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Committee on Economic and Monetary Affairs

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OPINION

of the Committee on Economic and Monetary Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a European Parliament and Council regulation on
information on the payer accompanying transfers of funds
(COM(2005)0343 – C6-0246/2005 – 2005/0138(COD))

Draftsman (*): Udo Bullmann

(*) Enhanced cooperation between committees – Rule 47 of the Rules of
Procedure

PA_Leg

SHORT JUSTIFICATION

The Commission's proposed regulation COM(2005) 343 aims finally to transpose into Community law Special Recommendation VII by the FATF¹ on wire transfers (electronic payment transactions). It was internationally agreed that the FATF special recommendation should be applied by 1 January 2007 at the latest.

The proposal regulates the requirement on banks and other payment service providers to provide information on payers transferring funds, i.e. the requirements on all payment service providers involved in the transfer of funds. By making it a general requirement on payment service providers to transfer full details on the payer, the regulation aims to make money transfers traceable.

The draftsman welcomes the fact that the proposal largely follows the interpretative note by the FATF on Special Recommendation VII, but he also considers it appropriate to create exemptions from the scope of the regulation, in order to take account of special situations in the payment systems of some Member States. In the draftsman's view there is a balance to be struck between the need to consider national particularities, the need for action to be proportionate, and the opportunities for misuse in the area of money laundering and terrorist financing that may arise as a result of exemptions from the law.

The following points need mentioning.

- The interpretation followed for dealing with money transfers of up to €1000 is rather strict, and the draftsman welcomes this. Although the maximum threshold of €1000 allowed by the FATF for alleviated measures is indeed used, it is not exploited to avoid making any requirements at all for verifying and forwarding information on the payer. Complete information must accompany the fund transfer in every case. In the case of cash payments the payer's name must also be verified. Since the third money-laundering directive contains sufficient requirements on the management of accounts, when payments are from accounts in the EU it should only be necessary to forward the account number or an identifying number.
- The draftsman welcomes the exemptions listed in Article 2 for credit or debit cards, withdrawals from teller machines, debit transfer authorisations, electronically processed cheques, payments to public authorities and transactions between banks. He also accepts an exemption for payments to settle accounts if a system is set up in one Member State to enable the payer to be identified through the recipient, for instance by a public service provider and the latter's payment service provider. The electronic funds exemption under the third directive on money laundering has been incorporated. In accordance with the FATF recommendation a threshold of €1000 on transactions has been laid down in both cases.
- The rapid growth of new electronic payment systems such as e-money or payment systems offered by mobile phone companies poses a challenge for adequate regulation. The form of exemption chosen for e-money seems to the draftsman for the

¹ Financial Action Task Force on Money Laundering and Terrorist Financing.

moment to be sufficiently restrictive; in the case of mobile phone companies there is a need for further consultation in the course of this legislative procedure. There is disagreement on assessing the risks from money-laundering and terrorist financing in the area of e-money payments and mobile payment systems. So the draftsman considers that for the aims pursued by this regulation there needs to be a review clause on the e-money exemption and the inclusion of new electronic payment systems.

- The requirements on the payee's payment service provider have here been clarified. The payee must verify whether the fields provided in the payment system have been completed, as is consonant with the needs of an automated payment system. If the payment service provider ascertains that the information is incomplete, he must reject the transfer or otherwise require full details from the relevant payment service provider making the transfer. In the case of continuing incomplete transfers by a given service provider the recipient agency is required to enter into a dialogue with the transferring service provider and gradually restrict or terminate business relations for transfer transactions.
- The draftsman welcomes the proposed exemption for donations to charities, as long as it is applied in a clear framework and monitored by the authorities in a Member State.
- As negotiations between the institutions on comitology are continuing, the draftsman proposes deleting the comitology provisions in this regulation.

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 Recital 2

(2) In order to prevent terrorist funding, measures aimed at the freezing of funds and economic resources of certain persons, groups and entities have been taken, including Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan. 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 2005/.../EC** of the European Parliament and of the Council of ... **2005** on prevention of the use of the financial system for the purposes of money

(2) In order to prevent terrorist funding, measures aimed at the freezing of funds and economic resources of certain persons, groups and entities have been taken, including Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan. 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 2005/60/EC** of the European Parliament and of the Council of **26 October 2005** on prevention of the use of the financial system for the purposes of

¹ Not yet published in OJ.

laundrying and terrorist financing¹ contains a number of measures aimed at combating the misuse of the financial system for the purpose of money laundrying and terrorist financing. All those measures do not, however, fully prevent terrorists and other criminals from having access to payment systems for moving their funds.

money laundrying and terrorist financing² contains a number of measures aimed at combating the misuse of the financial system for the purpose of money laundrying and terrorist financing. All those measures do not, however, fully prevent terrorists and other criminals from having access to payment systems for moving their funds.

Justification

Updated following adoption of the third directive on money-laundrying on 26 October 2005.

Amendment 2
Recital 5 a (new)

(5a) 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, nor does any natural or legal person that provides payment service providers solely with a message or other support systems for transmitting funds or with clearing and settlement systems.

