

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.7.2005
COM(2005) 343 final

2005/0138 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on information on the payer accompanying transfers of funds

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

• Grounds for and objectives of the proposal

The present proposal for a Regulation aims to transpose Special Recommendation VII on "wire transfers" (SR VII) of the Financial Action Task Force (FATF) into Community legislation.[1]

The proposal lays down rules on information on the payer accompanying transfers of funds, in order to ensure that basic information is immediately available to the authorities responsible for combating money laundering and terrorist financing, to assist them in their task.

According to its revised interpretative note, which was adopted on 10 June 2005, SR VII should be transposed by December 2006.

• General context

The worldwide escalation of acts of terrorism in the last decade has mobilised the international community to develop appropriate measures to combat this phenomenon. Following the terrorist attacks of 11 September 2001 in the United States, combating terrorism has become a key political priority worldwide. At its extraordinary meeting on 21 September 2001, the European Council decided that the fight against terrorism will, more than ever, be a key objective of the European Union, and adopted a Plan of Action to Combat Terrorism.

Following the attacks in Madrid of 11 March 2004, the European Council adopted, on 25 March 2004, a Declaration on combating terrorism and revised its Plan of Action to Combat Terrorism. The Declaration committed the Union and its members "(…) to do everything within their power to combat all forms of terrorism (…)" and identified a number of strategic objectives to help achieve this goal. These include a requirement on the Union and its members to take all necessary measures "to reduce the access of terrorists to financial and other economic resources". The revised "EU Plan of Action on combating terrorism" acknowledges that the legislative framework created by the Union for the purpose of combating terrorism and improving judicial cooperation has a decisive role to play in combating terrorist activities and sets out detailed proposals for developing the fight against terrorist financing. One of these measures consists in close co-operation with the FATF and the adaptation of the EU legislative framework to the nine Special Recommendations on terrorist financing adopted by the FATF.

In combination with the FATF Forty Recommendations on money laundering adopted in 1990 and revised in 2003, Special Recommendations I to IX set out the basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts at international level. FATF rules are generally accepted as the international standard in the fight against money laundering and terrorist financing.

EU Member States are committed to the implementation of FATF standards. Most of the measures set out in the nine Special Recommendations of the FATF have been or are in the process of being implemented either through Community legislation, or

[1] FATF is the international body established by the Paris G7 summit in 1989, and which is considered as the world standard in the fight against money laundering and terrorist financing.

through the procedures established under Titles V and VI of the Treaty of the European Union.

- **Existing provisions in the area of the proposal**

Council Regulations (EC) No 2580/2001 of 27 December 2001[2] and (EC) No 881/2002 of 27 May 2002[3] relate to the freezing of terrorists' assets. The provisions of these Regulations however only apply to targeted individuals or groups which are considered as terrorists by the United Nations Security Council.

On the other hand, Directive 2005/…/EC of the European Parliament and of the Council of ….2005 on prevention of the use of the financial system for the purpose of money laundering and terrorist financing contains a number of measures aimed at combating the misuse of the financial system for the purposes of money laundering and terrorist financing.

However, the measures described above do not fully prevent terrorists and other criminals from having access to payment systems to move their funds. The proposal complements those measures by ensuring that basic information on the payer of transfers 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.

- **Consistency with the other policies and objectives of the Union**

The proposal is consistent with the objectives of the European Council's Plan of Action to Combat Terrorism, which specifically addresses the need to ensure that the legislative framework created by the Community for the purpose of combating terrorism and improving judicial cooperation is adapted to the nine Special Recommendations of the Financial Action Task Force on Money Laundering and Terrorist Financing.

---

2 On specific restricted measures directed against certain persons and entities with a view to combating terrorism. OJ L 344, 28.12.2001, p. 70. Regulation as amended by Commission Regulation (EC) No 745/2003 (OJ L 106, 29.4.2003, p. 22).

3 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 exports of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan. OJ L 139, 29.5.2002, p. 9. Regulation as last amended by Commission Regulation (EC) No 2034/2004 (OJ L 353, 27.11.2004, p. 11).

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

In its Communication to the Council and the European Parliament concerning a "New legal framework for payments in the Internal Market", the Commission consulted interested parties on issues raised by the transposition of SR VII into Community legislation. In addition, The Commission extensively consulted major stakeholders by means of targeted meetings of consultative Committees (Payment Systems Government expert Group, Payment Systems Market Group and Money Laundering Contact Committee).

