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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	22 July 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 422 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on information accompanying transfers of funds and certain crypto-assets (recast)

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Delegations will find attached document COM(2021) 422 final.

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Brussels, 20.7.2021  
COM(2021) 422 final

2021/0241 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**on information accompanying transfers of funds and certain crypto-assets (recast)**

(Text with EEA relevance)

{SWD(2021) 190, 191} - {SEC(2021) 391}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- Reasons for and objectives of the proposal

Money laundering and terrorism financing pose a serious threat to the integrity of the EU economy and financial system and the security of its citizens. Europol has estimated that around 1% of the EU's annual Gross Domestic Product is 'detected as being involved in suspect financial activity'<sup>1</sup>. In July 2019, following a number of prominent cases of alleged money laundering involving credit institutions in the Union, the Commission adopted a package<sup>2</sup> analysing the effectiveness and efficiency of the EU Anti-Money Laundering/Countering Financing of Terrorism (AML/CFT) regime as it stood at that time, and concluding that reforms were necessary. In this context, the EU's Security Union Strategy<sup>3</sup> for 2020-2025 highlighted the importance of enhancing the EU's framework for anti-money laundering and countering terrorist financing in order to protect Europeans from terrorism and organised crime.

On 7 May 2020 the Commission presented an Action Plan for a comprehensive Union policy on preventing money laundering and terrorism financing<sup>4</sup>. In that Action Plan, the Commission committed to take measures in order to strengthen the EU's rules on combating money laundering and terrorism financing and their implementation, with six priorities or pillars:

1. Ensuring effective implementation of the existing EU AML/CFT framework,
2. Establishing an EU single rulebook on AML/CFT,
3. Bringing about EU-level AML/CFT supervision,
4. Establishing a support and cooperation mechanism for FIUs,
5. Enforcing EU-level criminal law provisions and information exchange,
6. Strengthening the international dimension of the EU AML/CFT framework.

While pillars 1, 5 and 6 of the Action Plan are being implemented, the other pillars demand legislative action. This proposal for the recast of Regulation EU 2015/847 is part of an AML/CFT package of four legislative proposals that is considered as one coherent whole, in implementation of the Commission Action Plan of 7 May 2020, creating a new and more coherent AML/CFT regulatory and institutional framework within the EU. The package encompasses:

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<sup>1</sup> Europol, 'From suspicion to action: Converting financial intelligence into greater operational impact', 2017.

<sup>2</sup> Communication from the Commission - Towards better implementation of the EU's anti-money laundering and countering the financing of terrorism framework (COM/2019/360 final), Report from the Commission on the assessment of recent alleged money laundering cases involving EU credit institutions, (COM/2019/373 final), report on FIU cooperation (COM/2019/371).

<sup>3</sup> COM(2020) 605 final.

<sup>4</sup> C(2020)2800 final, hereafter "the Action Plan".

- a proposal for a Regulation on the prevention of the use of the financial system for the purposes of money laundering (ML) and terrorist financing (TF)<sup>5</sup>;
- a proposal for a Directive<sup>6</sup> establishing the mechanisms that Member States should put in place to prevent the use of the financial system for ML/TF purposes, and repealing Directive (EU) 2015/849<sup>7</sup>;
- a proposal for a Regulation creating an EU Anti-Money Laundering Authority (AMLA)<sup>8</sup>, and
- this proposal for the recast of Regulation EU 2015/847 expanding traceability requirements to crypto-assets.

This present legislative proposal, together with the proposal for a Directive establishing the mechanisms that Member States should put in place to prevent the use of the financial system for ML/TF purposes, and repealing Directive (EU) 2015/849 and the proposal for a Regulation on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing<sup>9</sup>, fulfils the objective of establishing an EU single rulebook (pillar 2).

Both the European Parliament and the Council lent their support to the plan set out by the Commission in the May 2020 Action Plan. In its resolution of 10 July 2020, the European Parliament called for strengthening Union rules and welcomed plans to overhaul the EU AML/CFT institutional set-up<sup>10</sup>. On 4 November 2020, the ECOFIN Council adopted Conclusions supporting each of the pillars of the Commission's Action Plan<sup>11</sup>.

The need for harmonised rules across the internal market is corroborated by the evidence provided in the 2019 reports issued by the Commission. These reports identified that whereas the requirements of Directive (EU) 2015/849<sup>12</sup> are far-reaching, their lack of direct applicability and granularity led to a fragmentation in their application along national lines and divergent interpretations. This situation does not allow dealing effectively with cross-border situations and are therefore ill-suited to adequately protect the internal market. It also generates additional costs and burdens for operators providing cross-border services and causes regulatory shopping.

In order to prevent, detect and investigate their possible use for money laundering and terrorist financing, Regulation (EU) 2015/847<sup>13</sup> was adopted to ensure the full traceability of transfers of funds, ensuring the transmission of information throughout the payment chain, by

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<sup>5</sup> C(2021)420 final.

<sup>6</sup> C(2021)423 final.

<sup>7</sup> Directive 2015/849/EU on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended by Directive (EU) 2018/843 (OJ L 141, 5.6.2015, p. 73).

<sup>8</sup> C(2021)421 final.

<sup>9</sup> C(2021)420 final.

<sup>10</sup> European Parliament resolution of 10 July 2020 on a comprehensive Union policy on preventing money laundering and terrorist financing – the Commission's Action Plan and other recent developments (2020/2686(RSP)), P9\_TA(2020)0204

<sup>11</sup> Council Conclusions on anti-money laundering and countering the financing of terrorism, 12608/20

<sup>12</sup> 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 (OJ L 141, 5.6.2015, p. 73).

<sup>13</sup> Regulation (EU) 2015/847 on information accompanying transfers of funds (OJ L 141, 5.6.2015, p. 1).

providing for a system imposing the obligation on payment service providers to accompany transfers of funds with information on the payer and the payee. However, Regulation (EU) 2015/847 currently only apply to the transfer of funds, which are defined as “*banknotes and coins, scriptural money and electronic money*” in point (25) of Article 4 of Directive 2015/2366 of the European Parliament and of the Council<sup>14</sup>, not to the transfer of virtual assets. Indeed, it is only in 2018 that new international standards were adopted to create requirement for information sharing in transfer of virtual assets of the same nature that the ones existing for information sharing in transfer of funds.

Until now, transfers of virtual assets have remained outside of the scope of Union legislation on financial services, exposing holders of crypto-assets to money laundering and financing of terrorism risks, as flows of illicit money can be done through transfers of crypto-assets and damage the integrity, stability and reputation of the financial sector, and threaten the internal market of the Union as well as the international development of crypto-assets transfers. Money laundering, terrorist financing and organised crime remain significant problems which should be addressed at Union level.

Given that virtual assets transfers are subject to similar money laundering and terrorist financing risks as wire funds transfers, it is to requirements of the same nature they must also be submitted and it therefore appears logical to use the same legislative instrument to address these common issues. Regulation (EU) 2015/847 must therefore now be complemented to also cover virtual assets transfers adequately. Since further significative amendments are to be made to reach this goal, Regulation (EU) 2015/847 should now be recasted in the interests of maintaining its clarity.

- Consistency with existing provisions in the policy area

This proposal takes as its starting point the existing Regulation (EU) 2015/847 of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006, as amended by Regulation (EU) 2019/2175 of 18 December 2019<sup>15</sup>. This proposal must be seen as part of a package, with the other legislative proposals which accompany it, fully consistent with one another. This proposal is consistent with the latest amendments to the recommendations of the Financial Action Task Force (FATF), and in particular in relation to the expansion of the scope of entities subject to AML/CFT requirements to include virtual asset service providers and the mitigation of risks deriving from their activities. Thus, Payment Services Providers (PSPs) involved in transfer of funds have already the duty since several years to accompany their transfers of funds with information on the sender and the beneficiary of each transfer, and to keep this information available to competent authorities. These information sharing duties in the context of wire transfers are often referred to internationally as the ‘*travel rule*’, which was implemented within the Union law through Regulation (EU) 2015/847. Over the last years, growing concerns of money laundering and terrorism financing risks related to virtual assets conducted international standards setters and in particular the FATF to decide to align the regime of transparency already developed for payments services

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<sup>14</sup> 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 (OJ L 337, 23.12.2015, p. 35).

<sup>15</sup> Regulation (EU) 2015/847 on information accompanying transfers of funds (OJ L 141, 5.6.2015, p. 1 and OJ L 334, 27.12.2019, p.1).

providers for transfer of funds to Virtual Asset Service Providers (VASPs) processing transfers of virtual assets<sup>16</sup>. The present proposal aims at introducing in EU law these new requirements of the VASPs, by providing an obligation for these actors to collect and make accessible data concerning the originators and beneficiaries of the transfers of virtual or crypto assets they operate.

To that end, this proposal amends Regulation (EU) 2015/847 of the European Parliament and the Council of 20 May 2015 on information accompanying transfers of funds, extending to crypto assets the information requirements currently applying to wire transfers, with the necessary adjustments needed due to the differences in some of their features.

To ensure the coherence of the EU legal framework, this regulation will use the definitions of ‘crypto-assets’ and ‘crypto-asset services providers’ (CASPs) laid down in the Commission proposal for a regulation on Markets in Crypto-assets<sup>17</sup> [[please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937-COM/2020/593 final] . The definition of ‘crypto-assets’ used in this proposal also corresponds to the definition of ‘virtual assets’ set out in the recommendations of Financial Action Task Force (FATF), and the list of crypto-asset services and crypto-asset services providers (CASPs) covered in this proposal also encompasses the virtual asset services providers (VASPs) identified as such by the FATF and that are likely to raise money-laundering concerns.

- Consistency with other Union policies

In addition to amending Regulation (EU) 2015/847, this proposal is consistent with EU other legislation on payments and transfers of funds (Payment Services Directive, Payment Accounts Directive, Electronic Money Directive<sup>18</sup>). It complements the Commission’s recent Digital Finance Package of 24 September<sup>19</sup> and will ensure full consistency between the EU framework and FATF standards.

The EU’s Security Union Strategy of July 2020 mentioned that the Commission would also support the development of expertise and of a legislative framework in emerging risks, such as crypto-assets and new payment systems. In particular, the Commission will look at the response to the emergence of crypto-assets such as bitcoin and the effect these new technologies will have on how financial assets are issued, exchanged, shared and accessed.

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- Legal basis

With respect to legislation which amends existing legislation, it is important also to take into account, for the purposes of identifying its legal basis, the existing legislation that it amends

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<sup>16</sup> See in particular Recommendation 15 of the Financial Action Task Force (FATF) on new technologies as modified in June 2019.

<sup>17</sup> COM(2020)593 final.

<sup>18</sup> Directives (EU) 2015/2366, 2014/92, and 2009/110 respectively.