Justification

Clarification, already considered necessary in the money-laundrying directive, to show that the regulation should not be applied to people providing support systems for payment service providers, and are thus merely passing on a message to other payment service providers or supplying some other system to support the transfer of funds, nor to clearing and settlement systems (see also Recital 34 of the third money-laundrying directive).

Amendment 3

Recital 6

(6) ***Due to the*** lower risk of money laundrying or terrorist financing associated with transfers of funds ***that flow from a commercial transaction or where the payer and the payee are payment service providers acting on their own behalf,*** it is

(6) ***Where there is a*** lower risk of money laundrying or terrorist financing associated with transfers of funds, it is appropriate to exempt such transfers from the scope of this Regulation. ***Such exemptions should cover credit or debit cards, ATM withdrawals,***

¹ OJ L ...,2005, p. .. (to be published, 2004/0137/COD).

² OJ L ...,2005, p. .. (to be published, 2004/0137/COD).

appropriate to exempt such transfers from the scope of this Regulation, ***under the condition that it is always possible to trace them back to the payer.***

direct debits, truncated cheques, payments of taxes, fines or other levies, where the payer and the payee are payment service providers acting on their own behalf. In addition, in order to reflect the special characteristics of national payment systems, Member States may exempt electronic giro payments, providing that it is always possible to trace the transfer back to the payer. Where Member States have applied the derogation for electronic money in Directive 2005/60/EC, that derogation should also be applied in this Regulation provided the amount transacted does not exceed EUR 1 000.

Justification

Alignment with the amendment on extending the rules on exceptions under Article 2, which ensures an effective exception for the 'giro' systems in some Member States that guarantee traceability.

Amendment 4 Recital 6 a (new)

(6a) The exemption for electronic money, as defined by Article 1(3) of Directive 2000/46/EC, covers electronic money irrespective of whether the issuer of electronic money enjoys a waiver under Article 8 of that directive or not.

Justification

The aim here is to clarify the point that the e-money exemption refers to e-money products, in other words, that it can also be applied if need be to e-money issuers that are exempted by the e-money directive.

Amendment 5 Recital 7

(7) In order to balance the risk of driving transactions underground by applying too strict identification requirements against the potential terrorist threat posed by small transfers, the obligation to verify that the information on the payer is accurate should ***be able to be applied on a risk-sensitive***

(7) In order ***not to hinder the efficiency of payment systems, the verification requirements for account and non-account based transfers should be separated.*** In order to balance the risk of driving transactions underground by applying too strict identification requirements against the

basis, as regards transfers of funds to payees outside the Community up to EUR 1000.

potential terrorist threat posed by small transfers, *in the case of transfers not made from an account*, the obligation to verify that the information on the payer is accurate should be applied *only to individual transfers that exceed EUR 1 000. For account-based transfers, payment service providers are not required to verify information on the payer for each transfer of funds where the obligations of Directive 2005/60/EC have been met.*

Justification

Amended recital in line with the proposed amendment of Article 5.

Replaces Article 5.

Amendment 6
Recital 12

(12) Due to the potential terrorist financing threat posed by anonymous transfers, it is appropriate to enable the payment service provider of the payee to avoid or correct such situations when becoming aware of a lack of presence or incompleteness of information on the payer. In this regard, flexibility should be allowed as regards the extent of information on the payer on a risk-sensitive basis. In addition, the accuracy and completeness of information on the payer should remain in the responsibility of the payment service provider of the payer. In the case where the payment service provider of the payer is situated outside the Community, enhanced customer due diligence should be applied, in accordance with **Article [11] of Directive 2005/.../EC**, in respect of cross-frontier correspondent banking relationships with that payment service provider.

(12) Due to the potential terrorist financing threat posed by anonymous transfers, it is appropriate to enable the payment service provider of the payee to avoid or correct such situations when becoming aware of a lack of presence or incompleteness of information on the payer. In this regard, flexibility should be allowed as regards the extent of information on the payer on a risk-sensitive basis. In addition, the accuracy and completeness of information on the payer should remain in the responsibility of the payment service provider of the payer. In the case where the payment service provider of the payer is situated outside the Community, enhanced customer due diligence should be applied, in accordance with **Article 13 of Directive 2005/60/EC**, in respect of cross-frontier correspondent banking relationships with that payment service provider.

Justification

Updated following adoption of the third directive on money-laundering on 26 October 2005.

Amendment 7
Recital 13

(13) In any event, the payment service provider of the payee should *exert* special vigilance, on a risk-based assessment, when becoming aware of a lack of presence or incompleteness of information on the payer, and should report suspicious transactions to the competent authorities.

(13) In any event, the payment service provider of the payee should *exercise* special vigilance, on a risk-based assessment, when becoming aware of a lack of presence or incompleteness of information on the payer, and should report suspicious transactions to the competent authorities ***in accordance with the reporting obligations set out in Chapter III of Directive 2005/60/EC and national implementing measures.***

Justification

Clarifies the point that Article 9 applies irrespective of the provisions of the third money-laundering directive.

Amendment 8
Recital 13 a (new)

(13a) The provisions on transfers of funds lacking information on the payer apply without prejudice to any obligations payment service providers have to suspend and/or reject transfers of funds which violate provisions in civil, administrative or penal law.