Summary of responses and how they have been taken into account

The main issues addressed in the Communication on a "New legal framework for payments in the Internal Market" were: (1) the transposition of SR VII by Community legislation versus national legislation; (2) the information regime applicable within the EU; (3) the need for derogation from the principle of complete information on the payer as regards batch transfers between jurisdictions and (4) the need for exemptions or thresholds.

(1) The transposition of SR VII through Community legislation versus national legislation

The results of the consultation have shown overwhelming support from all stakeholders (the banking community, national central banks, the European Central Bank and Member States) to transpose SR VII through Community legislation rather than national legislation.

(2) The information regime applicable within the EU: the contents of information on the payer as regards transfers of funds within and between Member States

According to SR VII, information on the payer accompanying transfers of funds inside a jurisdiction can be limited to the account number of the payer, provided complete information on the payer (name, address and account number) can be delivered within three working days, upon request, by the PSP of the payer to the PSP of the payee. As this rule is enforceable within the Community by way of Community legislation, it is sufficient to require transfers of funds within the EU to be accompanied by the account number of the payer. In cases where either the PSP of the payer or of the payee are situated outside the EU, complete information on the payer should be transmitted.

The present proposal therefore establishes that simplified information (the account number of the payer or a unique identifier) has to be applied to transfers of funds within the EU, whereas complete information on the payer has to be applied to transfers of funds between the EU and other jurisdictions. This is fully in line with the results of the public consultation.

(3) The need for derogation from the principle of complete information on the payer as regards batch transfers between jurisdictions

The FATF's original interpretative note on SR VII (INSR VII) exempted batch transfers between jurisdictions (except those sent by money remitters) from carrying complete information on the payer. By derogation from the complete information

regime that applies between jurisdictions, batch transfers needed only carry the account number of the payer or a unique identifier. However, the term "batch" was not defined in the original FATF's INSR VII. This absence of definition made the scope of the derogation unclear. In the context of payment systems, the term "batch transfers" can have very different meanings. Without a harmonised definition, a common understanding of the derogation by PSPs was unlikely, and maybe not even possible. The banking community and the majority of Member States recognise the need for this derogation as regards individual transfers from a single payer that are contained in a batch file for transmission to payees outside the Community. This process specifically refers to bundling together groupings of individual transfers from a single payer to several payees (typically certain type of routine transfers, like social security payments), which does not allow, for cost/efficiency reasons, to include complete information on the payer with each individual transfer, but only on the batch file which contains them. The same understanding now applies in the FATF, after a revision of the original INSR VII. The present proposal therefore contains a specific provision allowing for transfers of funds from a single payer which are contained in a batch file for transmission to payees outside the Community, to only carry the account number of the payer, provided the batch file contains complete information on the payer.

(4) The need for exemptions or thresholds

The initial interpretative note on SR VII established that jurisdictions could have a de minimis threshold (no higher than USD 3 000). This exemption was nevertheless meant to be temporary and subject to review by the FATF in 2004. This review took place between February 2004 and June 2005 and materialised in a revised INSR VII, which was approved on 10 June 2005. Such review gave rise to an extensive consultation of the payments industry as well as of the Member States. The results of the consultation show that the payments industry is in general opposed to the application of thresholds, as this would necessitate putting in place dual systems for dealing with transfers of funds below and above thresholds. Other stakeholders (Member States, national central banks and the European Central Bank) are generally not supportive either. In addition, a study by the FATF shows that even small amounts can be used to finance terrorism. On the other hand, there are concerns that too strict identification requirements may drive transactions underground, where the ability of authorities to obtain any information is considerably compromised. Consequently, the present proposal does not retain any threshold either for outgoing transfers from the EU or incoming transfers in the EU, as regards the collection and transmittal of information on the payer. It therefore provides for incoming anonymous transfers in the EU to be subject to special vigilance and to appropriate measures destined to get missing information on the payer. It also establishes that outgoing transfers of funds from the EU shall be accompanied by complete information on the payer, but in order to take into account the risk of driving transactions underground, flexibility is however allowed as regards the extent of verification of information on the payer, on a risk-sensitive basis.

An open consultation was conducted over the internet from 02/12/2003 to 15/02/2004. The Commission received 103 response(s). The results are available on http://europa.eu.int/comm/internal_market/payments/framework/2004-contributions_en.htm.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal was not submitted for impact assessment as it derives from international obligations and has no significant cross-cutting impact. In addition, it was submitted to extensive consultation by all stakeholders.

