institutions and payment service providers is essential to combat money-laundering which costs many billions annually. A UNODC Report estimated that the flow of laundered money in the world today stands at around 2.7% of global GDP (or about 1.6 trillion U.S. dollars in 2009).

Complementing the package on fighting money launderers and terrorists (together with the fourth Anti-money laundering Directive), the Funds Transfer Regulation aims to achieve the same overarching goal of more efficient fight against money laundering and terrorist financing by enhancing the transparency of fund transfers of all types, domestic and cross border, in order to make it easier for law enforcement authorities to track funds transferred electronically by criminals and terrorists. The Funds Transfer Regulation is trying to ensure that the basic information on the payer of transfer of funds is immediately available to appropriate law enforcement and/or prosecutorial authorities to assist them in detecting, investigating, prosecuting terrorists or other criminals and tracing the assets of terrorists. As the two documents aimed at fighting money launderers and terrorists are closely linked together, your Rapporteurs want to ensure that the two legal texts are fully aligned.

The revised Regulation is closely linked to changes in the international standards, as is the Directive. Against the background of the changing nature of money laundering and terrorist financing threats, facilitated by the constant evolution of technology and means at the disposal of criminals, the Financial Action Task Force (FATF) has undertaken a fundamental review of the international standards. The introduced changes by the Commission aim at improving traceability of payments while ensuring that the EU framework remains fully compliant with international standards as set out by the FATF in February 2012.

The Commission proposes a regime for the transfers of funds in any currency, which are sent or received by a payment service provider established in the Union. One of the main new requirements introduced in the proposed revision of the Regulation, is the requirement on payment service providers to record the information on the payer as well as the payee/beneficiary recipient of the funds when executing the transfer. Your Rapporteurs strongly support this addition.

Transfers outside the Union

All information should be recorded in the transfers of funds outside the Union. Introduced de minimis EUR 1000 threshold should make transfers outside the Union, especially in the case of remittances slightly easier. Suspicion of money laundering or terrorist financing should, however, still enable payment service providers to request full information from both payer and the payee.

Transfers without an account

So as not to curb efficient practices, there shall be a distinction regarding verifications between account related and non-account-related transfers. In case of independent transfers not made from an account, the payment service provider shall be obliged to verify complete information about the payer and the payee whereas in the case of a transfer of funds under EUR 1000 the verification of the name of the payer shall be sufficient.

Transfers within the Union

Against the background of the Union payment legislation and in light of the functioning of the single market, simplified information on the payer should accompany transfers of funds within the Union. Applications of the Payment Service Directive and SEPA regulation can enable the transaction to be tracked back to the payer using only payer's account number or his unique identifier. Nonetheless, the danger of money laundering is closely interlinked also with the problems of tax evasion and tax havens, all of which present a pressing issue also within the EU. For this reason, it is crucial to establish an effective risk-based approach for payment service providers that enable them to quickly and efficiently identify cases of higher risk and take appropriate action, which can and should include a possibility for requiring further information on the payer and the payee for the transfers within the Union. Your Rapporteurs make that clear in the Regulation by linking it directly to the list of identified higher risk factors (Annex III) in the fourth Anti-money laundering Directive (AMLD).

Risk-based approach

Your Rapporteurs support the move towards a flexible and responsive approach based on identified risks. It is, nonetheless, important to clarify and strengthen the rather airy definition of "effective risk-based procedures" proposed by the Commission. Your Rapporteurs embark on this by introducing clear links to the identified higher risk factors (Annex III) in the fourth AMLD, which will serve as an indication to payment service providers on how to set up their systems. It is important that not only missing or incomplete information serve as a factor of suspicion for payment service providers but that through their risk-based approach they are capable of identifying suspicious transfers and take appropriate action also in the identified risk situations, such as unusually large transactions, unusual patterns of transactions, complex background and purpose of transactions (as listed in the Article 16(2) and Annex III of the fourth AMLD).

Intermediary payment service providers

While strengthening the role of intermediary service providers is an important part of the new updated FATF recommendations, your Rapporteur believe that a difference between payment service providers of the payer and the payee on one hand, and the intermediary payment service providers on the other exists and should be recognized in the legal text. The two entities do not have the same insight or connection to the payer or the payee. The main role of the intermediary service provider is to ensure that all the information received on the payer and payee that accompanies a transfer of funds is kept with the transfer. In light of this, your Rapporteurs believe that the intermediary payment service provider should be clearly obliged to effectively check for the missing or incomplete information and have an appropriate follow

up strategy in place.

Monitoring and sanctions

Your Rapporteurs strongly support the Commission's list of effective, proportionate and dissuasive sanctions. Your Rapporteurs call on the Commission to report back to the Parliament within 3 years of implementation of the Regulation, focusing on the implications of the application of Chapter IV on Sanctions and monitoring. Your Rapporteurs also suggest the Commission to strengthen the cooperation with national authorities outside the Union responsible for investigation and sanctioning in case of breaches as defined in Article 18.

Data protection

Your Rapporteurs agree that achieving transparency of payments sources, funds deposits and transfers in order to counter terrorism and money laundering is a legitimate interest, but it needs to be pursued while ensuring compliance with data protection requirements. The processing of personal data is subject to Directive 95/46/EC and to the supervision of the national independent data protection authorities. Therefore it is necessary to take these requirements into account while transposing the FAFT standards in the EU legal order.

It is worth noting that the Regulation impacts on the relationships between the service provider and the customer, and the collection of personal data for anti-money laundering purposes takes place at the same time as the collection of data for commercial purposes. In order to respect the rights of individuals it is necessary to ensure that data subjects are properly informed in accordance with Directive 95/46/EC and are granted their rights of their personal data and that data protection safeguards are concretely applied to this specific area in accordance with Directive 95/46/EC.

Conclusions

There is a general understanding that immense damage can result if financial systems are insufficiently protected from criminal or terrorist abuse. Societal risk, disruptions in international capital flows, reduced investment, lower economic growth, financial market instability, loss of reputation, drop of confidence and prudential risks, are only a few of the dangers faced by our economies due to money laundering and terrorist financing practices.

Your Rapporteurs believe that the EU framework needs to evolve and adjust to the changes, which should see an increased focus placed on the effectiveness of regimes to counter money laundering and terrorist financing, greater clarity and consistency of rules across Member States, and a broadened scope designed to address new threats and vulnerabilities. Within the political and economic context of the crisis, it is becoming ever more pressing to guarantee that criminal activity does not exacerbate the existing problems nor pose an additional threat to genuine European solidarity and efforts for a thorough and full recovery.