Justification

Clarifies the point that Article 9 applies irrespective of other legislation that could require the payment service provider to suspend or reject payment.

Amendment 9
Recital 16 a (new)

(16a) The three working days to respond to requests for complete information on the payer are determined by reference to the national provisions determining the opening days of banks applicable in the Member State where the payment service provider of the payer is situated.

Justification

Necessary to clarify the periods referred to in Articles 6 and 13, as there are different rules in

the Member States and in some cases also between different types of payment service providers.

Amendment 10

Recital 18 a (new)

(18a) In its resolution of 5 February 2002 on the implementation of financial services legislation¹, the European Parliament requested that it and the Council should have an equal role in supervising the way in which the Commission exercises its executive role in order to reflect the legislative powers of the European Parliament under Article 251 of the Treaty. In the solemn declaration made before the European Parliament by its President on the same day, the Commission supported that request. On 11 December 2002, the Commission proposed amendments to Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission², and then submitted an amended proposal on 22 April 2004. The European Parliament does not consider that this proposal preserves its legislative prerogatives. In the view of the European Parliament, it and the Council should have the opportunity of evaluating the conferral of implementing powers on the Commission within a determined period. It is therefore appropriate to limit the period during which the Commission may adopt implementing measures.

¹ OJ C 284 E, 21.11.2002, p. 115.

² OJ L 184, 17.7.1999, p. 23.

Justification

The objective is to align the comitology provisions of the regulation on information on the payer with those adopted in the Capital Adequacy directive.

Amendment 11

Recital 18 b (new)

(18b) The European Parliament should be given a period of three months from the

first transmission of draft amendments and implementing measures to allow it to examine them and to give its opinion. However, in urgent and duly justified cases, it should be possible to shorten that period. If, within that period, a resolution is adopted by the European Parliament, the Commission should re-examine the draft amendments or measures.

Justification

The objective is to align the comitology provisions of the regulation on information on the payer with those adopted in the Capital Adequacy directive.

Amendment 12
Recital 19

(19) A number of countries and territories which do not form part of the territory of the Community share a monetary union or form part of the currency area of a Member State **and have established membership of** the payment and clearing systems of that Member State. In order to avoid a significant negative effect on the economies of those countries or territories which could result from the application of this Regulation to transfers of funds between the Member States concerned and 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 that Member State.

(19) A number of countries and territories which do not form part of the territory of the Community share a monetary union or form part of the currency area of a Member State **or have signed a monetary convention with the European Union represented by a Member State and have payment service providers that participate directly, or indirectly, in** the payment and clearing systems of that Member State. In order to avoid a significant negative effect on the economies of those countries or territories which could result from the application of this Regulation to transfers of funds between the Member States concerned and 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 that Member State.

Justification

In line with the amendment to Article 18.

Amendment 13
Recital 20

(20) In order not to discourage donations for charitable purposes, it is appropriate to

(20) In order not to discourage donations for charitable purposes, it is appropriate to

authorise Member States to exempt payment services providers situated in their territory from collecting, verifying, recording, or sending information on the payer for transfers of funds up to a maximum amount of **EUR 150**. It is also appropriate to make this option conditional upon requirements to be met by the charitable organisations in order to allow Member States to ensure that this exemption does not give rise to abuse by terrorists as a cover for or a means of facilitating the financing of their activities.

authorise Member States to exempt payment services providers situated in their territory from collecting, verifying, recording, or sending information on the payer for transfers of funds up to a maximum amount of **EUR 1 000**. It is also appropriate to make this option conditional upon requirements to be met by the charitable organisations in order to allow Member States to ensure that this exemption does not give rise to abuse by terrorists as a cover for or a means of facilitating the financing of their activities.

Justification

Alignment with the amendment to Article 19(1) raising the threshold to €1000, so that anonymous donations can still be possible within certain limits, on condition of strict checks on non-profit organisations.

Amendment 14

Article 2, paragraph 2, subparagraph 1

2. This Regulation shall not apply to transfers of funds ***which flow from a commercial transaction*** carried out using a credit or debit card ***or any other similar payment instrument***, provided that a unique identifier, allowing the transaction to be traced back to the payer, accompanies ***all transfers of funds flowing from that commercial transaction***.

2. This Regulation shall not apply to transfers of funds carried out using a credit or debit card provided that:

(a) the payee has an agreement with the payment service provider permitting payment for the provision of goods and services; and

(b) a unique identifier, allowing the transaction to be traced back to the payer, accompanies the transfer of funds.

Justification

As the Council proposes and the draftsman welcomes, this wording clarifies the contents and presents it more clearly. The sense of the Commission proposal is unchanged.

Amendment 15

Article 2, paragraph 2, subparagraph 2

This regulation shall not apply to transfers ***deleted***

of funds where both the payer and the payee are payment service providers acting on their own behalf.

Justification

This provision has been redrafted in Article 2, paragraph 2g (new) (amendment 22 of the draft report).

Amendment 16
Article 2, paragraph 2 a (new)

2a. Where a Member State chooses to apply the derogation set out in Article 11(5) (d) of Directive 2005/60/EC, this regulation shall not be applied to transfers of funds using electronic money covered by the said derogation, except where the amount transacted is more than EUR 1 000.