It transposes SR VII of the FATF in a way that minimises costs for the payments industry while at the same time ensuring a high standard in the fight against money laundering and terrorist financing.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The proposal establishes rules aimed at establishing the traceability of transfers of funds, which are applicable to all the PSPs involved in the payment chain. The PSP of the payer must ensure that transfers of funds contain complete, accurate and meaningful information on the payer. Any intermediary PSP must ensure that all information on the payer that accompanies a transfer is retained with the transfer or that appropriate records are kept. The PSP of the payee must be able to detect a lack of presence of information on the payer when receiving transfers and take appropriate steps in order to correct this situation, so that received transfers of funds do not remain anonymous. While doing so, it must exert a special vigilance regarding such transfers and, on a risk sensitive basis, taking into account other pertinent factors, report suspicious transactions to the authorities responsible for combating money laundering and terrorist financing. PSPs should also keep appropriate records and respond fully and rapidly to enquiries by the authorities responsible for combating money laundering and terrorist financing of the Member State where they are situated.

- **Legal basis**

Aricle 95 of the Treaty establishing the European Community.

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

Non-coordinated action by Member States alone in the field of cross-border transfers of funds could significantly impact on the smooth functioning of payment systems at EU level, and therefore damage the Internal Market in the field of financial services.

Community action will better achieve the objectives of the proposal for the following reason(s):

By the scale of its action, Community action shall guarantee a uniform transposition of SR VII throughout the EU, and in particular, that there is no discrimination between national payments within a Member State and cross-border payments between Member States. This principle was established by Regulation (EC) No 2560/2001 on cross-

border payments in euro, which was the first significant step towards the establishment of a Single Payment Area in the EU.

There is a general consensus, emanating from all stakeholders (in particular Member States and the payments industry), that the objectives of the action can be better achieved by the Union.

The scope of the proposal, which coincides with the measures foreseen in SR VII cannot, by its nature, and in order to avoid inconsistencies, be divided into Community action and action by Member States.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

In conformity with the results of the consultation process, the proposal transposes SR VII in the simplest way, by providing a simplified regime within the EU and a cost-effective system in order to ensure the traceability of transfers of funds to and from third countries. It does not go beyond what is necessary to achieve its objectives.

By establishing obligations applicable to payment service providers, which minimise the cost for the payments industry, the proposal therefore minimises the financial burden for national governments, economic operators and citizens.

- **Choice of instruments**

Proposed instrument: regulation.

Other means would not be adequate for the following reason(s):

Payment systems in the EU are in the process of being integrated into a Single Payment Area and, consequently, SR VII should be implemented in a harmonised manner throughout the EU. All stakeholders called for the use of a regulation, which would be the most effective way of guaranteeing uniform implementation and thus a level playing field.

4) BUDGETARY IMPLICATION

Meetings of the Committee on the Prevention of Money Laundering and Terrorist Financing.

5) ADDITIONAL INFORMATION

- **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

2005/0138 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on information on the payer accompanying transfers of funds

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission[4]

Having regard to the opinion of the European Economic and Social Committee[5]

Having regard to the opinion of the Committee of the Regions[6]

Having regard to the opinion of the European Central Bank[7]

Acting in accordance with the procedure laid down in Article 251 of the Treaty[8],

Whereas:

(1) In the wake of the terrorist attacks in the USA on 11 September 2001, the extraordinary European Council on 21 September 2001 reiterated that the fight against terrorism is a key objective of the European Union. The European Council approved a plan of action dealing with enhanced police and judicial co-operation, developing international legal instruments against terrorism, preventing terrorist funding, strengthening air security and greater consistency between all relevant policies. This plan of action was revised by the European Council following the terrorist attacks of 11 March 2004 in Madrid, and now specifically addresses the need to ensure that the legislative framework created by the Community for the purpose of combating terrorism and improving judicial cooperation is adapted to the nine Special Recommendations against Terrorist Financing adopted by the Financial Action Task Force on Money Laundering and Terrorist Financing (FATF).

(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

---

4 OJ C , , p. .
5 OJ C , , p. .
6 OJ C , , p. .
7 OJ C , , p. .
8 OJ C , , p. .

terrorism[9], 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[10]. 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 laundering and terrorist financing[11] contains a number of measures aimed at combating the misuse of the financial system for the purpose of money laundering 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.

(3) In order to foster a coherent approach in the international context in the field of combating money laundering and terrorist financing, further Community action should take account of developments at that level, namely the nine Special Recommendations against Terrorist Financing adopted by the FATF and in particular Special Recommendation VII (SR VII) on wire transfers, and the revised interpretative note for its implementation.

