Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (Text with EEA relevance)

REGULATION (EU) 2015/847 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) Flows of illicit money through transfers of funds can damage the integrity, stability and reputation of the financial sector, and threaten the internal market of the Union as well as international development. Money laundering, terrorist financing and organised crime remain significant problems which should be addressed at Union level. The soundness, integrity and stability of the system of transfers of funds and confidence in the financial system as a whole could be seriously jeopardised by the efforts of criminals and their associates to disguise the origin of criminal proceeds or to transfer funds for criminal activities or terrorist purposes.

(2) In order to facilitate their criminal activities, money launderers and financers of terrorism are likely to take advantage of the freedom of capital movements within the Union's integrated financial area unless certain coordinating measures are adopted at Union level. International cooperation within the framework of the Financial Action Task Force (FATF) and the global implementation of its recommendations aim to prevent money laundering and terrorist financing while transferring funds.

(3) By reason of the scale of the action to be undertaken, the Union should ensure that the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by FATF on16 February 2012 (the ‘revised FATF Recommendations’), and, in particular, FATF Recommendation 16 on wire

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transfers (the 'FATF Recommendation 16') and the revised interpretative note for its implementation, are implemented uniformly throughout the Union and that, in particular, there is no discrimination or discrepancy between, on the one hand, national payments within a Member State and, on the other, cross-border payments between Member States. Uncoordinated action by Member States acting alone in the field of cross-border transfers of funds could have a significant impact on the smooth functioning of payment systems at Union level and could therefore damage the internal market in the field of financial services.

(4) In order to foster a coherent approach in the international context and to increase the effectiveness of the fight against money laundering and terrorist financing, further Union action should take account of developments at international level, namely the revised FATF Recommendations.

(5) The implementation and enforcement of this Regulation, including FATF Recommendation 16, represent relevant and effective means of preventing and combating money-laundering and terrorist financing.

(6) This Regulation is not intended to impose unnecessary burdens or costs on payment service providers or on persons who use their services. In this regard, the preventive approach should be targeted and proportionate and should be in full compliance with the free movement of capital, which is guaranteed throughout the Union.

(7) In the Union's Revised Strategy on Terrorist Financing of 17 July 2008 (the 'Revised Strategy'), it was pointed out that efforts must be maintained to prevent terrorist financing and to control the use by suspected terrorists of their own financial resources. It is recognised that FATF is constantly seeking to improve its Recommendations and is working towards a common understanding of how they should be implemented. It is noted in the Revised Strategy that implementation of the revised FATF Recommendations by all FATF members and members of FATF-style regional bodies is assessed on a regular basis and that a common approach to implementation by Member States is therefore important.

(8) In order to prevent terrorist financing, measures with the purpose of freezing the funds and the economic resources of certain persons, groups and entities have been taken, including Council Regulations (EC) No 2580/2001[(4)], (EC) No 881/2002[(5)] and (EU) No 356/2010[(6)]. To the same end, measures with the purpose of protecting the financial system against the channelling of funds and economic resources for terrorist purposes have also been taken. Directive (EU) 2015/849 of the European Parliament and of the Council[(7)] contains a number of such measures. Those measures do not, however, fully prevent terrorists or other criminals from accessing payment systems for transferring their funds.

(9) The full traceability of transfers of funds can be a particularly important and valuable tool in the prevention, detection and investigation of money laundering and terrorist financing, as well as in the implementation of restrictive measures, in particular those imposed by Regulations (EC) No 2580/2001, (EC) No 881/2002 and (EU) No 356/2010, and in full compliance with Union regulations implementing such measures. It is therefore appropriate, in order to ensure the transmission of information throughout

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the payment chain, to provide for a system imposing the obligation on payment service providers to accompany transfers of funds with information on the payer and the payee.

(10) This Regulation should apply without prejudice to the restrictive measures imposed by regulations based on Article 215 of the Treaty on the Functioning of the European Union (TFEU), such as Regulations (EC) No 2580/2001, (EC) No 881/2002 and (EU) No 356/2010, which may require that payment service providers of payers and of payees, as well as intermediary payment service providers, take appropriate action to freeze certain funds or that they comply with specific restrictions concerning certain transfers of funds.

(11) This Regulation should also apply without prejudice to national legislation transposing Directive 95/46/EC of the European Parliament and of the Council[(8)]. For example, personal data collected for the purpose of complying with this Regulation should not be further processed in a way that is incompatible with Directive 95/46/EC. In particular, further processing of personal data for commercial purposes should be strictly prohibited. The fight against money laundering and terrorist financing is recognised as an important public interest ground by all Member States. Therefore, in applying this Regulation, the transfer of personal data to a third country which does not ensure an adequate level of protection in accordance with Article 25 of Directive 95/46/EC should be permitted in accordance with Article 26 thereof. It is important that payment service providers operating in multiple jurisdictions with branches or subsidiaries located outside the Union should not be prevented from transferring data about suspicious transactions within the same organisation, provided that they apply adequate safeguards. In addition, the payment service providers of the payer and of the payee and the intermediary payment service providers should have in place appropriate technical and organisational measures to protect personal data against accidental loss, alteration, or unauthorised disclosure or access.

(12) Persons that merely convert paper documents into electronic data and are acting under a contract with a payment service provider and persons that provide payment service providers solely with messaging or other support systems for transmitting funds or with clearing and settlement systems do not fall within the scope of this Regulation.