Justification

Setting aside concerns about possible abuses, the draftsman favours an exemption for e-money that incorporates the relevant provision in the third money-laundering directive and is also, in accordance with the FATF recommendation, limited to single transfers of up to EUR 1 000. The draftsman regards this wording as a clarification of the exemption discussed by the Council.

Amendment 17
Article 2, paragraph 2 a (new)

2a. Without prejudice to Article 2(2a) (new), this Regulation shall not apply to transfers of funds carried out by means of a mobile telephone or any other digital or IT device, when such transfers are pre-paid and do not exceed EUR 150.

Justification

For the purpose of this regulation and setting aside any doubts about the possibility of abuse, the draftsman advocates an exception for prepaid mobile phone cards. This rule should in no way prejudice the definition of such cards in the context of the E-money directive.

Amendment 18
Article 2, paragraph 2 b (new)

2b. This Regulation shall not apply to transfers of funds carried out by means of a mobile telephone or any other digital or IT device, when such transfers are post-paid

and meet all of the following conditions:

- the payee has an agreement with the payment service provider permitting payment for the provision of goods and services;

- a unique identifier, allowing the transaction to be traced back to the payer, accompanies the transfer of funds; and

- the payment service provider is subject to the obligations set out in Directive 2005/60/EC.

Justification

There should be an exception for transfers made by mobile phone, as long as traceability is guaranteed. Therefore it is sensible to make the exception dependent on application of the rules under the third money-laundering directive.

Amendment 19

Article 2, paragraph 2 b (new)

2b. Member States may decide not to apply this Regulation to transfers of funds within that Member State to a payee account permitting payment for the provision of goods or services if:

(a) the payment service provider of the payee is subject to the obligations set out in Directive 2005/60/EC;

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

(c) the amount transacted is EUR 1 000 or less.

Member States making use of this derogation shall inform the Commission.

Justification

The exemption is intended to apply to giro systems that ensure that the recipient bank can trace back through the payee the identity of the paying customer. The purpose of this exemption is to avoid creating difficulties for the practice in some Member States enabling third parties to settle accounts by credit payments.

Amendment 20 Article 2, paragraph 2 c (new)

2c. This Regulation shall not apply to transfers of funds where the payer withdraws cash from his or her own account.

Justification

Clarifies the Commission's intention to ensure that cash withdrawals from the payer's own account do not come within the directive's scope.

Amendment 21 Article 2, paragraph 2 d (new)

2d. This Regulation shall not apply to transfers of funds where there is a debit transfer authorisation between two parties permitting payments between them through accounts provided a unique identifier accompanies the transfer of funds to enable the natural or legal person to be traced back.

Justification

Exemption for debit procedures, which are a widespread form of payment for regular transactions such as insurance contributions. Exemption from the directive's scope is justifiable since the money transfer can be traced back through the recipient via the authorisation.

Amendment 22 Article 2, paragraph 2 e (new)

2e. This Regulation shall not apply to transfers of funds using cheques that have been truncated.

Justification

Makes clear that electronically processed cheques – as also paper-based cheques in general – do not come under the directive's scope.

Amendment 23
Article 2, paragraph 2 f (new)

2f. This Regulation shall not apply to transfers of funds to public authorities for taxes, fines or other levies within a Member State.

Justification

Payments of tax and levies to public agencies are considered risk-free and otherwise comprehensible and so should be exempted from the directive's scope.

Amendment 24
Article 2, paragraph 2 g (new)

2g. This Regulation shall not apply to transfers of funds where both the payer and the payee are payment service providers acting on their own behalf.

Justification

To clarify the point that the regulation does not apply to inter-bank business.

Amendment 25
Article 3, paragraph 1

1. "terrorist financing" means ***any of the offences within the meaning of Article [1(3)] of Directive 2005/.../EC;***

1. "terrorist financing" means ***the provision or collection of funds within the meaning of Article 1(4) of Directive 2005/60/EC;***

Justification

Matches the definition in the third money-laundering directive.

Amendment 26
Article 3, paragraph 2

2. “money laundering” means any **of the offences within the meaning of Article [1(2)] of Directive 2005/.../EC**;

2. “money laundering” means any **conduct which, when committed intentionally, is regarded as money laundering for the purposes of Article 1(2) or (3) of Directive 2005/60/EC**;

Justification

Matches the definition in the third money-laundering directive.

Amendment 27
Article 3, paragraph 3

3. “payer” means a natural or legal person who **has the right of disposal of funds and who allows them to be transferred to a payee**;

3. “payer” means **either** a natural or legal person who **is the account holder who allows a transfer of funds from an account, or, where there is no account, a natural or legal person who places the order for a transfer of funds**;

Justification

Matches the FATF definition. Needed to ensure it is practicable and provide equal competitive conditions for EU payment service providers.

Amendment 28
Article 3, paragraph 5

5. “payment service provider” means a natural or legal person whose business includes the provision of **payment services to payment service users**;

5. “payment service provider” means a natural or legal person whose business includes the provision of **fund transfer services**;

Justification

Simplifies the definition, as the term ‘payment service user’ now does not need to be defined itself.