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

(5) The provisions of this Regulation apply without prejudice to 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[12].

(6) Due to the lower risk of money laundering 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 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.

(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 basis, as regards transfers of funds to payees outside the Community up to EUR 1 000.

---

9 OJ L 344, 28.12.2001, p. 70. Regulation as amended by Commission Regulation (EC) No 745/2003 (OJ L 106, 29.4.2003, p. 22).

10 OJ L 139, 29.5.2002, p. 9. Regulation as last amended by Commission Regulation (EC) No 2034/2004 (OJ L 353, 27.11.2004, p. 11).

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

12 OJ L 281, 23.11.1995, p. 31

(8) Against the background of Regulation (EC) No 2560/2001 of the European Parliament and of the Council of 19 December 2001 on cross-border payments in euro[13] and the Commission Communication "A New Legal Framework for Payments in the Internal Market"[14], it is sufficient to provide for simplified information on the payer to accompany transfers of funds within the Community.

(9) In order to allow the authorities responsible for combating money laundering or terrorist financing in third countries to trace the source of funds used for money laundering or the financing of terrorism, transfers of funds from the Community to third countries should carry complete information on the payer. Access, by those authorities, to complete information on the payer should only be granted for the purposes of preventing, investigating, detecting and prosecuting money laundering or terrorist financing.

(10) For transfers of funds from a single payer to several payees to be sent in an inexpensive way in batch files containing individual transfers, such individual transfers should be able to carry only the account number of the payer, provided that the batch file contains complete information on the payer.

(11) In order to check whether the required information on the payer accompanies transfers of funds, and to help to identify suspicious transactions, the payment service provider of the payee should have effective procedures in order to detect a lack of presence of information on the payer.

(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.

(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.

(14) Until technical limitations that may prevent intermediary payment service providers from satisfying the obligation of transmitting all the received information on the payer, are removed, those intermediary payment service providers should keep records of that information. Such technical limitations should be removed as soon as payment systems are upgraded.

(15) 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, it is appropriate to require payment service providers to keep records of information on the payer for the purposes of preventing, investigating, detecting and

---

13 OJ L 344, 28.12.2001, p. 13.

14 COM (2003) 718 final.

prosecuting money laundering or terrorist financing. In a democratic society, this period should be limited. It is appropriate that this period be set to five years.

(16) To make for rapid action in the framework of combating terrorism, payment service providers should respond rapidly to requests for information on the payer from the authorities responsible for combating money laundering or terrorist financing in the Member State where they are established.

(17) Given the importance of the combat against money laundering and terrorist financing, Member States should lay down effective, proportionate and dissuasive penalties in national law for failure to comply with the provisions of this Regulation.

(18) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[15].

(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.

(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.

(21) Since the objectives of the action to be taken cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(22) In order to establish a coherent approach in the field of combating money laundering and terrorist financing, the main provisions of this regulation should apply from the same date as the relevant provisions adopted at international level,

---

[15] OJ L 184, 17.7.1999, p. 23.

HAVE ADOPTED THIS REGULATION:

Chapter I
Scope and definitions

Article 1
Subject matter

This Regulation lays down rules on information to accompany transfers of funds, concerning the payers of those funds, for the purposes of the prevention, investigation, detection and prosecution of money laundering and terrorist financing.

Article 2
Scope

1. This Regulation shall apply to transfers of funds in any currency which are sent or received by a payment service provider established in the Community.

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.

   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.

Article 3
Definitions

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

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

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

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;

4. "payee" means a natural or legal person who is the intended final recipient of transferred funds;

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

6. "intermediary payment service provider" means a payment service provider which is neither that of the payer nor that of the payee and which participates in the execution of transfers of funds;

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

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

9. "batch file transfer" means several individual transfers of funds which are bundled together for transmission.

Chapter II
Obligations for the payment service provider of the payer

Article 4
Complete information on the payer

Complete information on the payer shall consist of his name, address and account number.

The address may be substituted with the date and place of birth of the payer, his customer identification number or national identity number.

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.

Article 5
Information accompanying transfers of funds and record keeping

1. Payment service providers shall ensure that transfers of funds are accompanied by the complete information on the payer.

2. The payment service provider of the payer shall, before transferring the funds, verify the complete information on the payer on the basis of documents, data or information obtained from a reliable and independent source.

   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.

3. The payment service provider of the payer shall keep records for five years of complete information on the payer which accompanies transfers of funds.

Article 6
Transfers of funds within the Community

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.

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.