<sup>19</sup> This package includes a proposal for a Directive on Markets in Crypto-Assets and a proposal for an EU regulatory framework on digital operational resilience.

and in particular, its objective and content<sup>20</sup> This proposal for a regulation is based on Article 114 TFEU, the same legal basis as the current Regulation (EU) 2015/847, which it amends, and the same as the EU AML/CFT legal framework<sup>21</sup>. Where a legislative act has already coordinated the legislation of the Member States in a given EU policy area, the EU legislature cannot be denied the possibility of adapting that act to any change in circumstances or advances in knowledge, having regard to its task of safeguarding the general interests recognised by the TFEU Treaty and of taking into account the overarching objectives of the European Union laid down in Article 9 of that Treaty<sup>22</sup>. Indeed, in such a situation, the EU legislature can properly carry out its task of safeguarding those general interests and those overarching objectives of the European Union recognised by the Treaty only if it is open to it to adapt the relevant EU legislation to take account of such changes or advances<sup>23</sup>. Article 114 remains appropriate for amending legislation on AML/CFT to adapt to changes in circumstances and development of experience such as the increasing emergence and use of crypto-assets in view of the continuous significant threat to the internal market caused by money laundering and terrorism financing, and the economic losses and disruption on a cross-border level which it can create.

- Subsidiarity

The 2019 Commission AML package<sup>24</sup> highlighted how criminals have been able to exploit the differences among Member States' AML/CFT regimes. The cross-border nature of much money laundering and terrorism financing (ML/TF) makes good cooperation between national supervisors and FIUs essential to prevent these crimes. Many entities subject to AML obligations have cross-border activities, and different approaches by national supervisors and FIUs hinder them in achieving optimal AML/CFT practices at group level. In particular, cross-border transfers of funds and of values between EU Member States can only be effectively regulated at EU level.

Transfers of virtual assets fall today outside of the scope of Union legislation on financial services. The lack of such rules leaves holders of crypto-assets exposed to money laundering and financing of terrorism risks, as flows of illicit money can be done through transfers of crypto-assets and damage the integrity, stability and reputation of the financial sector, and threaten the internal market of the Union as well as the international development of crypto-assets transfers. Money laundering, terrorist financing and organised crime remain significant problems which should be addressed at Union level.

Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU).

- Proportionality

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<sup>20</sup> ECJ, judgment of 3 December 2019, *Czech Republic v Parliament and Council*, C-482/17, EU:C:2019:1035, paragraph 42

<sup>21</sup> 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.

<sup>22</sup> ECJ, judgment of 21 December 2016, *AGET Iraklis*, C-201/15, EU:C:2016:972, paragraph 78

<sup>23</sup> ECJ, judgment of 8 December 2020, *Hungary v Parliament and Council*, EU C.2020:1001 paragraphs 41 and 42

<sup>24</sup> See footnote 2.

The cross-border nature of ML/TF requires a coherent and coordinated approach across Member States based on a single set of rules in the form of a single rulebook. Thus, EU rules are not fully consistent with the latest international standards, that have evolved since the latest amendment to the AMLD, as they fail to cover the traceability of the virtual assets transfers and the information sharing obligations between crypto assets services providers, as current EU rules, as laid down in Regulation (EU) 2015/847 only apply to wire transfers involving funds as defined in point (25) of Article 4 of Directive (EU) 2015/2366. In their recent joint opinion<sup>25</sup> the EU supervisory authorities identified specific risk-increasing factors in respect of new business models and products (i.e. fintech), first of which is the provision of unregulated financial products and services that do not fall within the scope of AML/CFT legislation. In accordance with the principle of proportionality as set out in Article 5 of the Treaty on European Union (TEU), this Regulation does not go beyond what is necessary in order to achieve those objectives.

- Choice of the instrument

Current EU rules laid down in Regulation (EU) 2015/847, were adopted to ensure that the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by FATF on 16 February 2012 (the ‘revised FATF Recommendations’), and, in particular, FATF Recommendation 16 on wire transfers (the ‘FATF Recommendation 16’) and the revised interpretative note for its implementation, are applied uniformly throughout the Union. But these rules only apply to funds (defined as “banknotes and coins, scriptural money and electronic money” in point (25) of Article 4 of Directive (EU) 2015/2366), which do not include crypto-assets, and they must therefore now be completed adequately.

A Regulation of the European Parliament and of the Council is an appropriate instrument for introducing in the Union law the so-called “travel rule” of FATF recommendation 15, which requires on the one hand that originating CASPs obtain and hold required and accurate crypto-assets transfers originator information and required crypto-asset transfers beneficiary information, submit the above information to the beneficiary CASP or financial institution (if any) immediately and securely, and make it available on request to appropriate authorities (i) and, in the other hand, that beneficiary CASPs obtain and hold required originator information and required and accurate beneficiary information on crypto-asset transfers and make it available on request to appropriate authorities (ii). This regulation amending Regulation (EU) 2015/847 is part of a single rulebook, being directly and immediately applicable, and thus removing the possibility of differences in application in different Member States due to divergences in transposition technique.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- Ex-post evaluations/fitness checks of existing legislation

Regulation (EU) 2015/847 has not been subject to an evaluation or fitness check to date. However, this should not prevent the rapid integration in the EU framework of FATF standards.

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<sup>25</sup> Joint opinion of the European supervisory authorities on the risks of money laundering and terrorist financing affecting the European Union’s Financial Sector, 4 October 2019 (JC2019 59)



The new standards adopted by FATF in October 2018 introduced a new definition of ‘virtual asset’, and of ‘virtual asset service providers’ (VASPs), the implementation of which requires to modify Union law. Regulation [please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937-COM/2020/593 final] already provides a definition of ‘crypto-asset service’, which covers a list of services and activities to crypto-asset that reflects adequately the complete set of activities covered by the new FATF standards; and a definition of ‘crypto-asset’, defined as “a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology” and that should also correspond to the definition of ‘virtual assets’ set out in the recommendations of the Financial Action Task Force (FATF)<sup>26</sup>.

A further necessary alignment with the FATF standards consists in introducing into EU legislation the information-sharing obligations contained in the Interpretative note to recommendation 15 of FATF (the so called “travel rule”), which is the purpose of the present proposed regulation. As indicated above (see “Consistency with existing provisions in the policy area”) and to ensure the coherency of the EU legal framework, this regulation will use the definitions of ‘crypto-assets’ and ‘crypto-asset services providers’ (CASPs) contained within Regulation [please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937-COM/2020/593 final].

- Stakeholder consultations

The consultation strategy supporting the package of which this proposal is a part, was composed of a number of components:

- A consultation on the roadmap announcing the Commission’s Action Plan. The consultation, on the Commission’s Have Your Say portal, ran between 11 February and 12 March 2020, and received 42 contributions from a range of stakeholders;
- A public consultation on the actions put forward in the Action Plan, open to the general public and all stakeholder groups, launched on 7 May 2020, and open until 26 August. The consultation received 202 official contributions;
- A targeted consultation of Member States and competent AML/CFT authorities. Member States had the opportunity to give their views in various meetings of the Expert Group on Money Laundering and Terrorist Financing, and EU FIUs made input in meetings of the FIU Platform and via written papers. The discussions were supported by targeted consultations of Member States and competent authorities, using questionnaires;
- A request for advice from the European Banking Authority, made in March 2020; the EBA provided its opinion on 10 September;
- On 23 July 2020, the EDPS issued an opinion on the Commission’s Action Plan;

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<sup>26</sup> FATF International Standards on Combating Money Laundering and the Financing of Terrorism (as amended in October 2020) : (<http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf> )

- On 30 September 2020, the Commission organised a high-level conference, bringing together representatives from national and EU authorities, MEPs, private sector and civil society representatives and academia.

Stakeholder input on the Action Plan was broadly positive. However, some European Union VASP representatives<sup>27</sup> claimed that the absence of a standardised global, open source and free, technical solution for the travel rule could lead to the exclusion of small actors from the crypto-assets market, with only important players being able to afford compliance with the rules. On the other hand, for obliged entities that are operating on a cross-border basis and are currently subject to divergent jurisdictional rules, significant compliance costs are generated by these differences, hence in the medium term harmonised rules would lead to cost-saving in compliance area, and for newly-covered entities, the additional costs would be mitigated.

- Collection and use of expertise

In preparing this proposal, the Commission relied on qualitative and quantitative evidence collected from recognised sources, including a Report with advice on crypto-assets from EBA issued on 9 January 2019<sup>28</sup> recommending that the European Commission should take account of the latest FATF recommendations and any further standards or guidance issued by FATF as part of a holistic review of the need, if any, for action at the EU level to address issues relating to crypto-assets.

Information on enforcement of AML rules was also obtained from Member States via questionnaires.

- Impact assessment

This proposal is accompanied by an impact assessment<sup>29</sup>, which was submitted to the Regulatory Scrutiny Board (RSB) on 6 November 2020 and approved on 4 December 2020. The same impact assessment also accompanies two other legislative proposals which are presented together with the present proposal, a draft Regulation on AML/CFT, and a review of Directive 2015/849 on AML/CFT. The RSB proposed various presentational improvements to the impact assessment in its positive opinion; these have been made.

Regarding the introduction of the FATF “travel rule” into EU law, the impact assessment concludes that the easiest option would be to modify the transfer of funds regulation to also encompass transfers of virtual assets. The implementation of the “travel rule” introduce new specific requirements for both the newly-covered VASPs and those already covered in AMLD, requiring them to obtain, hold and share required and accurate information on virtual

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<sup>27</sup> The Blockchain and Virtual Currencies Working Group notably raised this issue.

<sup>28</sup> EBA, Report with advice for the European Commission on crypto-assets, 9 January 2019, <https://www.eba.europa.eu/eba-reports-on-crypto-assets>

<sup>29</sup> Commission Staff Working Document - Impact Assessment Report Accompanying the package of Commission legislative proposals regarding Anti-Money Laundering and Countering of Financing of Terrorism (AML/CFT), and law enforcement, including:

- Draft Regulation on AML/CFT, also amending the existing Transfer of Funds Regulation (Regulation 2015/847);
- Draft amendment of Directive 2015/849 on AML/CFT;
- Draft Regulation creating an EU Authority for AML/CFT, in the form of a regulatory agency;
- Draft amendment of Directive 2019/1153 facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences.

asset transfers users and make it available on request to appropriate authorities<sup>30</sup>. These specific obligations raise various technical challenges, as virtual assets services providers have to develop technological solutions and protocols allowing to collect and share this information, both between themselves and with the competent authorities. However, no precise estimated costs were provided, and it must be noted that this requirement will also bring benefits that are not easy to assess either: being the introduction of new global FATF standards which have to be applied simultaneously in several jurisdictions around the world, it will make easier the provision of cross-border services.