Amendment 29
Article 3, paragraph 7

7. “transfer of funds” means any transaction carried out on behalf of a payer through a payment service provider by electronic means with a view to making funds available to a payee at **another** payment

7. “transfer of funds” means any transaction carried out on behalf of a payer through a payment service provider by electronic means with a view to making funds available to a payee at **a** payment service

service provider, irrespective of whether the payer and the payee are the same person;

provider, irrespective of whether the payer and the payee are the same person;

Justification

Makes clear that fund transfers still come under the scope of the directive if the payer and the payee are both customers of the same payment service provider.

Amendment 30
Article 3, paragraph 8

8. “payment service user” means a natural or legal person who makes use of a payment service, in the capacity of payer or payee; **deleted**

Justification

Matches amendment to Article 3(5).

Amendment 31
Article 3, paragraph 9 a (new)

9a. “unique 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 system or messaging system used to effect the transfer.

Justification

Necessary definition of the term ‘unique identifier’.

Amendment 32
Article 4, subparagraph 3

Where the account number of the payer does not exist, the payment service provider of the payer **may** substitute it by a unique identifier, which allows the transaction to be traced back to the payer.

Where the account number of the payer does not exist, the payment service provider of the payer **shall** substitute it by a unique identifier, which allows the transaction to be traced back to the payer.

Justification

Removes the ambiguity by stipulating that either an account number or a unique identifier must accompany the transfer.

Amendment 33

Article 5, paragraph 2, subparagraph 2

However, for transfers of funds to payees outside the Community up to an amount of EUR 1 000, payment service providers may determine the extent of such verification in view of the risks of money laundering and terrorist financing. ***deleted***

Justification

To avoid reducing the efficiency of the payment system it is proposed, with the Council's agreement, to distinguish between account-based and non-account-based transfer systems in conjunction with the provisions on verification. See below.

Amendment 34

Article 5, paragraph 2 a (new)

2a. In the case of transfers of funds from an account, verification may be deemed to have taken place if:

(a) a payer's identity has been verified in connection with the opening of the account and the information gained by this verification has been stored in accordance with the obligations set out in Articles 8(2) and 30(a) of Directive 2005/60/EC, or

(b) the payer falls within the scope of Article 9(6) of Directive 2005/60/EC.

Justification

In the case of account-based transfers, payment service providers should not be obliged to verify information on the recipient for every individual transaction, provided that they comply with the third money-laundering directive.

Amendment 35

Article 5, paragraph 2 a (new)

2a. However, in the case of transfers of funds not made from an account, the

payment service provider of the payer shall verify the information on the payer only where the amount exceeds EUR 1 000, unless the transaction is carried out in several operations that appear to be linked and together exceed EUR 1 000.

Justification

For transfers not made from an account, the payment service provider should verify the information on the payer only for each individual transaction exceeding €1000. This should prevent an undesirably large number of small payments being made outside the normal transfer system.

Amendment 36
Article 6, subparagraph 1

By way of derogation from **Article 5**, transfers of funds, where both the payment service provider of the payer and the payment service provider of the payee are situated in the Community, shall only be required to be accompanied by the account number of the payer or a unique identifier allowing the transaction to be traced back to the payer.

By way of derogation from **Article 5(1)**, transfers of funds, where both the payment service provider of the payer and the payment service provider of the payee are situated in the Community, shall only be required to be accompanied by the account number of the payer or a unique identifier allowing the transaction to be traced back to the payer.

Justification

Correction of a cross-referencing mistake.

Amendment 37
Article 6, paragraph 2

However, if so requested by the payment service provider of the payee, the payment service provider of the payer shall make available to the payment service provider of the payee, complete information on the payer, within three working days of receiving that request.

However, if so requested **with good reason** by the payment service provider of the payee, the payment service provider of the payer shall make available to the payment service provider of the payee, complete information on the payer, within three working days of receiving that request.

Justification

To avoid systematic requests which would be very expensive for the financial institutions concerned, requests under Article 6, paragraph 2 should not be complied with unless there is a good reason for the request

Amendment 38
Article 7, heading

Transfers of funds from the Community to
payees outside the Community

Transfers of funds from the Community to
outside the Community

Justification

Clarification.

Amendment 39
Article 7, paragraph 1

1. Transfers of funds **from the Community to payees** outside the Community shall be accompanied by complete information on the payer.

1. Transfers of funds **where the payment service provider of the payee is situated** outside the Community shall be accompanied by complete information on the payer.

Justification

Makes clear that the location of the payee's payment service provider is the determining factor, and not the payee's own location.

Amendment 40
Article 7, paragraph 2

2. In the case of batch file transfers from a single payer **to** payees outside the Community, paragraph 1 shall not apply to the individual transfers bundled together therein, provided that the batch file contains that information and that the individual transfers carry the account number of the payer or a unique identifier.

2. In the case of batch file transfers from a single payer **where the payment service providers of the payees are situated** outside the Community, paragraph 1 shall not apply to the individual transfers bundled together therein, provided that the batch file contains that information and that the individual transfers carry the account number of the payer or a unique identifier.

