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Commission Delegated Regulation (EU) 2017/2055 of 23 June 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for the cooperation and exchange of information between competent authorities relating to the exercise of the right of establishment and the freedom to provide services of payment institutions (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2017/2055

of 23 June 2017

supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for the cooperation and exchange of information between competent authorities relating to the exercise of the right of establishment and the freedom to provide services of payment institutions

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC[1], and in particular Article 28(5) thereof,

Whereas:

(1) In order to enhance cooperation between competent authorities and ensure a consistent and efficient notification process for payment institutions intending to exercise the right of establishment and the freedom to provide services on a cross-border basis, it is necessary to specify the framework for cooperation, and for the exchange of information, between competent authorities of the home and of the host Member States, specifying the method, means and details of cooperation and, in particular, the scope and treatment of information to be submitted, including common terminology and standard notification templates.

(2) For the purposes of having a common terminology and standard notification templates, it is necessary to define some technical terms in order to make a clear distinction between branch applications, services applications and agent applications with regard to payment institutions wishing to carry out their activities in another Member State.

(3) The establishment of standard procedures covering the language and means of communication of passport applications between competent authorities of home and host Member States facilitates the exercise of the right of establishment and the freedom to provide services and the efficiency of the performance of the respective tasks and responsibilities of the competent authorities of home and host Member States.

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(4) Competent authorities in home Member States should be required to assess the accuracy and completeness of the information submitted by payment institutions intending to provide services in another Member State to ensure the quality of the passport notifications. To this end, competent authorities in home Member States should inform payment institutions of the particular aspects in which passport applications are deemed to be incomplete or incorrect to facilitate the process of identification, communication and submission of the missing or incorrect elements. Further, the assessment of completeness and accuracy should ensure an efficient notification process by clearly determining the one-month period and the three-month period referred to, respectively, in the first subparagraph of Article 28(2) and in the first subparagraph, of Article 28(3) of Directive (EU) 2015/2366 as having commenced on the date of receipt of a passport application containing information that is assessed as complete and correct by the home competent authorities.

(5) Where a procedure for settlement of disagreements between competent authorities of different Member States has been initiated, in accordance with Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(2)], competent authorities of the home Member State should inform the payment institution that a decision concerning the passport application is deferred pending resolution under that provision.

(6) To ensure an efficient and smooth notification process, allowing competent authorities of home and host Member States to perform their respective assessments in accordance with Directive (EU) 2015/2366, the information to be shared between competent authorities in relation to a passport application should be clearly defined for branch passport applications, agent passport applications and services passport applications, respectively. It is also appropriate to provide standard templates for the transmission of such information. Where available, those templates should also include the Legal Entity Identifier for legal entities.

(7) To facilitate the identification of payment institutions operating cross-border in different Member States, it is appropriate to determine the format of the relevant unique identification number used in each Member State to identify payment institutions, their branches or agents engaged by payment institutions to provide payment services in the host Member State.

(8) Where a payment institution carrying out its activities in another Member State changes the information communicated in the initial application, competent authorities of the home Member State should transmit only the information which is affected by the changes in accordance with Article 28(4) of Directive (EU) 2015/2366 to the competent authorities of the host Member State.

(9) In accordance with point (a) of Article 6(1) of Directive 2009/110/EC of the European Parliament and of the Council[(3)], electronic money institutions, in addition to issuing electronic money, are entitled to the provision of payment services. Further, in accordance with Article 3(1) of that Directive, the procedures for passport notification of payment institutions apply *mutatis mutandis* to electronic money institutions. Article 3(4) of Directive 2009/110/EC also establishes that the provisions for passport

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notifications of payment institutions apply *mutatis mutandis* to electronic money institutions distributing electronic money in another Member State through natural or legal persons which act on their behalf. Article 3(5) of Directive 2009/110/EC provides that electronic money institutions shall not issue electronic money through agents, while they are allowed to provide payment services through agents subject to the conditions laid down in Article 19 of Directive (EU) 2015/2366. Notifications between competent authorities should therefore be facilitated with regard to the information relating to a passport application from an electronic money institution intending to exercise the right of establishment or the freedom to provide services, including by engaging an agent for the provision of payment services or by distributing and redeeming electronic money through distributors which act on their behalf in another Member State, in accordance with the applicable framework of the activities that electronic money institutions are entitled to perform.

(10) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority (EBA) to the Commission.