- Regulatory fitness and simplification

Although, as noted above, no formal ex-post evaluation or fitness check of existing EU AML/CFT legislation has yet taken place, a number of points can be made with regard to elements of the proposal which will bring further simplification and improve efficiency. In order to address the money laundering and terrorist financing threats represented by crypto-assets, the proposed recast of Regulation (EU) 2015/847 will introduce an obligation for the crypto-assets services providers submitted to anti-money laundering and countering terrorism financing requirements in the Union legal framework, to collect and make accessible data concerning the originators and beneficiaries of the transfers of crypto-assets they operate. By providing harmonised and directly applicable rules in a Regulation, the proposed recast of Regulation (EU) 2015/847 will ensure that all crypto-asset service providers covered by Union law will comply with their information sharing duties in an harmonised way, remove the need for transposition work in the Member States and facilitate doing business for cross-border entities in the EU. This should also simplify cooperation between supervisors and FIUs due to the reduction in divergences between their rules and practices. These new rules will significantly enhance the monitoring of crypto-assets service providers, and, at the international stage, ensure compliance of the European Union and its Member States with the relevant measures called for in the FATF Recommendations.

- Fundamental rights

The EU is committed to ensuring high standards of protection of fundamental rights. Under article 15 of the current regulation, the processing of personal data under this Regulation is subject to Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>31</sup>. Personal data that is processed pursuant to this Regulation by the Commission or EBA is subject to Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>32</sup>. The General Data Protection Regulation<sup>33</sup> will apply to CASPs as regards the personal data handled and attached to cross-border transfers of value using virtual assets.

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<sup>30</sup> This “travel rule” requirement will be implemented via an amendment to Regulation 2015/847 on information accompanying transfers of funds. See Annex 6, section 8. It arises from FATF Recommendation 15 (with interpretative note).

<sup>31</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>32</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>33</sup> Regulation (EU) 2016/679.

#### 4. BUDGETARY IMPLICATIONS

This Regulation has no budgetary implications.

#### 5. OTHER ELEMENTS

- Detailed explanation of the specific provisions of the proposal

##### **Subject matter**

The proposal extends the scope of Regulation 2015/847 to include transfers of crypto-assets made by Crypto-Asset Service Providers (CASPs) in addition to the current provisions on transfer of funds. It aims at reflecting in EU law amendments made in June 2019 to Financial Action Task Force (FATF) Recommendation 15 on new technologies to cover ‘virtual assets’ and ‘virtual asset service providers’, and in particular new information obligations for the originator and beneficiary CASPs at the two ends of a crypto-assets transfer (the so-called ‘travel rule’)<sup>34</sup>.

##### **Scope**

The requirements of this regulation apply to CASPs whenever their transactions, whether in fiat currency or a crypto-asset, involve: (a) a traditional wire transfer, or (b) a crypto-asset transfer between a CASP and another obliged entity (e.g. between two CASPs or between a CASP and another obliged entity, such as a bank or other financial institution). For transactions involving crypto-assets transfers, all crypto-asset transfers are treated with the same requirements as for cross-border wire transfers, in accordance with the FATF Interpretative Note to Recommendation 16, rather than domestic wire transfers, given the risks associated to crypto-assets activities and CASP operations.

##### **Nature of the new obligations on crypto-asset service providers**

The crypto-asset service provider of the originator must ensure that transfers of crypto-assets are accompanied by the name of the originator, the originator’s account number, where such an account exists and is used to process the transaction; and the originator’s address, official personal document number, customer identification number or date and place of birth; the crypto-asset service provider of the originator must also ensure that transfers of crypto-assets are accompanied by the name of the beneficiary and the beneficiary’s account number, where such an account exists and is used to process the transaction.

The crypto-asset service provider of the beneficiary must implement effective procedures to detect whether the information on the originator is included in, or follows, the transfer of crypto-assets. The crypto-asset service provider of the beneficiary must also implement effective procedures, including, where appropriate, ex-post monitoring or real-time monitoring, in order to detect whether the required information on the originator or the beneficiary is missing.

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<sup>34</sup> FATF interpretative note to recommendation 15: ‘Countries should ensure that originating VASPs obtain and hold required and accurate originator information and required beneficiary information on virtual asset transfers, submit the above information to the beneficiary VASP or financial institution (if any) immediately and securely, and make it available on request to appropriate authorities’ and that ‘beneficiary VASPs obtain and hold required originator information and required and accurate beneficiary information on virtual asset transfers and make it available on request to appropriate authorities.’

## **Final provisions**

The Regulation will enter into force on the twentieth day after publication in the Official Journal.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on information accompanying transfers of funds  and certain crypto-assets  ~~and~~  
~~repealing Regulation (EC) No 1781/2006 (recast)~~**

(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<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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↓ new

- (1) Regulation (EU) 2015/847 of the European Parliament and of the Council<sup>3</sup> has been substantially amended<sup>4</sup>. Since further amendments are to be made, that Regulation should be recast in the interests of clarity.
- (2) Regulation (EU) 2015/847 was adopted to ensure that the Financial Action Task Force (FATF) requirements on wire transfers services providers, and in particular the obligation on payment service providers to accompany transfers of funds with information on the payer and the payee, were applied uniformly throughout the Union.

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> 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 (OJ L 141, 5.6.2015, p. 1).

<sup>4</sup> See Annex I.

The latest changes introduced in June 2019 in the FATF standards on new technologies, aiming at regulating so called virtual assets and virtual asset service providers, have provided new and similar obligations for virtual asset service providers, with the purpose to facilitate the traceability of transfers of virtual assets. Thus, under those new requirements, virtual asset transfer service providers must accompany transfers of virtual assets with information on their originators and beneficiaries, that they must obtain, hold, share with counterpart at the other hand of the virtual assets transfer and make available on request to appropriate authorities.

- (3) Given that Regulation (EU) 2015/847 currently only applies to transfer of funds, in the meaning of banknotes and coins, scriptural money and electronic money as defined in point (2) of Article 2 of Directive 2009/110/EC, it is appropriate to extend the scope in order to also cover transfer of virtual assets.

↓ 2015/847 recital 1 (adapted)  
⇒ new

- (4) Flows of illicit money through transfers of funds ⇒ and crypto-assets ⇐ 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 crypto-assets ⇐ ☒ as well as ☒ 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 ⇒ or crypto-assets ⇐ for criminal activities or terrorist purposes.

↓ 2015/847 recital 2 (adapted)  
⇒ new

- (5) In order to facilitate their criminal activities, money launderers and financiers 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 ⇒ or crypto-assets ⇐.

↓ 2015/847 recital 3 (adapted)  
⇒ new

- (6) 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 on 16 February 2012 ☒ and then on 21 June 2019 ☒ (~~the revised FATF Recommendations~~), and, in particular, ⇒ FATF Recommendation 15 on new technologies (FATF Recommendation 15), ⇐ FATF Recommendation 16 on wire transfers (~~the 'FATF Recommendation 16'~~) and the revised interpretative ☒ notes on those Recommendations ☒ ~~note for its implementation, are implemented~~ ☒ applied ☒ uniformly throughout the Union and that, in particular, there is no discrimination or discrepancy between, on the one hand,

national payments ⇒ or transfers of crypto-assets ⇐ within a Member State and, on the other, cross-border payments ⇒ or transfers of crypto-assets ⇐ between Member States. Uncoordinated action by Member States acting alone in the field of cross-border transfers of funds ⇒ and crypto-assets ⇐ could have a significant impact on the smooth functioning of payment systems ⇒ and crypto-asset transfer services ⇐ at Union level and could therefore damage the internal market in the field of financial services.

↓ 2015/847 recital 4 (adapted)

- (7) 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~~ ⊗ in particular ⊗ the revised FATF Recommendations.

↓ new

- (8) Directive (EU) 2018/843 of the European Parliament and of the Council<sup>5</sup> introduced a definition of virtual currencies and recognised providers engaged in exchange services between virtual currencies and fiat currencies as well as custodian wallet providers among the entities submitted to anti-money laundering and countering terrorism financing requirements in the Union legal framework. The latest international developments, notably within the FATF, now implies the need to regulate additional categories of virtual asset service providers not yet covered as well as to broaden the current definition of virtual currency.

- (9) It is to be noted that the definition of crypto-assets in Regulation<sup>6</sup> [please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937-COM/2020/593 final] corresponds to the definition of virtual assets set out in the recommendations of FATF, and the list of crypto-asset services and crypto-asset service providers covered in that Regulation also encompass the virtual asset services providers identified as such by FATF and considered as likely to raise money-laundering concerns. In order to ensure the coherency of the Union legal framework, this proposal should refer to those definitions of crypto-assets and crypto-asset service providers.

↓ 2015/847 recital 5 (adapted)

- (10) 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.

<sup>5</sup> Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (OJ L 156, 19.6.2018, p. 43).

<sup>6</sup> References to MiCA to be added once the text adopted



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↓ 2015/847 recital 6  
⇒ new

- (11) This Regulation is not intended to impose unnecessary burdens or costs on payment service providers ⇒ , crypto-asset 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.

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↓ 2015/847 recital 7

- (12) 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.

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↓ new

- (13) In addition, the Commission Action Plan of 7 May 2020 for a comprehensive Union policy on preventing money laundering and terrorism financing<sup>7</sup> identified six priority areas for urgent action to improve the Union's anti-money laundering and countering financing of terrorism regime, including the establishment of a coherent regulatory framework for that regime in the Union to obtain more detailed and harmonised rules, notably to address the implications of technological innovation and developments in international standards and avoid diverging implementation of existing rules. Work at international level suggests a need to expand the scope of sectors or entities covered by the anti-money laundering and countering financing of terrorism rules and to assess how they should apply to virtual assets service providers not covered so far.

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↓ 2015/847 recital 8 (adapted)  
⇒ new

- (14) 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<sup>8</sup>, (EC) No 881/2002<sup>9</sup> and (EU) No

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<sup>7</sup> Communication from the Commission on an Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing (C(2020) 2800 final).

<sup>8</sup> Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344, 28.12.2001, p. 70).

<sup>9</sup> Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations (OJ L 139, 29.5.2002, p. 9).

356/2010<sup>10</sup>. 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<sup>11</sup> [please insert reference – proposal for a directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849] ⇒ and Regulation [please insert reference – proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849] ⇐~~ 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.

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↓ 2015/847 recital 9 (adapted)  
⇒ new

- (15) The ~~full~~ traceability of transfers of funds ⇒ and crypto-assets ⇐ 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, in ~~full~~ compliance with Union regulations implementing such measures. It is therefore appropriate, in order to ensure the transmission of information throughout the payment ⇒ or transfers of crypto-assets ⇐ chain, to provide for a system imposing the obligation on payment service providers ⇒ and crypto-asset service providers ⇐ to accompany transfers of funds ⇒ and crypto-assets ⇐ with information on the payer and the payee ⇒ , and, for transfers of crypto-assets, on the originator and the beneficiary ⇐ .
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↓ 2015/847 recital 10

- (16) 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.

