Commission Delegated Regulation (EU) 2018/1108 of 7 May 2018 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with regulatory technical standards on the criteria for the appointment of central contact points for electronic money issuers and payment service providers and with rules on their functions (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2018/1108

of 7 May 2018

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC[1], and in particular Article 45(11) thereof,

Whereas:

(1) Electronic money issuers and payment service providers may appoint central contact points to ensure, on behalf of the appointing institutions, compliance with anti-money laundering and counter-terrorist financing rules and to facilitate supervision by competent authorities. Member States may require the appointment of a central contact point where payment service providers and electronic money issuers provide services in their territory through establishments in forms other than a branch, but not where they provide services without an establishment.

(2) The appointment of a central contact point to ensure compliance with anti-money laundering and counter-terrorist financing rules appears to be justified where the size and scale of the activities carried out by payment service providers and electronic money issuers through establishments in forms other than a branch meets or exceeds certain thresholds. Those thresholds should be set at a level that is proportionate to the aim of Directive (EU) 2015/849 to facilitate supervision by competent authorities of such establishments' compliance, on behalf of their appointing institution, with local anti-money laundering and countering the financing of terrorism (AML/CFT) obligations, while at the same time not creating undue regulatory burden on payment service providers and electronic money issuers.

Changes to legislation: *Commission Delegated Regulation (EU) 2018/1108 is up to date with all changes known to be in force on or before 24 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) The requirement to appoint a central contact point appears also to be justified where a Member State considers that the risk of money laundering and terrorist financing associated with the operation of such establishments is increased, as demonstrated, for instance, on the basis of an assessment of the money laundering and terrorist financing risk associated with certain categories of payment service providers or electronic money issuers. Member States should not be required to perform a risk assessment of individual institutions for that purpose.

(4) However, in exceptional cases, where Member States have reasonable grounds to believe that the money laundering and terrorist financing risk associated with a particular payment service provider or electronic money issuer that operates establishments in their territory is high, they should be able to require that issuer or provide to appoint a central contact point, even if it does not meet the thresholds laid down in this Regulation or does not belong to a category of institutions that is required to appoint a central contact point based on the Member State's assessment of money laundering and terrorist financing risk.

(5) Where a central contact point is appointed, it should ensure, on behalf of the appointing electronic money issuer or payment services provider, the compliance by its establishments with the applicable AML/CFT rules. To that end, the central contact point should have a sound understanding of applicable AML/CFT requirements and facilitate the development and implementation of AML/CFT policies and procedures.

(6) The central contact point should, among others, have a central coordinating role between the appointing electronic money issuer or payment services provider and its establishments, and between the electronic money issuer or payment services provider and the competent authorities of the Member State where the establishments operate, to facilitate their supervision.

(7) Member States should be entitled to determine, based on their overall assessment of money laundering and terrorist financing risks associated with the activity of payment service providers and electronic money issuers that are established in their territory in forms other than a branch, that central contact points are required to perform certain additional functions as part of their duty to ensure compliance with local AML/CFT obligations. In particular, it could be appropriate for Member States to require central contact points to submit, on behalf of the appointing electronic money issuer or payment services provider, suspicious transaction reports to the Financial Intelligence Unit (FIU) of the host Member State in whose territory the obliged entity is established.

(8) It is for each Member State to determine whether or not central contact points should take a particular form. Where the form is prescribed, Member States should ensure that the requirements are proportionate and do not go beyond what is necessary to achieve the aim of compliance with AML/CFT rules and facilitate supervision.

(9) This Regulation is based on the draft regulatory technical standards by the European Supervisory Authorities (the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority) to the Commission.

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(10) The European Supervisory Authorities have conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(2)], Regulation (EU) No 1094/2010 of the European Parliament and of the Council[(3)] and Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(4)] respectively,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation lays down:

(a) criteria for determining the circumstances in which the appointment of a central contact point pursuant to Article 45(9) of Directive (EU) 2015/849 is appropriate;

(b) rules concerning the functions of central contact points.

Article 2

Definitions

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

(1) ‘competent authority’ means the authority of a Member State competent for ensuring compliance of electronic money issuers and payment service providers that are established in their territory in forms other than a branch and whose head office is situated in another Member State with the requirements of Directive (EU) 2015/849 as transposed by national legislation;

(2) ‘host Member State’ means the Member State in whose territory electronic money issuers and payment service providers whose head office is situated in another Member State are established in forms other than a branch;

(3) ‘electronic money issuers and payment services providers’ means electronic money issuers as defined in point (3) of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council[(5)] and payment services providers as defined in point (9) of Article 4 of Directive 2007/64/EC of the European Parliament and of the Council[(6)].

Article 3

Criteria for the appointment of a central contact point

1 Host Member States may require electronic money issuers and payment services providers that have establishments in their territory in forms other than a branch, and whose head office is situated in another Member State, to appoint a central contact point where any of the following criteria is met:

a the number of such establishments is 10 or more;

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b the cumulative amount of the electronic money distributed and redeemed, or the cumulative value of the payment transactions executed by the establishments is expected to exceed EUR 3 million per financial year or has exceeded EUR 3 million in the previous financial year;

c the information necessary to assess whether or not the criterion in point (a) or (b) is met is not made available to the host Member State's competent authority upon request and in a timely manner.

2 Without prejudice to the criteria set out in paragraph 1, host Member States may require categories of electronic money issuers and payment services providers that have establishments in their territory in forms other than a branch, and whose head office is situated in another Member State, to appoint a central contact point where this requirement is commensurate to the level of money laundering or terrorist financing risk associated with the operation of those establishments.

3 Host Member States shall base their assessment of the level of money laundering or terrorist financing risk associated with the operation of those establishments on the findings of risk assessments carried out in accordance with Article 6(1) and Article 7(1) of Directive (EU) 2015/849 and other credible and reliable sources available to them. As part of this assessment, host Member States shall take into account at least the following criteria:

a the money laundering and terrorist financing risk associated with the types of products and services offered and the distribution channels used;

b the money laundering and terrorist financing risk associated with the types of customers;

c the money laundering and terrorist financing risk associated with the prevalence of occasional transactions over business relationships;

d the money laundering and terrorist financing risk associated with the countries and geographic areas serviced.

4 Without prejudice to the criteria set out in paragraphs 1 and 2, a host Member State may, in exceptional cases, empower the host Member State's competent authority require an electronic money issuer or payment services provider that has establishments in its territory in forms other than a branch, and whose head office is situated in another Member State, to appoint a central contract point providing that the host Member State has reasonable grounds to believe that the operation of establishments of that electronic money issuer or payment services provider presents a high risk of money laundering and terrorist financing.

Article 4

Ensuring compliance with AML/CFT rules

The central contact point shall ensure that establishments specified in Article 45(9) of Directive (EU) 2015/849 comply with AML/CFT rules of the host Member State. To this end, the central contact point shall:

(a) facilitate the development and implementation of AML/CFT policies and procedures pursuant to Article 8(3) and (4) of Directive (EU) 2015/849 by informing the appointing electronic money issuer or payment services provider of AML/CFT requirements applicable in the host Member State;

(b) oversee, on behalf of the appointing electronic money issuer or payment services provider, the effective compliance by those establishments with AML/CFT requirements applicable in the host Member State and the appointing electronic money