(11) EBA has 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,

HAS ADOPTED THIS REGULATION:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Scope

1 This Regulation establishes rules on the cooperation and exchange of information between competent authorities of home and host Member States regarding notifications for the exercise of the right of establishment or the freedom to provide services by payment institutions, in accordance with Article 28 of Directive 2015/2366/EC.

2 This Regulation applies *mutatis mutandis* to notifications between competent authorities of home and host Member States for the exercise of the right of establishment or of the freedom to provide services by electronic money institutions, including where they distribute electronic money by engaging a natural or legal person, in accordance with Article 3(1), (4) and (5) of Directive 2009/110/EC and Article 111 of Directive 2015/2366/EC.

3 The scope and treatment of information exchanged between competent authorities under the framework for cooperation defined in this Regulation does not entail any consequence on the competence of the home and host authorities as defined under Directive (EU) 2015/2366.

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Article 2

Definitions

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

(a) 'passport application' means a branch passport application, a services passport application or an agent passport application;

(b) 'branch passport application' means an application made in accordance with Article 28(1) of Directive (EU) 2015/2366 by an authorised payment institution wishing to establish a branch in another Member State;

(c) 'services passport application' means an application made in accordance with Article 28(1) of Directive (EU) 2015/2366 by an authorised payment institution seeking to provide services in another Member State;

(d) 'agent passport application' means an application made in accordance with Article 28(1) of Directive (EU) 2015/2366 by an authorised payment institution seeking to provide payment services in another Member State by engaging an agent as referred to in Article 19(5) of that Directive.

Article 3

General requirements

1 Notifications referred to in Article 1(1) shall be transmitted by means of the templates set out in Annexes II, III, V and VI.

2 Notifications referred to in Article 1(2) shall be transmitted by means of the templates set out in Annexes II, III, V and VI.

3 Notifications referred to in Article 1(2) where electronic money institutions distribute electronic money by engaging a natural or legal person shall be transmitted by means of the templates set out in Annexes IV and VI.

4 The templates referred to in paragraphs 1, 2 and 3, and the information contained therein, shall comply with the following requirements:

a they shall be in writing and in a language accepted by the competent authorities of both the home and the host Member States;

b they shall be transmitted by electronic means, where those means are accepted by the competent authorities of the host Member State in which the payment institution intends to provide payment services, followed by an electronic confirmation of receipt by those competent authorities, or transmitted by post with acknowledgement of receipt.

5 Each competent authority shall make the following information available to the other competent authorities:

a the languages accepted, in accordance with point (a) of paragraph 4;

b the email address to which information and templates are to be transmitted where submitted by electronic means or the address to which information and templates are to be sent where submitted by post.

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Article 4

Assessment of completeness and accuracy

1 On receipt of a passport application by a payment institution, the competent authorities of the home Member State shall assess the completeness and accuracy of the information provided pursuant to Article 28(1) of Directive (EU) 2015/2366.

2 Where the information provided in the application is assessed to be incomplete or incorrect pursuant to paragraph 1, the competent authority of the home Member State shall inform the payment institution without delay, indicating in which respect the information is considered to be incomplete or incorrect.

3 The time periods referred to in the first subparagraph of Article 28(2) and the first subparagraph of Article 28(3) of Directive (EU) 2015/2366 shall be considered as having commenced on the date of receipt of a complete and accurate passport application.

Article 5

Settlement of disagreements between competent authorities

Where a procedure for settlement of disagreements between competent authorities of different Member States has been initiated in accordance with Article 27 of Directive (EU) 2015/2366 in relation to a passport application from a payment institution pursuant to Article 28 of that Directive, the competent authorities of the home Member State shall inform the payment institution of the deferral of a decision on the application pending resolution under Article 19 of Regulation (EU) No 1093/2010.

CHAPTER 2

BRANCH PASSPORT APPLICATION

Article 6

Information to be transmitted

1 For the purposes of the first subparagraph of Article 28(2) of Directive (EU) 2015/2366, where a branch passport application is submitted by a payment institution, the competent authorities of the home Member State shall communicate the following information to the competent authorities of the host Member State:

a the date of receipt of a complete and accurate passport application from the payment institution in accordance with Article 4;

b the Member State in which the payment institution intends to operate;

c the type of the passport application;

d the name, the address and, where applicable, the authorisation number and the unique identification number of the payment institution in the home Member State in accordance with the formats set out in Annex I;

e where available, the Legal Entity Identifier of the payment institution;