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<sup>10</sup> Council Regulation (EU) No 356/2010 of 26 April 2010 imposing certain specific restrictive measures directed against certain natural or legal persons, entities or bodies, in view of the situation in Somalia (OJ L 105, 27.4.2010, p. 1).

<sup>11</sup> ~~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 purpose 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 (see page 73 of this Official Journal).~~

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↓ 2015/847 recital 11 (adapted)  
⇒ new

- (17) This Regulation should also apply without prejudice to  Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>12</sup>  ~~national legislation transposing Directive 95/46/EC of the European Parliament and of the Council<sup>13</sup>. 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~~ ⇒ must be carried out ⇐ in accordance with ~~Article 25 of Directive 95/46/EC~~ ⇐ Chapter V of Regulation (EU) 2016/679 ⇐ ~~should be permitted in accordance with Article 26 thereof.~~ It is important that payment service providers ⇐ and crypto-asset 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 crypto-asset service providers of the originator and the beneficiary, ⇐ 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.

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↓ 2015/847 recital 12 (adapted)

- (18) 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~~  should  not fall within the scope of this Regulation.

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↓ 2015/847 recital 13

- (19) Transfers of funds corresponding to services referred to in points (a) to (m) and (o) of Article 3 of Directive ~~(EU) 2015/2366/2007/64/EC of the European Parliament and of the Council<sup>14,15</sup>~~ do not fall within the scope of this Regulation. It is also appropriate to

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<sup>12</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>13</sup> ~~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 (OJ L 281, 23.11.1995, p. 31).~~

<sup>14</sup> ~~Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p. 1).~~

<sup>15</sup> ~~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~~

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 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.

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↓ 2015/847 recital 14  
⇒ new

- (20) In order to reflect the special characteristics of national payment ⇒ and crypto-asset transfer ⇐ systems, and provided that it is always possible to trace the transfer of funds back to the payer ⇒ or the transfer of crypto-assets back to the beneficiary ⇐, Member States should be able to exempt from the scope of this Regulation certain domestic low-value transfers of funds, including electronic giro payments, ⇒ or low-value transfers of crypto-assets, ⇐ used for the purchase of goods or services.
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↓ 2015/847 recital 15  
⇒ new

- (21) Payment service providers ⇒ and crypto-asset service providers ⇐ should ensure that the information on the payer and the payee ⇒ or the originator and the beneficiary ⇐ is not missing or incomplete.
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↓ 2015/847 recital 16  
⇒ new

- (22) In order not to impair the efficiency of payment systems ⇒ and crypto-asset transfer services ⇐, 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 ⇒ or crypto-assets ⇐, the obligation to check whether information on the payer or the payee ⇒, or, for transfers of crypto-assets, the originator and the beneficiary, ⇐ 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 ⇒ or crypto-assets ⇐ that exceed EUR 1000, unless the transfer appears to be linked to other transfers of funds ⇒ or transfers of crypto-assets ⇐ which together would exceed EUR 1000, the funds ⇒ or crypto-assets ⇐ 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.
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[2013/36/EU and Regulation \(EU\) No 1093/2010, and repealing Directive 2007/64/EC \(OJ L 337, 23.12.2015, p. 35\).](#)

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↓ 2015/847 recital 17  
⇒ new

- (23) For transfers of funds ⇒ or for transfers of crypto-assets ⇐ where verification is deemed to have taken place, payment service providers ⇒ and crypto-asset service providers ⇐ should not be required to verify information on the payer or the payee accompanying each transfer of funds, ⇒ or on the originator and the beneficiary accompanying each transfer of crypto-assets, ⇐ provided that the obligations laid down in ~~Directive (EU) 2015/849~~ [please insert reference – proposal for a directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849] ⇒ and Regulation [please insert reference – proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849] ⇐ are met.
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↓ 2015/847 recital 18  
⇒ new

- (24) 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<sup>16</sup>, Regulation (EU) No 260/2012 of the European Parliament and of the Council<sup>17</sup> and Directive ~~(EU) 2015/2366~~~~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 ⇒ , or for transfers of crypto-assets, in the case of a transfer not made from or to an account, other means ensuring that the transfer of crypto-assets can be individually identified and that the originator and beneficiary address identifiers are recorded on the distributed ledger ⇐ .
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↓ 2015/847 recital 19 (adapted)  
⇒ new

- (25) In order to allow the authorities responsible for combating money laundering or terrorist financing in third countries to trace the source of funds ⇒ or crypto-assets ⇐ used for those purposes, transfers of funds ⇒ or transfer of crypto-assets ⇐ from the Union to outside the Union should carry complete information on the payer and the payee. ⇒ Complete information on the payer and the payee should include the Legal Entity Identifier (LEI) when this information is provided by the payer to the payer's service provider, since that would allow for better identification of the parties involved in a transfer of funds and could easily be included in existing payment message formats such as the one developed by the International Organisation for Standardisation for electronic data interchange between financial institutions. ⇐ ~~These~~ ⊗ The ⊗ authorities ⊗ responsible for combating money laundering or terrorist

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<sup>16</sup> Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (OJ L 266, 9.10.2009, p. 11).

<sup>17</sup> Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22).

financing in third countries ~~☒~~ 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.

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↓ 2015/847 recital 20 (adapted)

- (26) The Member State authorities responsible for combating money laundering and terrorist financing, and relevant judicial and law enforcement ~~agencies~~ ~~☒~~ authorities ~~☒~~ in the Member States ~~☒~~ and at Union level ~~☒~~, 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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↓ new

- (27) Regarding transfers of crypto-assets, the requirements of this Regulation should apply to crypto-asset service providers whenever their transactions, whether in fiat currency or a crypto-asset, involve a traditional wire transfer or a transfer of crypto-assets involving a crypto-asset service provider.

- (28) Due to the cross-border nature and the risks associated with crypto-asset activities and crypto-asset service providers operations, all transfers of crypto-assets should be treated as cross-border wire transfers, with no simplified domestic wire transfers regime.

- (29) The crypto-asset service provider of the originator should ensure that transfers of crypto-assets are accompanied by the name of the originator, the originator's account number, where such an account exists and is used to process the transaction, and the originator's address, official personal document number, customer identification number or date and place of birth. The crypto-asset service provider of the originator should also ensure that transfers of crypto-assets are accompanied by the name of the beneficiary and the beneficiary's account number, where such an account exists and is used to process the transaction.
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↓ 2015/847 recital 21

- (30) 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.
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↓ new

- (31) As regards transfers of crypto-assets, the submission of originator and beneficiary information in batches should be accepted, as long as submission occurs immediately and securely. It should not be permitted to submit the required information after the transfer, as submission must occur before or at the moment the transaction is

completed, and crypto-asset service providers or other obliged entities should submit the required information simultaneously with the batch crypto-assets transfer itself.

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↓ 2015/847 recital 22 (adapted)  
⇒ new

- (32) 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~~ ⇒ after or during the transfers ⇐ 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.
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↓ new

- (33) As regards transfers of crypto-assets, the crypto-asset service provider of the beneficiary should implement effective procedures to detect whether the information on the originator is missing or incomplete. These procedures should include, where appropriate, monitoring after or during the transfers, in order to detect whether the required information on the originator or the beneficiary is missing. It should not be required that the information is attached directly to the transfer of crypto-assets itself, as long as it is submitted immediately and securely, and available upon request to appropriate authorities.
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↓ 2015/847 recital 23  
⇒ new

- (34) 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 crypto-asset service provider of the beneficiary, ⇐ 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, ⇒ or where a transfer of crypto-assets lacks the required information on the originator or the beneficiary, ⇐ 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.
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↓ 2015/847 recital 24 (adapted)  
⇒ new

- (35) ~~The~~ payment service provider of the payee, ~~and~~ the intermediary payment service provider ⇒ and the crypto-asset service provider of the beneficiary ⇐ should exercise special vigilance, assessing the risks, when either becomes aware that information on the payer or the payee ⇒, or the originator or the beneficiary ⇐ is missing or

incomplete, and should report suspicious transactions to the competent authorities in accordance with the reporting obligations set out in Regulation Directive (EU) [...] 2015/849 and with national measures transposing that Directive.

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↓ 2015/847 recital 25 (adapted)  
⇒ new

- (36) The provisions on transfers of funds ⇒ and transfers of crypto-assets ⇐ in relation to which information on the payer or the payee ⇒ or the originator or the beneficiary ⇐ is missing or incomplete apply without prejudice to any obligations on payment service providers, ~~and~~ intermediary payment service providers ⇒ and crypto-asset service providers, ⇐ to suspend and/or reject transfers of funds which breach a provision of civil, administrative or criminal law.
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↓ 2015/847 recital 26 (adapted)

- (37) 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<sup>18</sup>, 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<sup>19</sup>, and the ~~European Supervisory Authority~~ (European Securities and Markets Authority) (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>20</sup>, should issue guidelines.
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↓ 2015/847 recital 27  
⇒ new

- (38) To enable prompt action to be taken in the fight against money laundering and terrorist financing, payment service providers ⇒ and crypto-asset service providers ⇐ should respond promptly to requests for information on the payer and the payee ⇒ or on the originator and the beneficiary ⇐ from the authorities responsible for combating money laundering or terrorist financing in the Member State where those payment service providers ⇒ and crypto-asset service provider ⇐ are established.

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<sup>18</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

<sup>19</sup> Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

<sup>20</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).



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↓ 2015/847 recital 28

⇒ new

- (39) The number of working days in the Member State of the payment service provider of the payer ⇒ or crypto-asset service provider of the beneficiary ⇐ determines the number of days to respond to requests for information on the payer ⇒ or the originator ⇐ .
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↓ 2015/847 recital 29

⇒ new

- (40) As it may not be possible in criminal investigations to identify the data required or the individuals involved in a transaction until many months, or even years, after the original transfer of funds ⇒ or transfer of crypto-assets ⇐ , and in order to be able to have access to essential evidence in the context of investigations, it is appropriate to require payment service providers ⇒ or crypto-asset service providers ⇐ to keep records of information on the payer and the payee ⇒ or the originator and the beneficiary ⇐ for a period of time for the purposes of preventing, detecting and investigating money laundering and terrorist financing. That period should be limited to five years, after which all personal data should be deleted unless national law provides otherwise. ~~If necessary for the purposes of preventing, detecting or investigating money laundering or terrorist financing, and after carrying out an assessment of the necessity and proportionality of the measure, Member States should be able to allow or require retention of records for a further period of no more than five years, without prejudice to national criminal law on evidence applicable to ongoing criminal investigations and legal proceedings.~~
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↓ 2015/847 recital 30

- (41) In order to improve compliance with this Regulation, and in accordance with the Commission Communication of 9 December 2010 entitled ‘Reinforcing sanctioning regimes in the financial services sector’, the power to adopt supervisory measures and the sanctioning powers of competent authorities should be enhanced. Administrative sanctions and measures should be provided for and, given the importance of the fight against money laundering and terrorist financing, Member States should lay down sanctions and measures that are effective, proportionate and dissuasive. Member States should notify the Commission and the Joint Committee of EBA, EIOPA and ESMA (the ‘ESAs’) thereof.
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↓ 2015/847 recital 31

- (42) In order to ensure uniform conditions for the implementation of ~~Chapter VI of~~ this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>21</sup>.