Article 7
Transfers of funds from the Community to payees outside the Community

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

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.

Chapter III
Obligations for the payment service provider of the payee

Article 8
Detection of lack of presence of information on the payer

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:

(1) For transfers of funds where the payment service provider of the payer is situated in the Community, the information required under Article 6.

(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.

Article 9
Transfers of funds lacking information on the payer

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.

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.

   The payment service provider of the payee shall report that fact to the authorities responsible for combating money laundering or terrorist financing.

Article 10
Risk-based assessment

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.

Article 11
Record keeping

The payment service provider of the payee shall keep records for five years, of any information received on the payer.

Chapter IV
Obligations for intermediary payment service providers

Article 12
Retaining information on the payer with the transfer

Intermediary payment service providers shall ensure that all received information on the payer that accompanies a transfer of funds is retained with the transfer.

Article 13
Technical limitations

1. Where the payment service provider of the payer is situated outside the Community and technical limitations at the level of an intermediary payment service provider situated in the Community prevent the information on the payer from accompanying the transfer of funds, that intermediary payment service provider shall keep records for five years of all the information received, irrespective of whether that information is complete or not.

2. If, in the case referred to in paragraph 1, 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.

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.

Chapter V
General obligations, implementing and amending powers

Article 14
Co-operation obligations

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.

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

Article 15
Penalties

The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are

implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those rules, as well as the authorities responsible for their application, to the Commission by 31 December 2006 at the latest, and shall notify it without delay of any subsequent amendment affecting them.

Article 16
Implementing and amending powers

1. The Commission may, in accordance with the procedure referred to in Article 17(2) and taking into account any developments in the field of money laundering and terrorist financing, and corresponding changes in international standards, notably those agreed in the Financial Action Task Force on money laundering and terrorist financing (FATF), adopt measures concerning the clarification of the definitions set out in Article 3(5) and (7).

2. The Commission may, in accordance with the procedure referred to in Article 17(2) and taking into account any developments in the field of money laundering and terrorist financing, and corresponding changes in international standards, notably those agreed in the FATF, adopt measures concerning the updating of the monetary thresholds established for the obligations laid down in Articles 5 and 19.

Article 17
Committee

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".

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.

   The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

Chapter VI
Derogations

Article 18
Agreements with territories or countries outside the Community

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.

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

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

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

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

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

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

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

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

3. Within three months of the notification referred to in the fourth sub-paragraph of paragraph 2 of this Article, the Commission shall decide, in accordance with the procedure referred to in Article 17(2), whether to authorise the Member State concerned to conclude the agreement referred to in paragraph 1.

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

Article 19
Transfers of funds to charitable organisations within a Member State

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.

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

Chapter VII
Final provisions

Article 20
Entry into force

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

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 Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): Internal Market
Activit(y/ies): Internal Market for goods and services

TITLE OF ACTION: PROPOSAL FOR A REGULATION ON INFORMATION ON THE PAYER ACCOMPANYING TRANSFERS OF FUNDS

1. BUDGET LINE(S) + HEADING(S)

12.010211.01.03 – Committee meetings

2. OVERALL FIGURES

2.1. Total allocation for action (Part B): € million for commitment

n.a.

2.2. Period of application:

2005–2010

2.3. Overall multiannual estimate of expenditure:

(a) Schedule of commitment appropriations/payment appropriations (financial intervention) *(see point 6.1.1)*

n.a.

(b) Technical and administrative assistance and support expenditure*(see point 6.1.2)*

n.a.

(c) Overall financial impact of human resources and other administrative expenditure *(see points 7.2 and 7.3)*

Commitments/ payments	0.224	0.224	0.224	0.224	0.224		

TOTAL a+b+c							
Commitments	0.224	0.224	0.224	0.224	0.224		
Payments	0.224	0.224	0.224	0.224	0.224		

2.4. Compatibility with financial programming and financial perspective

[X] Proposal is compatible with existing financial programming.

Proposal will entail reprogramming of the relevant heading in the financial perspective.

Proposal may require application of the provisions of the Interinstitutional Agreement.

2.5. Financial impact on revenue:[16]

[X] Proposal has no financial implications (involves technical aspects regarding implementation of a measure)

OR

Proposal has financial impact – the effect on revenue is as follows:

n.a.

3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
Non-comp	Non-diff	NO	YES	YES	**No** [5]

4. LEGAL BASIS

The action only concerns administrative expenditure.