Justification

Makes clear that the location of the payee's payment service provider is the determining factor, and not the payee's own location.

Amendment 41
Article 8, introductory part

The payment service provider of the payee shall have effective procedures in place in order to detect a lack of presence of the following information on the payer:

The payment service provider of the payee **is required to detect that fields within the messaging or payment and settlement system used to effect the transfer in respect of the information on the payer have been completed in accordance with the characters or inputs admissible within the conventions of that messaging or payment and settlement system.** It shall have effective procedures in place in order to detect a lack of presence of the following information on the payer:

Justification

Makes clear that the payee's payment service provider must only verify whether the relevant fields have been completed, but not how. In other words, he is not required to check the correctness of the data. This meets the needs of an automated payment system.

Amendment 42

Article 8, paragraph 1, point 2

(2) For transfers of funds where the payment service provider of the payer is situated outside the Community, complete information on the payer as referred to in Article 4, **or, where applicable, the information required under Article 13.**

(2) For transfers of funds where the payment service provider of the payer is situated outside the Community, complete information on the payer as referred to in Article 4.

Justification

Horizontal amendment, because of the amendment to delete Article 13(2).

Amendment 43

Article 8, paragraph 1, point 2 a (new)

(2a) For batch file transfers where the payment service provider of the payer is situated outside the Community, complete information on the payer as referred to in Article 4 only in the batch file, not in the individual transfers bundled therein.

Justification

Special provision for batch file transfers.

Amendment 44
Article 9, paragraph 1

1. If the payment service provider of the payee becomes aware that information on the payer required under this Regulation is missing or incomplete when receiving transfers of funds, *it may* either reject the transfer, or ask for complete information on the payer. ***In the latter case, the payment service provider of the payee may either hold the funds pending enquiry or make the funds available to the payee.*** In all cases, 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, Regulations (EC) No 2580/2001 and (EC) No 881/2002 and ***Directive 2005/.../EC***, as well as national implementing measures.

1. If the payment service provider of the payee becomes aware that information on the payer required under this Regulation is missing or incomplete when receiving transfers of funds ***within the Community or transfers of funds over an amount of EUR 1 000 and USD 1 000 from outside the Community, it shall*** either reject the transfer, or ask for complete information on the payer. In all cases, 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, Regulations (EC) No 2580/2001 and (EC) No 881/2002 and ***Directive 2005/60/EC***, as well as national implementing measures, ***notwithstanding the contractual arrangement and contract law that governs such business relationship.***

Justification

Addition, as Special Recommendation VII provides for a minimum threshold of EUR/USD 1000, under which the payers' countries are not obliged to identify the payer and forward full information. If there is no minimum threshold for incoming money transfers as well, there will be conflict in the international payment system. Under Article 9 (1) of the draft regulation, these transfers would always be rejected or, in each individual case, complete information on the payer would have to be requested.

Amendment 45
Article 9, paragraph 2, subparagraph 1

2. Where a payment service provider ***repeatedly*** fails to supply the required information on the payer, the payment service provider of the payee shall ***reject any transfers of funds from that payment service provider or terminate*** its business relationship with ***that payment service provider either with respect to transfer of funds services or with respect to any mutual supply of services.***

2. Where a payment service provider ***regularly*** fails to supply the required information on the payer ***by transfers of funds over an amount of EUR 1 000 and USD 1 000***, the payment service provider of the payee shall ***consider restricting or even terminating*** its business relationship with ***these financial institutions.***

Justification

Special Recommendation VII provides for a minimum threshold of EUR/USD 1000, under

which the payers' countries are not obliged to identify the payer and forward full information. Under Article 9 (2) of the draft regulation, if transfers from third countries were repeatedly received and – legitimately – complete details of the payer not provided, the business relationship would have to be terminated. Such sanctions are not in the interests of consumers and businesses in the EU. There must be some margin for manoeuvre for payment service providers in the EU.

Amendment 46
Article 10

The payment service provider of the payee shall consider incomplete information on the payer as a factor in assessing whether the transfer of funds, or any related transaction, is suspicious, and whether it must be reported, in accordance with the obligations set out in Chapter III of **Directive 2005/.../EC**, to the authorities responsible for combating money laundering or terrorist financing.

The payment service provider of the payee shall consider incomplete information on the payer as a factor in assessing whether the transfer of funds, or any related transaction, is suspicious, and whether it must be reported, in accordance with the obligations set out in Chapter III of **Directive 2005/60/EC**, to the authorities responsible for combating money laundering or terrorist financing.

Justification

Updated following adoption of the third directive on money-laundering on 26 October 2005.

Amendment 47
Article 13, paragraph 2

2. If, in the case referred to in paragraph 1, ~~deleted~~ an intermediary payment service provider does not receive complete information on the payer, it shall inform the payment service provider of the payee accordingly, when transferring the funds.

Justification

The payment service provider of the payee already has an obligation to check that complete information has been provided. An additional check by the intermediary payment service provider would mean duplication of work and would unnecessarily slow down the payment process. It seems more sensible to limit the duties of the intermediary payment service provider to forwarding the data and keeping records, as provided for under Article 13(1) and (3). The EU regulation should not go further than the provisions of FATF Special Recommendation VII.