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<sup>21</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

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↓ 2015/847 recital 32

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

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↓ 2015/847 recital 33 (adapted)

~~Given the number of amendments that would need to be made to Regulation (EC) No 1781/2006 of the European Parliament and of the Council<sup>22</sup> pursuant to this Regulation, that Regulation should be repealed for reasons of clarity.~~

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↓ 2015/847 recital 34  
⇒ new

- (44) Since the objectives of this Regulation ⇒, namely to fight money laundering and the financing of terrorism, including by implementing International Standards, by ensuring the availability of basic information on payers and payees of transfer of funds, and on originators and beneficiaries of transfers of crypto-assets, ⇐ cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). 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.

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↓ 2015/847 recital 35  
⇒ new

- (45) This Regulation ⇒ is subject to Regulation (EU) 2016/679 and Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>23</sup>. It ⇐ respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life (Article 7), the right to the protection of personal data (Article 8), the right to an effective remedy and to a fair trial (Article 47) and the principle of *ne bis in idem*.

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<sup>22</sup> ~~Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds (OJ L 345, 8.12.2006, p. 1).~~

<sup>23</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

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↓ 2015/847 recital 36 (adapted)

~~In order to ensure the smooth introduction of the anti-money laundering and terrorist financing framework, it is appropriate that the date of application of this Regulation be the same as the deadline for transposition of Directive (EU) 2015/849.~~

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↓ 2015/847 recital 37 (adapted)

(46) The European Data Protection Supervisor was consulted in accordance with Article 42(1)~~28(2)~~ of Regulation (EU) 2018/1725~~(EC) No 45/2001 of the European Parliament and of the Council~~<sup>24</sup> and delivered an opinion on ☒ [...] ☒<sup>25</sup> 4 July 2013<sup>26</sup>,

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↓ 2015/847 (adapted)

⇒ new

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### *SUBJECT MATTER, SCOPE AND DEFINITIONS*

#### *Article 1*

##### **Subject matter**

This Regulation lays down rules on the information on payers and payees, accompanying transfers of funds, in any currency, ⇒ and the information on originators and beneficiaries, accompanying transfers of crypto-assets, ⇐ for the purposes of preventing, detecting and investigating money laundering and terrorist financing, where at least one of the payment ⇒ or crypto-asset ⇐ service providers involved in the transfer of funds ⇒ or crypto-assets ⇐ is established in the Union.

#### *Article 2*

##### **Scope**

1. This Regulation shall apply to transfers of funds, in any currency, ⇒ or crypto-assets, ⇐ which are sent or received by a payment service provider ⇒, a crypto-asset service provider, ⇐ or an intermediary payment service provider established in the Union.

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<sup>24</sup> ~~Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).~~

<sup>25</sup> [OJ reference of that opinion]

<sup>26</sup> OJ C 32, 4.2.2014, p. 9.

2. This Regulation shall not apply to the services listed in points (a) to (m) and (o) of Article 3 of Directive ~~(EU) 2015/2366~~2007/64/EC.

3. This Regulation shall not apply to transfers of funds carried out using a payment card, an electronic money instrument or a mobile phone, or any other digital or IT prepaid or postpaid device with similar characteristics, where the following conditions are met:

- (a) that card, instrument or device is used exclusively to pay for goods or services; and
- (b) the number of that card, instrument or device accompanies all transfers flowing from the transaction.

However, this Regulation shall apply when a payment card, an electronic money instrument or a mobile phone, or any other digital or IT prepaid or postpaid device with similar characteristics, is used in order to effect a person-to-person transfer of funds  $\Rightarrow$  or crypto-assets  $\Leftarrow$ .

4. This Regulation shall not apply to persons that have no activity other than to convert paper documents into electronic data and that do so pursuant to a contract with a payment service provider, or to persons that have no activity other than to provide payment service providers with messaging or other support systems for transmitting funds or with clearing and settlement systems.

This Regulation shall not apply to transfers of funds  $\Rightarrow$  and crypto-assets  $\Leftarrow$   $\boxtimes$  if any of the following conditions is fulfilled  $\boxtimes$  :

- (a) ~~that~~  $\boxtimes$  they  $\boxtimes$  involve the payer withdrawing cash from the payer's own payment account;
- (b) ~~that transfer~~  $\boxtimes$  they constitute transfers of  $\boxtimes$  funds  $\Rightarrow$  or crypto-assets  $\Leftarrow$  to a public authority as payment for taxes, fines or other levies within a Member State;
- (c) ~~where~~ both the payer and the payee are payment service providers  $\Rightarrow$  or both the originator and the beneficiary are crypto-asset service providers  $\Leftarrow$  acting on their own behalf;
- (d) ~~that~~  $\boxtimes$  they  $\boxtimes$  are carried out through cheque images exchanges, including truncated cheques.

$\Downarrow$  new

Electronic money tokens, as defined in Article 3(1), point 4 of Regulation [*please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937-COM/2020/593 final*] shall be treated as crypto-assets under this Regulation.

This Regulation shall not apply to person-to-person transfer of crypto-assets.

5. A Member State may decide not to apply this Regulation to transfers of funds ⇒ or transfers of crypto-assets ⇐ within its territory to a payee's payment account ⇒ or a beneficiary's account ⇐ permitting payment exclusively for the provision of goods or services where all of the following conditions are met:

- (a) the payment service provider ⇒ or the crypto-asset service provider ⇐ of the payee ⇒ or the beneficiary ⇐ is subject to Directive (EU) 2015/849 [*please insert reference – proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849*];
- (b) the payment service provider of the payee ⇒ or the crypto-asset service provider of the beneficiary ⇐ is able to trace back, through the payee, by means of a unique transaction identifier, the transfer of funds ⇒ or, for transfers of crypto-assets, through the beneficiary, by means allowing to identify individually the transfers of crypto-assets on the distributed ledger, ⇐ from the person who has an agreement with the payee ⇒ or the beneficiary ⇐ for the provision of goods or services;
- (c) the amount of the transfer of funds ⇒ or crypto-assets ⇐ does not exceed EUR 1000.

### Article 3

#### Definitions

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

- (1) ‘terrorist financing’ means terrorist financing as defined in Article ~~2(2)1(5)~~ of Directive (EU) 2015/849 [*please insert reference – proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849*];
- (2) ‘money laundering’ means the money laundering activities referred to in Article ~~2(1)1(3) and (4)~~ of Directive (EU) 2015/849 [*please insert reference – proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849*];
- (3) ‘payer’ means a person that holds a payment account and allows a transfer of funds from that payment account, or, where there is no payment account, that gives a transfer of funds order;
- (4) ‘payee’ means a person that is the intended recipient of the transfer of funds;
- (5) ‘payment service provider’ means the categories of payment service provider referred to in Article 1(1) of Directive ~~(EU) 2015/2366~~ 2007/64/EC, natural or legal persons benefiting from a waiver pursuant to Article ~~3226~~ thereof and legal persons

benefiting from a waiver pursuant to Article 9 of Directive 2009/110/EC of the European Parliament and of the Council<sup>27</sup>, providing transfer of funds services;

(6) ‘intermediary payment service provider’ means a payment service provider that is not the payment service provider of the payer or of the payee and that receives and transmits a transfer of funds on behalf of the payment service provider of the payer or of the payee or of another intermediary payment service provider;

(7) ‘payment account’ means a payment account as defined in ~~point (1214) of Article 4, point (12),~~ of Directive ~~(EU) 2015/2366/2007/64/EC~~;

(8) ‘funds’ means funds as defined in ~~point (2515) of Article 4, point (25),~~ of Directive ~~(EU) 2015/2366/2007/64/EC~~;

(9) ‘transfer of funds’ means any transaction at least partially carried out by electronic means on behalf of a payer through a payment service provider, with a view to making funds available to a payee through a payment service provider, irrespective of whether the payer and the payee are the same person and irrespective of whether the payment service provider of the payer and that of the payee are one and the same, including:

(a) a credit transfer as defined in ~~point (1) of Article 2, point (1),~~ of Regulation (EU) No 260/2012;

(b) a direct debit as defined in ~~point (2) of Article 2, point (2),~~ of Regulation (EU) No 260/2012;

(c) a money remittance as defined in ~~point (13) of Article 4, point (22),~~ of Directive ~~(EU) 2015/2366/2007/64/EC~~, whether national or cross border;

(d) a transfer carried out using a payment card, an electronic money instrument, or a mobile phone, or any other digital or IT prepaid or postpaid device with similar characteristics;

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↓ new

(10) ‘transfer of crypto-assets’ means any transaction at least partially carried out by electronic means on behalf of an originator through a crypto-asset service provider, with a view to making crypto-assets available to a beneficiary through a crypto-asset service provider, irrespective of whether the originator and the beneficiary are the same person and irrespective of whether the crypto-asset service provider of the originator and that of the beneficiary are one and the same.

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<sup>27</sup> Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

~~(1140)~~ ‘batch file transfer’ means a bundle of several individual transfers of funds ⇒ or crypto-assets ⇐ put together for transmission;

~~(1244)~~ ‘unique transaction identifier’ means a combination of letters, numbers or symbols determined by the payment service provider, in accordance with the protocols of the payment and settlement systems or messaging systems used for the transfer of funds, which permits the traceability of the transaction back to the payer and the payee;

~~(1342)~~ ‘person-to-person transfer of funds’ means a transaction between natural persons acting, as consumers, for purposes other than trade, business or profession;=

(14) ‘person-to-person transfer of crypto-assets’ means a transaction between natural persons acting, as consumers, for purposes other than trade, business or profession, without the use or involvement of a crypto-asset service provider or other obliged entity;

(15) ‘crypto-asset’ means a crypto-asset as defined in Article 3(1), point 2 of Regulation [*please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937-COM/2020/593 final*] except when falling under the categories listed in Article 2(2) of that Regulation or otherwise qualifying as funds.

(16) ‘crypto-asset service provider’ means a crypto-asset service provider as defined in Article 3(1), point (8) of [*please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937-COM/2020/593 final*] where performing one or more crypto-asset services as defined in Article 3(1) point (9) of [*please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937-COM/2020/593 final*];

(17) ‘wallet address’ means an account number which custody is ensured by a crypto-asset service provider or a alphanumeric code for a wallet on a blockchain;

(18) ‘account number’ means the number of an account to hold crypto-assets which custody is ensured by a crypto-asset service provider;

(19) ‘originator’ means a person that holds an account with a crypto-asset service provider and allows a transfer of crypto-assets from that account, or, where there is no account, that gives a transfer of crypto-assets order;

(20) ‘beneficiary’ means a person that is the intended recipient of the transfer of crypto-assets;

(21) ‘legal entity identifier’ (LEI) means a unique alphanumeric reference code based on the ISO 17442 standard assigned to a legal entity.