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention[17]

5.1.1. Objectives pursued

The present proposal for a regulation aims to transpose Special Recommendation VII (SR VII) of the Financial Action Task Force (the international body established by the Paris G7 summit in 1989 which objective is to fight against financial crime) into Community law in a way that is fully compatible with Internal Market principles. It lays down rules on payer's information accompanying funds transfers, in order to ensure that basic information is immediately available to the authorities responsible for combating money laundering and terrorism, to assist them in their task.

5.1.2. Measures taken in connection with ex ante *evaluation*

In its Communication to the Council and the European Parliament concerning a "New legal framework for payments in the Internal Market" (COM (2003) 718 final) the Commission consulted interested parties on issues raised by the transposition of SR VII into Community legislation.

The results of the consultation have shown overwhelming support from all stakeholders (the banking community, Central Banks, the European Central Bank and Member States) to transpose SR VII through Community legislation rather than national legislation. Payment systems in the EU are in the process of being integrated into a Single Payment Area and, consequently, SR VII should be transposed in a harmonised manner throughout the EU. All stakeholders called for the use of a regulation, which would be the most effective way of guaranteeing uniform implementation and thus a level playing field.

---

16 For further information, see separate explanatory note.

17 For further information, see separate explanatory note.

The results of the consultation are available at:

http://europa.eu.int/comm/internal_market/payments/framework/2004-contributions_en.htm.

5.1.3. Measures taken following ex post *evaluation*

n.a.

5.2. Action envisaged and budget intervention arrangements

The rules on payer's information accompanying funds transfers provided for in the proposal for a regulation result in a number of obligations applicable to all payment service providers (PSPs) involved in the payment chain. The payer's payment service provider must ensure that funds transfers contain complete, accurate and meaningful payer's information (name, address and account number). Any intermediary payment service provider must ensure that all payer's information that accompanies a transfer is retained with the transfer or that appropriate records are kept. The payee's payment service provider must have effective risk-based procedures in order to identify funds transfers lacking complete payer's information and, as appropriate, report suspicious transactions to the authorities responsible for combating money laundering and terrorism.

5.3. Methods of implementation

The negotiation of the Regulation in the Council and in the European Parliament will be carried out by DG MARKT staff within existing resources. Furthermore, Article 12 of the Regulation specifies that the Commission will be assisted by a committee consisting of Member States' representatives on certain specific issues.

6. FINANCIAL IMPACT

n.a.

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

Human and administrative resource requirements will be covered from within the budget allocated to the managing DG in the framework of the annual allocation procedure.

7.1. Impact on human resources

Types of post		Staff to be assigned to management of the action using existing		Total	Description of tasks deriving from the action
		Number of permanent posts	Number of temporary posts		
Officials or temporary staff	A	1		1	*Negotiation of the Regulation in the Council and in the European Parliament and participation in FATF work*
	B				
	C	0.5		0.5	*Organisation of meetings of the regulatory Committee on the prevention of money laundering and terrorist financing*

Other human resources				
Total	1.5		1.5	

7.2. Overall financial impact of human resources

Type of human resources	Amount (€)	Method of calculation *
Officials Temporary staff	EUR 162 000	EUR 108 000 x 1.5
Other human resources (specify budget line)		
Total	EUR 162 000	

The amounts are total expenditure for twelve months.

7.3. Other administrative expenditure deriving from the action

Budget line (number and heading)	Amount €	Method of calculation
Overall allocation (Title A7) Copy updated budget linesA0701 – Missions 12 01 02 11 01 – Missions 12 01 02 11 02 – Meetings, conferences 12 01 02 11 03 – Committees (consultative committee) 12 01 02 11 04 – Studies and consultations	EUR 62 400 (Regulatory Committee on the prevention of money laundering and terrorist financing)	EUR 15 600 (reimbursement of 24 experts) x 4 meetings
Information systems (A-5001/A-4300)	n.a.	
Other expenditure - Part A (specify)	n.a.	
Total	EUR 62 400	

The amounts are total expenditure for twelve months.

Les besoins en ressources humaines et administratives seront couverts à l'intérieur de la dotation allouée à la DG gestionnaire dans le cadre de la procédure d'allocation annuelle.

[1] Specify the type of committee and the group to which it belongs.

I.	Annual total (7.2 + 7.3)	EUR 224 400
II.	Duration of action	5 years
III.	Total cost of action (I x II)	EUR 1 122 000

8. FOLLOW-UP AND EVALUATION

8.1. Follow-up arrangements

n.a

8.2. Arrangements and schedule for the planned evaluation

n.a

9. ANTI-FRAUD MEASURES

n.a