Amendment 48
Article 13, paragraph 3

3. Where paragraph 1 applies, the intermediary payment service provider shall, upon request from the payment service provider of the payee, make available to that payment service provider, ***complete information on the payer***, within three working days of receiving that request.

3. Where paragraph 1 applies, the intermediary payment service provider shall, upon request from the payment service provider of the payee, make available to that payment service provider, ***all the information on the payer which it has received, irrespective of whether it is complete or not***, within three working days of receiving that request.

Justification

Makes clear that an intermediary payment service provider need only pass on the information it has received (i.e. in some cases incomplete information).

Amendment 49 Article 14, subparagraph 1

Payment service providers shall respond fully and without delay to enquiries from the authorities responsible for combating money laundering or terrorist financing of the Member State in which the payment service provider is situated, concerning the information on the payer accompanying transfers of funds and corresponding records, ***in accordance with the time-limits and procedural requirements established in the national law of that Member State***.

Payment service providers shall respond fully and without delay, ***in accordance with the procedural requirements established in the national law of that Member State***, to enquiries from the authorities responsible for combating money laundering or terrorist financing of the Member State in which the payment service provider is situated, concerning the information on the payer accompanying transfers of funds and corresponding records.

Justification

Deletes the concept of ‘time limits’, to avoid conflict with the words ‘without delay’.

Amendment 50 Article 14, paragraph 2

Those authorities may use that information only for the purposes of preventing, investigating, detecting or prosecuting money laundering or terrorist financing.

Those authorities ***acting in accordance with national criminal laws and fundamental rights*** may use that information only for the purposes of preventing, investigating, detecting or prosecuting money laundering or terrorist financing.

Justification

It is essential that authorities responsible for combating money laundering or terrorist

financing act in accordance with national penal laws and basic rights.

Amendment 51
Article 15, heading

Penalties

Penalties ***and monitoring***

Justification

In line with the amendment to Article 15, second paragraph (new).

Amendment 52
Article 15, paragraph 1 a (new)

Member States shall require the competent authorities to effectively monitor, and take necessary measures to ensure, compliance with this Regulation.

Justification

Makes clear that the competent authorities should monitor application of the regulation.

Amendment 53
Article 17, paragraph 1

1. The Commission shall be assisted by the Committee on the Prevention of Money Laundering and Terrorist Financing established by Directive **2005/.../EC**, hereinafter “the Committee”.

1. The Commission shall be assisted by the Committee on the Prevention of Money Laundering and Terrorist Financing established by Directive **2005/60/EC**, hereinafter “the Committee”.

Justification

Completion of the directive number.

Amendment 54
Article 17, paragraph 2, subparagraph 1

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

2, Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof ***and provided that the implementing measures adopted in accordance with this procedure do not modify the essential provisions of***

this Regulation.

Justification

Necessary addition to ensure that the essential provisions of this regulation remain.

Amendment 55

Article 17, paragraph 2 a (new)

2a. Without prejudice to the implementing measures already adopted, on 1 April 2008 the application of the provisions requiring the adoption of technical rules, amendments and decisions in accordance with paragraph 2 shall be suspended. Acting on a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the Treaty and, to that end, shall review these provisions prior to the expiry of the period or date referred to above.

Justification

The objective is to align the comitology provisions of the regulation on information on the payer with those adopted in the Capital Adequacy directive. It sets the 1st April 2008 as a deadline for the sunset clause to enter into force.

Amendment 56

Article 18, paragraph 1, subparagraph 1

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 Community as determined in accordance with Article 299 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.

1. The Commission may authorise any Member State to conclude agreements, ***under national arrangements***, with a country or territory which does not form part of the territory of the Community as determined in accordance with Article 299 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.

Justification

Amendment that the Council considers necessary to cover the constitutional arrangements of some Member States with their 'territories'.

Amendment 57

Article 18, paragraph 1, subparagraph 2, introductory part

Such agreements may be authorised only if
***the country or territory concerned fulfils all
the following conditions:***

Such agreements may be authorised only if:

Justification

Reworded for greater clarity and in view of additions. See below.

Amendment 58

Article 18, paragraph 1, subparagraph 2, point a)

a) ***it*** shares a monetary union with the Member State concerned or forms part of the currency area ***of the Member State concerned;***

(a) the country or territory concerned shares a monetary union with the Member State concerned or forms part of the currency area ***of that Member State or has signed a Monetary Convention with the European Union represented by a Member State;***

Justification

Addition that the Council deems necessary to take account of territories within the EU such as Monaco.

Amendment 59

Article 18, paragraph 1, subparagraph 2, point b)

b) ***it is a member of the payment and clearing systems of the Member State concerned;***

(b) payment service providers in the country or territory concerned participate directly, or indirectly, in payment and settlement systems in that Member State; and

Justification

The Council deems this necessary as it is not the territories but the local payment service providers that are part of the payment system.

Amendment 60

Article 18, paragraph 1, subparagraph 2, point c)

c) **it** requires payment service providers under its jurisdiction to apply the same rules as those established under this Regulation.