## CHAPTER II

### *OBLIGATIONS ON PAYMENT SERVICE PROVIDERS*

#### *SECTION 1*

##### *OBLIGATIONS ON THE PAYMENT SERVICE PROVIDER OF THE PAYER*

###### *Article 4*

###### **Information accompanying transfers of funds**

1. The payment service provider of the payer shall ensure that transfers of funds are accompanied by the following information on the payer:

- (a) the name of the payer;
- (b) the payer's payment account number; ~~and~~
- (c) the payer's address, official personal document number, customer identification number or date and place of birth; and

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↓ new

(d) subject to the existence of the necessary field in the relevant payments message format, and where provided by the payer to the payer's Payment service provider, the current Legal Entity Identifier of the payer.

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↓ 2015/847 (adapted)

2. The payment service provider of the payer shall ensure that transfers of funds are accompanied by the following information on the payee:

- (a) the name of the payee; ~~and~~
- (b) the payee's payment account number; and

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↓ new

(c) subject to the existence of the necessary field in the relevant payments message format, and where provided by the payer to the payer's Payment service provider, the current Legal Entity Identifier of the payee.



3. By way of derogation from point (b) of paragraph 1 and point (b) of paragraph 2, in the case of a transfer not made from or to a payment account, the payment service provider of the payer shall ensure that the transfer of funds is accompanied by a unique transaction identifier rather than the payment account number(s).
4. Before transferring funds, the payment service provider of the payer shall verify the accuracy of the information referred to in paragraph 1 ⇒ and, where applicable, in paragraph 3, ⇐ on the basis of documents, data or information obtained from a reliable and independent source.
5. Verification as referred to in paragraph 4 shall be deemed to have taken place where:
- (a) a payer's identity has been verified in accordance with ~~Article 13 of Directive (EU) 2015/849~~ ⇒ Articles 16, 37 and 18(3) of *[please insert reference – proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849]* ⇐ and the information obtained pursuant to that verification has been stored in accordance with Article ~~5640~~ of that ~~Regulation~~~~Directive~~; or
- (b) Article ~~21(2) and (3)~~~~14(5)~~ of ~~Directive (EU) 2015/849~~ *[please insert reference – proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849]* applies to the payer.
6. Without prejudice to the derogations provided for in Articles 5 and 6, the payment service provider of the payer shall not execute any transfer of funds before ensuring full compliance with this Article.

## Article 5

### Transfers of funds within the Union

1. By way of derogation from Article 4(1) and (2), where all payment service providers involved in the payment chain are established in the Union, transfers of funds shall be accompanied by at least the payment account number of both the payer and the payee or, where Article 4(3) applies, the unique transaction identifier, without prejudice to the information requirements laid down in Regulation (EU) No 260/2012, where applicable.
2. Notwithstanding paragraph 1, the payment service provider of the payer shall, within three working days of receiving a request for information from the payment service provider of the payee or from the intermediary payment service provider, make available the following:
- (a) for transfers of funds exceeding EUR 1000, whether those transfers are carried out in a single transaction or in several transactions which appear to be linked, the information on the payer or the payee in accordance with Article 4;

(b) for transfers of funds not exceeding EUR 1000 that do not appear to be linked to other transfers of funds which, together with the transfer in question, exceed EUR 1000, at least:

- (i) the names of the payer and of the payee; and
- (ii) the payment account numbers of the payer and of the payee or, where Article 4(3) applies, the unique transaction identifier.

3. By way of derogation from Article 4(4), in the case of transfers of funds referred to in paragraph 2, point (b), of this Article, the payment service provider of the payer need not verify the information on the payer unless the payment service provider of the payer:

- (a) has received the funds to be transferred in cash or in anonymous electronic money; or
- (b) has reasonable grounds for suspecting money laundering or terrorist financing.

#### *Article 6*

#### **Transfers of funds to outside the Union**

1. In the case of a batch file transfer from a single payer where the payment service providers of the payees are established outside the Union, Article 4(1) shall not apply to the individual transfers bundled together therein, provided that the batch file contains the information referred to in Article 4(1), (2) and (3), that that information has been verified in accordance with Article 4(4) and (5), and that the individual transfers carry the payment account number of the payer or, where Article 4(3) applies, the unique transaction identifier.

2. By way of derogation from Article 4(1), and, where applicable, without prejudice to the information required in accordance with Regulation (EU) No 260/2012, where the payment service provider of the payee is established outside the Union, transfers of funds not exceeding EUR 1000 that do not appear to be linked to other transfers of funds which, together with the transfer in question, exceed EUR 1000, shall be accompanied by at least:

- (a) the names of the payer and of the payee; and
- (b) the payment account numbers of the payer and of the payee or, where Article 4(3) applies, the unique transaction identifier.

By way of derogation from Article 4(4), the payment service provider of the payer need not verify the information on the payer referred to in this paragraph unless the payment service provider of the payer:

- (a) has received the funds to be transferred in cash or in anonymous electronic money; or
- (b) has reasonable grounds for suspecting money laundering or terrorist financing.

## SECTION 2

### OBLIGATIONS ON THE PAYMENT SERVICE PROVIDER OF THE PAYEE

#### Article 7

##### Detection of missing information on the payer or the payee

1. The payment service provider of the payee shall implement effective procedures to detect whether the fields relating to the information on the payer and the payee in the messaging or payment and settlement system used to effect the transfer of funds have been filled in using characters or inputs admissible in accordance with the conventions of that system.

2. The payment service provider of the payee shall implement effective procedures, including, where appropriate,  ~~ex post~~ monitoring after or ~~real-time monitoring~~ during the transfers , in order to detect whether the following information on the payer or the payee is missing:

(a) for transfers of funds where the payment service provider of the payer is established in the Union, the information referred to in Article 5;

(b) for transfers of funds where the payment service provider of the payer is established outside the Union, the information referred to in Article 4(1), points (a), (b) and (c), and Article 4(2), points (a) and (b);

(c) for batch file transfers where the payment service provider of the payer is established outside the Union, the information referred to in Article 4(1), points (a), (b) and (c), and Article 4(2), points (a) and (b), in respect of that batch file transfer.

3. In the case of transfers of funds exceeding EUR 1000, whether those transfers are carried out in a single transaction or in several transactions which appear to be linked, before crediting the payee's payment account or making the funds available to the payee, the payment service provider of the payee shall verify the accuracy of the information on the payee referred to in paragraph 2 of this Article on the basis of documents, data or information obtained from a reliable and independent source, without prejudice to the requirements laid down in Articles ~~8369~~ and ~~8470~~ of Directive ~~(EU) 2015/2366~~ 2007/64/EC.

4. In the case of transfers of funds not exceeding EUR 1000 that do not appear to be linked to other transfers of funds which, together with the transfer in question, exceed EUR 1000, the payment service provider of the payee need not verify the accuracy of the information on the payee, unless the payment service provider of the payee:

(a) effects the pay-out of the funds in cash or in anonymous electronic money; or

(b) has reasonable grounds for suspecting money laundering or terrorist financing.

5. Verification as referred to in paragraphs 3 and 4 shall be deemed to have taken place where:

(a) a payee's identity has been verified in accordance with ~~Article 13 of Directive (EU) 2015/849~~ ⇒ Articles 16, 37 and 18(3) of *[please insert reference – proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849]* ⇐ and the information obtained pursuant to that verification has been stored in accordance with Article ~~5640~~ of that ~~Regulation~~~~Directive~~; or

(b) Article ~~21(2) and (3)~~~~14(5)~~ of ~~Directive (EU) 2015/849~~ *[please insert reference – proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849]* applies to the payee.

## Article 8

### Transfers of funds with missing or incomplete information on the payer or the payee

1. The payment service provider of the payee shall implement effective risk-based procedures, including procedures based on the risk-sensitive basis referred to in Article ~~1613~~ of ~~Directive (EU) 2015/849~~ *[please insert reference – proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849]*, for determining whether to execute, reject or suspend a transfer of funds lacking the required complete payer and payee information and for taking the appropriate follow-up action.

Where the payment service provider of the payee becomes aware, when receiving transfers of funds, that the information referred to in Article 4(1), points (a), (b) and (c), ~~or Article 4(2), points (a) and (b)~~, Article 5(1) or Article 6 is missing or incomplete or has not been filled in using characters or inputs admissible in accordance with the conventions of the messaging or payment and settlement system as referred to in Article 7(1), the payment service provider of the payee shall reject the transfer or ask for the required information on the payer and the payee before or after crediting the payee's payment account or making the funds available to the payee, on a risk-sensitive basis.

2. Where a payment service provider repeatedly fails to provide the required information on the payer or the payee, the payment service provider of the payee shall take steps, which may initially include the issuing of warnings and setting of deadlines, before either rejecting any future transfers of funds from that payment service provider, or restricting or terminating its business relationship with that payment service provider.

The payment service provider of the payee shall report that failure, and the steps taken, to the competent authority responsible for monitoring compliance with anti-money laundering and counter terrorist financing provisions.

## Article 9

### Assessment and reporting

The payment service provider of the payee shall take into account missing or incomplete information on the payer or the payee as a factor when assessing whether a transfer of funds, or any related transaction, is suspicious and whether it is to be reported to the Financial

Intelligence Unit (FIU) in accordance with ~~Directive (EU) 2015/849~~ [*please insert reference – proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849*].

### **SECTION 3**

#### **OBLIGATIONS ON INTERMEDIARY PAYMENT SERVICE PROVIDERS**

##### *Article 10*

#### **Retention of information on the payer and the payee with the transfer**

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

##### *Article 11*

#### **Detection of missing information on the payer or the payee**

1. The intermediary payment service provider shall implement effective procedures to detect whether the fields relating to the information on the payer and the payee in the messaging or payment and settlement system used to effect the transfer of funds have been filled in using characters or inputs admissible in accordance with the conventions of that system.

2. The intermediary payment service provider shall implement effective procedures, including, where appropriate, *ex-post* monitoring or real-time monitoring, in order to detect whether the following information on the payer or the payee is missing:

(a) for transfers of funds where the payment service providers of the payer and the payee are established in the Union, the information referred to in Article 5;

(b) for transfers of funds where the payment service provider of the payer or of the payee is established outside the Union, the information referred to in Article 4(1), points (a), (b) and (c), and Article 4(2), points (a) and (b);

(c) for batch file transfers where the payment service provider of the payer or of the payee is established outside the Union, the information referred to in Article 4(1) and (2) in respect of that batch file transfer.

##### *Article 12*

#### **Transfers of funds with missing information on the payer or the payee**

1. The intermediary payment service provider shall establish effective risk-based procedures for determining whether to execute, reject or suspend a transfer of funds lacking the required payer and payee information and for taking the appropriate follow up action.