(13) Transfers of funds corresponding to services referred to in points (a) to (m) and (o) of Article 3 of Directive 2007/64/EC of the European Parliament and of the Council[(9)] do not fall within the scope of this Regulation. It is also appropriate to exclude from the scope of this Regulation transfers of funds that represent a low risk of money laundering or terrorist financing. Such exclusions should cover payment cards, electronic money instruments, mobile phones or other digital or information technology (IT) prepaid or postpaid devices with similar characteristics, where they are used exclusively for the purchase of goods or services and the number of the card, instrument or device accompanies all transfers. However, the use of a payment card, an electronic money instrument, a mobile phone, or any other digital or IT prepaid or postpaid device with similar characteristics in order to effect a person-to-person transfer of funds, falls within the scope of this Regulation. In addition, Automated Teller Machine withdrawals, payments of taxes, fines or other levies, transfers of funds carried out through cheque

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images exchanges, including truncated cheques, or bills of exchange, and transfers of funds where both the payer and the payee are payment service providers acting on their own behalf should be excluded from the scope of this Regulation.

(14) In order to reflect the special characteristics of national payment systems, and provided that it is always possible to trace the transfer of funds back to the payer, Member States should be able to exempt from the scope of this Regulation certain domestic low-value transfers of funds, including electronic giro payments, used for the purchase of goods or services.

(15) Payment service providers should ensure that the information on the payer and the payee is not missing or incomplete.

(16) In order not to impair the efficiency of payment systems, and in order to balance the risk of driving transactions underground as a result of overly strict identification requirements against the potential terrorist threat posed by small transfers of funds, the obligation to check whether information on the payer or the payee is accurate should, in the case of transfers of funds where verification has not yet taken place, be imposed only in respect of individual transfers of funds that exceed EUR 1 000, unless the transfer appears to be linked to other transfers of funds which together would exceed EUR 1 000, the funds have been received or paid out in cash or in anonymous electronic money, or where there are reasonable grounds for suspecting money laundering or terrorist financing.

(17) For transfers of funds where verification is deemed to have taken place, payment service providers should not be required to verify information on the payer or the payee accompanying each transfer of funds, provided that the obligations laid down in Directive (EU) 2015/849 are met.

(18) In view of the Union legislative acts in respect of payment services, namely Regulation (EC) No 924/2009 of the European Parliament and of the Council[(10)], Regulation (EU) No 260/2012 of the European Parliament and of the Council[(11)] and Directive 2007/64/EC, it should be sufficient to provide that only simplified information accompany transfers of funds within the Union, such as the payment account number(s) or a unique transaction identifier.

(19) 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 those purposes, transfers of funds from the Union to outside the Union should carry complete information on the payer and the payee. Those authorities should be granted access to complete information on the payer and the payee only for the purposes of preventing, detecting and investigating money laundering and terrorist financing.

(20) The Member State authorities responsible for combating money laundering and terrorist financing, and relevant judicial and law enforcement agencies in the Member States, should intensify cooperation with each other and with relevant third country authorities, including those in developing countries, in order further to strengthen transparency and the sharing of information and best practices.

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(21) As regards transfers of funds from a single payer to several payees that are to be sent in batch files containing individual transfers from the Union to outside the Union, provision should be made for such individual transfers to carry only the payment account number of the payer or the unique transaction identifier, as well as complete information on the payee, provided that the batch file contains complete information on the payer that is verified for accuracy and complete information on the payee that is fully traceable.

(22) In order to check whether the required information on the payer and the payee accompanies transfers of funds, and to help identify suspicious transactions, the payment service provider of the payee and the intermediary payment service provider should have effective procedures in place in order to detect whether information on the payer and the payee is missing or incomplete. Those procedures should include *ex-post* monitoring or real-time monitoring where appropriate. Competent authorities should ensure that payment service providers include the required transaction information with the wire transfer or related message throughout the payment chain.

(23) Given the potential threat of money laundering and terrorist financing presented by anonymous transfers, it is appropriate to require payment service providers to request information on the payer and the payee. In line with the risk-based approach developed by FATF, it is appropriate to identify areas of higher and lower risk, with a view to better targeting the risk of money laundering and terrorist financing. Accordingly, the payment service provider of the payee and the intermediary payment service provider should have effective risk-based procedures that apply where a transfer of funds lacks the required information on the payer or the payee, in order to allow them to decide whether to execute, reject or suspend that transfer and to determine the appropriate follow-up action to take.

(24) The payment service provider of the payee and the intermediary payment service provider should exercise special vigilance, assessing the risks, when either becomes aware that information on the payer or the payee is missing or incomplete, and should report suspicious transactions to the competent authorities in accordance with the reporting obligations set out in Directive (EU) 2015/849 and with national measures transposing that Directive.

(25) The provisions on transfers of funds in relation to which information on the payer or the payee is missing or incomplete apply without prejudice to any obligations on payment service providers and intermediary payment service providers to suspend and/or reject transfers of funds which breach a provision of civil, administrative or criminal law.

(26) With the aim of assisting payment service providers to put effective procedures in place to detect cases in which they receive transfers of funds with missing or incomplete payer or payee information and to take follow-up actions, the European Supervisory Authority (European Banking Authority) (EBA), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(12)], the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council[(13)], and the European Supervisory Authority (European Securities and Markets Authority)