(c) **the country or territory concerned** requires payment service providers under its jurisdiction to apply the same rules as those established under this Regulation.

Justification

Reworded for greater clarity and in view of additions. See above.

Amendment 61
Article 19, heading

Transfers of funds to **charitable** organisations within a Member State

Transfers of funds to **non-profit** organisations within a Member State

Justification

In line with amendment to Article 19.

Amendment 62
Article 19, paragraph 1

Member States may exempt payment service providers situated in their territory from the obligations set out in Article 5, as regards transfers of funds to organisations carrying out activities for charitable, religious, cultural, educational, social, or fraternal purposes, provided these organisations are subject to reporting and external audit requirements or supervision by a public authority, and that those transfers of funds are limited to a maximum amount of EUR 150 per transfer and take place exclusively within the territory of that Member State.

1. Member States may exempt payment service providers situated in their territory from the obligations set out in Article 5, as regards transfers of funds to **non-profit** organisations carrying out activities for charitable, religious, cultural, educational, social, scientific or fraternal purposes, provided these organisations are subject to reporting and external audit requirements or supervision by a public authority **or self-regulatory body recognised under national law**, and that those transfers of funds are limited to a maximum amount of EUR 150 per transfer and take place exclusively within the territory of that Member State.

Justification

Makes clear that only non-profit organisations come under the exemption. These include scientific establishments such as cancer research institutes. To take account of specific conditions in individual Member States, self-administered bodies recognised under national law should also be considered.

Amendment 63
Article 19, paragraph 2

Member States shall communicate to the Commission the measures that they have adopted for applying the option provided in the first paragraph.

2. Member States ***making use of this Article*** shall communicate to the Commission the measures that they have adopted for applying the option provided in the first paragraph, ***including a list of organisations covered by this exemption, the names of the natural persons who ultimately control the organisations and an explanation of how the list will be updated. This information shall also be made available to the authorities responsible for combating money laundering and terrorist financing.***

Justification

Organisations exempted from the regulation should be listed by name and submitted to the Commission.

Amendment 64
Article 19, paragraph 2 a (new)

2a. An up-to-date list of organisations covered by this exemption shall be communicated by the Member State concerned to the payment service providers operating in that Member State.

Justification

A list of organisations exempted from the regulation should also be made available to payment service providers operating in the country concerned.

Amendment 65
Article 20, paragraph 1

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

However, Articles 4 to 14 and 19 shall apply from 1 January 2007.

This Regulation shall be binding in its entirety and is directly applicable in all

This Regulation shall enter into force ***twelve months*** following ***the day*** of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and is directly applicable in all

Member States.

Member States.

Justification

Payment service providers need 12 months to prepare for implementation of the Regulation based on most institutions' system configurations and stage of development. These 12 months are necessary to address design, implementation and testing of IT systems but also to inform and review contractual relationships with the customers.

Amendment 66

Article 20, paragraph 2 a (new)

By 2010 at the latest, the Commission shall present a report to the European Parliament and to the Council on the implications of the application of Article 2 with regard to further experience concerning the electronic money, as defined in Article 1 (3) of Directive 2000/46/EC, and other newly developed means of payment for the purposes of money laundering and terrorist financing. Should there be a risk of a misuse regarding money laundering or terrorist financing, the Commission shall submit a proposal to amend this Regulation.

Justification

As still not enough is known about the current and future risks of money laundering and terrorist financing by electronic money and payments using mobile phones, your draftsman considers that a review clause for the exceptions is required. In addition, any need for rules on new, innovative means of payment should be assessed. The Commission should draw up a report on whether any action is needed and if necessary propose appropriate amendments.

PROCEDURE

Title	Proposal for a European Parliament and Council regulation on information on the payer accompanying transfers of funds
References	COM(2004)0344 – C6-0296/2004 – 2004/0464(CNS)
Committee responsible	LIBE
Opinion by Date announced in plenary	ECON 8.9.2005
Enhanced cooperation – date announced in plenary	27.10.2005
Drafts(wo)man Date appointed	Udo Bullmann 27.9.2005
Previous drafts(wo)man	
Discussed in committee	29.11.2005 13.3.2006 18.4.2006
Date adopted	19.4.2006
Result of final vote	+: 31 –: 0 0: 2
Members present for the final vote	Zsolt László Becsey, Pervenche Berès, Sharon Bowles, Udo Bullmann, Ieke van den Burg, David Casa, Elisa Ferreira, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Gunnar Hökmark, Karsten Friedrich Hoppenstedt, Sophia in 't Veld, Piia-Noora Kauppi, Wolf Klinz, Christoph Konrad, Astrid Lulling, Cristobal Montoro Romero, John Purvis, Alexander Radwan, Antolín Sánchez Presedo, Margarita Starkevičiūtė, Ivo Strejček, Sahra Wagenknecht
Substitute(s) present for the final vote	Harald Ettl, Catherine Guy-Quint, Alain Lipietz, Vladimír Maňka, Thomas Mann, Diamanto Manolakou, Giovanni Pittella, Poul Nyrup Rasmussen
Substitute(s) under Rule 178(2) present for the final vote	Marios Matsakis, Marie-Line Reynaud
Comments (available in one language only)	