Where the intermediary payment service provider becomes aware, when receiving transfers of funds, that the information referred to in Article 4(1), points (a), (b) and (c), ~~or Article 4, points (2)(a) and (b)~~, Article 5(1) or Article 6 is missing or has not been filled in using characters or inputs admissible in accordance with the conventions of the messaging or payment and settlement system as referred to in Article 7(1) it shall reject the transfer or ask for the required information on the payer and the payee before or after the transmission of the transfer of funds, on a risk-sensitive basis.

2. Where a payment service provider repeatedly fails to provide the required information on the payer or the payee, the intermediary payment service provider shall take steps, which may initially include the issuing of warnings and setting of deadlines, before either rejecting any future transfers of funds from that payment service provider, or restricting or terminating its business relationship with that payment service provider.

The intermediary payment service provider shall report that failure, and the steps taken, to the competent authority responsible for monitoring compliance with anti-money laundering and counter terrorist financing provisions.

### Article 13

#### Assessment and reporting

The intermediary payment service provider shall take into account missing information on the payer or the payee as a factor when assessing whether a transfer of funds, or any related transaction, is suspicious, and whether it is to be reported to the FIU in accordance with Directive (EU) 2015/849 *[please insert reference – proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849]*.

↓ new

## CHAPTER III

### OBLIGATIONS ON CRYPTO-ASSET SERVICE PROVIDERS

#### SECTION 1

##### OBLIGATIONS ON THE CRYPTO-ASSET SERVICE PROVIDER OF THE ORIGINATOR

### Article 14

#### Information accompanying transfers of crypto-assets

1. The crypto-asset service provider of the originator shall ensure that transfers of crypto-assets are accompanied by the following information on the originator:

(a) the name of the originator;

(b) the account number of the originator, where an account is used to process the transaction;

(c) the originator's address, official personal document number, customer identification number or date and place of birth.

2. The crypto-asset service provider of the originator shall ensure that transfers of crypto-assets are accompanied by the following information on the beneficiary:

(a) the name of the beneficiary;

(b) the beneficiary's account number, where such an account exists and is used to process the transaction.

3. By way of derogation from paragraph 1, point (b), and paragraph 2, point (b), in the case of a transfer not made from or to an account, the crypto-asset service provider of the originator shall ensure that the transfer of crypto-assets can be individually identified and record the originator and beneficiary address identifiers on the distributed ledger.

4. The information referred to in paragraphs 1 and 2 does not have to be attached directly to, or be included in, the transfer of crypto-assets.

5. Before transferring crypto-assets, the crypto-asset service provider of the originator shall verify the accuracy of the information referred to in paragraph 1 on the basis of documents, data or information obtained from a reliable and independent source.

6. Verification as referred to in paragraph 5 shall be deemed to have taken place where

(a) the identity of the originator has been verified in accordance with Article 16, 18(3) and 37 of Regulation *[please insert reference – proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849]* [and the information obtained pursuant to that verification has been stored in accordance with Article 56 of Regulation *[please insert reference – proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849]* or

(b) Article 21(2) and (3) of Regulation *[please insert reference – proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849]* applies to the originator.

7. Without prejudice to the derogation provided for in Article 15(2), the crypto-asset service provider of the originator shall not execute any transfer of crypto-assets before ensuring full compliance with this Article.

#### *Article 15*

### **Transfers of crypto-assets**

1. In the case of a batch file transfer from a single originator, Article 14(1) shall not apply to the individual transfers bundled together therein, provided that the batch file contains the information referred to in Article 14(1), (2) and (3), that that information has been verified in accordance with Article 14(5) and (6), and that the individual transfers carry the payment account number of the originator or, where Article 14(3) applies the individual identification of the transfer.

2. By way of derogation from Article 14(1), transfers of crypto-assets not exceeding EUR 1 000 that do not appear to be linked to other transfers of crypto-assets which, together with the transfer in question, exceed EUR 1 000, shall be accompanied by at least the following information:

(a) the names of the originator and of the beneficiary;

(b) the account number of the originator and of the beneficiary or, where Article 14(3) applies, the insurance that the crypto-asset transaction can be individually identified;

By way of derogation from Article 14(5), the crypto-assets service provider of the originator shall only verify the information on the originator referred to in this paragraph, first subparagraph, points (a) and (b), in the following cases:

(a) the crypto-assets service provider of the originator has received the crypto-assets to be transferred in exchange of cash or anonymous electronic money;

(b) the crypto-assets service provider of the originator has reasonable grounds for suspecting money laundering or terrorist financing.

## **SECTION 2**

### **Obligations on the crypto-asset service provider of the beneficiary**

#### *Article 16*

### **Detection of missing information on the originator or the beneficiary**

1. The crypto-asset service provider of the beneficiary shall implement effective procedures, including, where appropriate, monitoring after or during the transfers, in order to detect whether the information referred to in Article 14(1) and (2), on the originator or the beneficiary is included in, or follows, the transfer of crypto-assets or batch file transfer.

2. In the case of transfers of crypto-assets exceeding EUR 1 000, whether those transfers are carried out in a single transaction or in several transactions which appear to be linked, before making the crypto-assets available to the beneficiary, the crypto-asset service provider of the beneficiary shall verify the accuracy of the information on the beneficiary referred to in paragraph 1 on the basis of documents, data or information obtained from a reliable and independent source, without prejudice to the requirements laid down in Articles 83 and 84 of Directive (EU) 2015/2366.

3. In the case of transfers of crypto-assets not exceeding EUR 1 000 that do not appear to be linked to other transfers of crypto-asset which, together with the transfer in question, exceed EUR 1 000, the crypto-asset service provider of the beneficiary shall only verify the accuracy of the information on the beneficiary in the following cases:

(a) where the crypto-asset service provider of the beneficiary effects the pay-out of the crypto-assets in cash or anonymous electronic money;

(b) where the crypto-asset service provider of the beneficiary has reasonable grounds for suspecting money laundering or terrorist financing.

4. Verification as referred to in paragraphs 2 and 3 shall be deemed to have taken place where one of the following applies:



(a) the identity of the crypto-assets transfer beneficiary has been verified in accordance with [replace with right reference in AMLR to replace Articles 16, 18(3) and 37 of Regulation [please insert reference – proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849] and the information obtained pursuant to that verification has been stored in accordance with Article 56 of Regulation [please insert reference – proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849];

(b) Article 21(2) and (3) of Regulation [please insert reference – proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849] applies to the crypto-assets transfer beneficiary.

#### Article 17

### **Transfers of crypto-assets with missing or incomplete information on the originator or the beneficiary**

1. The crypto-asset service provider of the beneficiary shall implement effective risk-based procedures, including procedures based on the risk-sensitive basis referred to in Articles 16, 18(3) and 37 of Regulation [please insert reference – proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849], for determining whether to execute or reject a transfer of crypto-assets lacking the required complete originator and beneficiary information and for taking the appropriate follow-up action.

Where the crypto-asset service provider of the beneficiary becomes aware, when receiving transfers of crypto-assets, that the information referred to in Article 14(1) or (2) or Article 15 is missing or incomplete, the crypto-asset service provider shall reject the transfer or ask for the required information on the originator and the beneficiary before or after making the crypto-assets available to the beneficiary, on a risk-sensitive basis.

2. Where a crypto-asset service provider repeatedly fails to provide the required information on the originator or the beneficiary, the crypto-asset service provider of the beneficiary shall take steps, which may initially include the issuing of warnings and setting of deadlines, and return the transferred crypto-assets to the originator's account or address. Alternatively, the crypto-asset service provider of the beneficiary may hold the transferred crypto-assets without making them available to the beneficiary, pending review by the competent authority responsible for monitoring compliance with anti-money laundering and counter terrorist financing provisions.

The crypto-asset service provider of the beneficiary shall report that failure, and the steps taken, to the competent authority responsible for monitoring compliance with anti-money laundering and counter terrorist financing provisions.

#### Article 18

### **Assessment and reporting**

The crypto-asset service provider of the beneficiary shall take into account missing or incomplete information on the originator or the beneficiary when assessing whether a transfer of crypto-assets, or any related transaction, is suspicious and whether it is to be reported to the FIU in accordance with Regulation [please insert reference – proposal for a regulation on the

↓ 2015/847  
⇒ new

## **CHAPTER ~~IV~~**

### **INFORMATION, DATA PROTECTION AND RECORD-RETENTION**

#### *Article ~~19~~*

#### **Provision of information**

Payment service providers ⇒ and crypto-asset service providers ⇐ shall respond fully and without delay, including by means of a central contact point in accordance with Article 5(1) of ~~Directive (EU) 2015/849~~ [*please insert reference – proposal for a directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849*], where such a contact point has been appointed, and in accordance with the procedural requirements laid down in the national law of the Member State in which they are established, to enquiries exclusively from the authorities responsible for preventing and combating money laundering or terrorist financing of that Member State concerning the information required under this Regulation.

#### *Article ~~20~~*

#### **Data protection**

↓ 2019/2175 Art. 6.1

1. The processing of personal data under this Regulation is subject to Regulation (EU) 2016/679 ~~of the European Parliament and of the Council~~<sup>28</sup>. Personal data that is processed pursuant to this Regulation by the Commission or EBA is subject to Regulation (EU) 2018/1725 ~~of the European Parliament and of the Council~~<sup>29</sup>.

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<sup>28</sup> ~~Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1)~~

<sup>29</sup> ~~Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39)~~

2. Personal data shall be processed by payment service providers ⇒ and crypto-asset service providers ⇐ on the basis of this Regulation only for the purposes of the prevention of money laundering and terrorist financing and shall not be further processed in a way that is incompatible with those purposes. The processing of personal data on the basis of this Regulation for commercial purposes shall be prohibited.

3. Payment service providers ⇒ and crypto-asset service providers ⇐ shall provide new clients with the information required pursuant to Article ~~1310~~ of Regulation (EU) 2016/679 ~~Directive 95/46/EC~~ before establishing a business relationship or carrying out an occasional transaction. That information shall, in particular, include a general notice concerning the legal obligations of payment service providers ⇒ and crypto-asset service providers ⇐ under this Regulation when processing personal data for the purposes of the prevention of money laundering and terrorist financing.

4. Payment ⇒ and crypto-asset ⇐ service providers shall ensure that the confidentiality of the data processed is respected.

#### *Article ~~2146~~*

#### **Record retention**

1. Information on the payer and the payee ⇒ , or, for transfers of crypto-assets, on the originator and beneficiary, ⇐ shall not be retained for longer than strictly necessary. Payment service providers of the payer and of the payee shall retain records of the information referred to in Articles 4 to 7 ⇒ and crypto-asset service providers of the originator and beneficiary shall retain records of the information referred to in Articles 14 to 16, ⇐ for a period of five years.

2. Upon expiry of the retention period referred to in paragraph 1, payment service providers ⇒ and crypto-asset service providers ⇐ shall ensure that the personal data is deleted, ~~unless otherwise provided for by national law, which shall determine under which circumstances payment service providers may or shall further retain the data. Member States may allow or require further retention only after they have carried out a thorough assessment of the necessity and proportionality of such further retention, and where they consider it to be justified as necessary for the prevention, detection or investigation of money laundering or terrorist financing. That further retention period shall not exceed five years.~~

~~3. Where, on 25 June 2015, legal proceedings concerned with the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing are pending in a Member State, and a payment service provider holds information or documents relating to those pending proceedings, the payment service provider may retain that information or those documents in accordance with national law for a period of five years from 25 June 2015. Member States may, without prejudice to national criminal law on evidence applicable to ongoing criminal investigations and legal proceedings, allow or require the retention of such information or documents for a further period of five years where the necessity and proportionality of such further retention has been established for the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing.~~

## CHAPTER IV

### SANCTIONS AND MONITORING

#### Article ~~2247~~

##### Administrative sanctions and measures

1. Without prejudice to the right to provide for and impose criminal sanctions, Member States shall lay down the rules on administrative sanctions and measures applicable to breaches of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The sanctions and measures provided for shall be effective, proportionate and dissuasive and shall be consistent with those laid down in accordance with Chapter ~~IVVI~~, Section 4, of ~~Directive (EU) 2015/849~~ [*please insert reference – proposal for a directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849*].

Member States may decide not to lay down rules on administrative sanctions or measures for breach of the provisions of this Regulation which are subject to criminal sanctions in their national law. In that case, Member States shall communicate to the Commission the relevant criminal law provisions.

2. Member States shall ensure that where obligations apply to payment services providers ⇨ and crypto-asset service providers ⇩, in the event of a breach of provisions of this Regulation, sanctions or measures can, subject to national law, be applied to the members of the management body and to any other natural person who, under national law, is responsible for the breach.

↓ 2019/2175 Art. 6.2

3. ~~By 26 June 2017,~~ Member States shall notify the rules referred to in paragraph 1 to the Commission and to the Joint Committee of the ESAs. Member States shall notify the Commission and EBA without undue delay of any subsequent amendments thereto.

↓ 2015/847 (adapted)

⇨ new

4. In accordance with Article ~~3958(4)~~ of ~~Directive (EU) 2015/849~~ [*please insert reference – proposal for a directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849*], competent authorities shall have all the supervisory and investigatory powers that are necessary for the exercise of their functions. In the exercise of their powers to impose administrative sanctions and measures, competent authorities shall cooperate closely to ensure that those administrative sanctions or measures produce the desired results and coordinate their action when dealing with cross-border cases.

5. Member States shall ensure that legal persons can be held liable for the breaches referred to in Article ~~2318~~ committed for their benefit by any person acting individually or as part of an organ of that legal person, and having a leading position within the legal person based on any of the following:

- (a) power to represent the legal person;
- (b) authority to take decisions on behalf of the legal person; or
- (c) authority to exercise control within the legal person.

6. Member States shall also ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 5 ~~of this Article~~ has made it possible to commit one of the breaches referred to in Article ~~2318~~ for the benefit of that legal person by a person under its authority.

7. Competent authorities shall exercise their powers to impose administrative sanctions and measures in accordance with this Regulation in any of the following ways:

- (a) directly;
- (b) in collaboration with other authorities;
- (c) under their responsibility by delegation to such other authorities;
- (d) by application to the competent judicial authorities.

In the exercise of their powers to impose administrative sanctions and measures, competent authorities shall cooperate closely in order to ensure that those administrative sanctions or measures produce the desired results and coordinate their action when dealing with cross-border cases.

#### *Article ~~2318~~*

#### **Specific provisions**

Member States shall ensure that their administrative sanctions and measures include at least those laid down by Articles ~~40(2), 40(3) and 41(1)~~~~59(2) and (3)~~ of ~~Directive (EU) 2015/849~~ *[please insert reference – proposal for a directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849]* in the event of the following breaches of this Regulation:

- (a) repeated or systematic failure by a payment service provider to include the required information on the payer or the payee, in breach of Article 4, 5 or 6  $\Rightarrow$  or by a crypto-asset service provider to include the required information on the originator and beneficiary, in breach of Articles 14 and 15  $\Leftarrow$  ;
- (b) repeated, systematic or serious failure by a payment service provider  $\Rightarrow$  or crypto-asset service provider  $\Leftarrow$  to retain records, in breach of Article ~~2146~~;

(c) failure by a payment service provider to implement effective risk-based procedures, in breach of Articles 8 or 12 ⇨ or by a crypto-asset service provider to implement effective risk-based procedures, in breach of Article 17 ⇨ ;

(d) serious failure by an intermediary payment service provider to comply with Article 11 or 12.

#### Article 2419

### **Publication of sanctions and measures**

In accordance with Article ~~4260(1), (2) and (3)~~ of ~~Directive (EU) 2015/849~~ [*please insert reference – proposal for a directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849*], the competent authorities shall publish administrative sanctions and measures imposed in the cases referred to in Articles ~~2217~~ and ~~2318~~ of this Regulation without undue delay, including information on the type and nature of the breach and the identity of the persons responsible for it, if necessary and proportionate after a case-by-case evaluation.

#### Article 2520

### **Application of sanctions and measures by the competent authorities**

1. When determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities shall take into account all relevant circumstances, including those listed in Article ~~39(5)60(4)~~ of ~~Directive (EU) 2015/849~~ [...].

2. As regards administrative sanctions and measures imposed in accordance with this Regulation, Articles 6(6) and 44 [...]~~62~~ of [...]Directive (EU)~~2015/849~~ [*please insert reference – proposal for a directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849*] shall apply.

#### Article 2621

### **Reporting of breaches**

1. Member States shall establish effective mechanisms to encourage the reporting to competent authorities of breaches of this Regulation.

Those mechanisms shall include at least those referred to in Article ~~4361(2)~~ of ~~Directive (EU) 2015/849~~ [*please insert reference – proposal for a directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849*].

2. Payment service providers ⇨ and crypto-asset service providers ⇨ , in cooperation with the competent authorities, shall establish appropriate internal procedures for their employees, or persons in a comparable position, to report breaches internally through a

secure, independent, specific and anonymous channel, proportionate to the nature and size of the payment service provider  $\Rightarrow$  or the crypto-asset service provider  $\Leftarrow$  concerned.

*Article ~~27~~<sup>22</sup>*

**Monitoring**

1. Member States shall require competent authorities to monitor effectively and to take the measures necessary to ensure compliance with this Regulation and encourage, through effective mechanisms, the reporting of breaches of the provisions of this Regulation to competent authorities.

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↓ 2019/2175 Art. 6.3  
 $\Rightarrow$  new

2.  $\Rightarrow$  Two years after the entry into force of this Regulation and every three years thereafter  $\Leftarrow$  ~~Following a notification in accordance with Article 17(3),~~ the Commission shall submit a report to the European Parliament and to the Council on the application of Chapter ~~IV~~<sup>V</sup>, with particular regard to cross-border cases.

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↓ 2015/847 (adapted)

**CHAPTER VI**

***IMPLEMENTING POWERS***

*Article ~~28~~<sup>23</sup>*

**Committee procedure**

1. The Commission shall be assisted by the Committee on the Prevention of Money Laundering and Terrorist Financing ~~(the ‘Committee’)~~. ~~The~~  $\boxtimes$  That  $\boxtimes$  Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

**CHAPTER VII**

***DEROGATIONS***

*Article ~~29~~<sup>24</sup>*

**Agreements with countries and territories which do not form part of the territory of the Union**

1. The Commission may authorise any Member State to conclude an agreement with a third country or with a territory outside the territorial scope of the TEU and the TFEU as referred to in Article 355 TFEU (the ‘country or territory concerned’), which contains derogations from this Regulation, in order to allow 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 where all of the following conditions are met:

- (a) the country or territory concerned shares a monetary union with the Member State concerned, forms part of the currency area of that Member State or has signed a monetary convention with the Union represented by a Member State;
- (b) payment service providers in the country or territory concerned participate directly or indirectly in payment and settlement systems in that Member State; ~~and~~
- (c) the country or territory concerned 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 submit a request to the Commission and provide it with all the information necessary for the appraisal of the request.

3. Upon receipt by the Commission of such a request, 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 this Article.

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

5. Within one month of receipt of all the information that it considers to be necessary for the appraisal of the request, the Commission shall notify the requesting Member State accordingly and shall transmit copies of the request to the other Member States.

6. Within three months of the notification referred to in paragraph 5 of this Article, the Commission shall decide, ~~in accordance with Article 23(2)~~, whether to authorise the Member State concerned to conclude the agreement that is the subject of the request. ~~⊗~~ Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2). ~~⊗~~

The Commission shall, in any event, adopt a decision as referred to in the first subparagraph within 18 months of receipt of the request.

~~7. By 26 March 2017, Member States that have been authorised to conclude agreements with a country or territory concerned pursuant to Commission Implementing Decision 2012/43/EU<sup>30</sup>, Commission Decision 2010/259/EU<sup>31</sup>, Commission Decision 2009/853/EC<sup>32</sup>~~

<sup>30</sup> ~~Commission Implementing Decision 2012/43/EU of 25 January 2012 authorising the Kingdom of Denmark to conclude agreements with Greenland and the Faroe Islands for transfers of funds between Denmark and each of these territories to be treated as transfers of funds within Denmark, pursuant to Regulation (EC) No 1781/2006 of the European Parliament and of the Council (OJ L 24, 27.1.2012, p. 12)~~



~~or Commission Decision 2008/982/EC<sup>33</sup> shall provide the Commission with updated information necessary for an appraisal under point (e) of the second subparagraph of paragraph 1.~~

~~Within three months of receipt of such information, the Commission shall examine the information provided to ensure that the country or territory concerned requires payment service providers under its jurisdiction to apply the same rules as those established under this Regulation. If, after such examination, the Commission considers that the condition laid down in point (e) of the second subparagraph of paragraph 1 is no longer met, it shall repeal the relevant Commission Decision or Commission Implementing Decision.~~

↓ 2019/2175 Art. 6.4

*Article ~~30~~<sup>25</sup>*

### Guidelines

~~By 26 June 2017, the ESAs shall issue guidelines addressed to the competent authorities and the payment service providers in accordance with Article 16 of Regulation (EU) No 1093/2010 on measures to be taken in accordance with this Regulation, in particular as regards the implementation of Articles 7, 8, 11 and 12 thereof. From 1 January 2020, EBA shall, where appropriate, issue such guidelines.~~

↓ 2015/847 (adapted)

## CHAPTER VIII

### FINAL PROVISIONS

*Article ~~31~~<sup>26</sup>*

#### Repeal of Regulation (EC) No ~~1781/2006~~

Regulation (EC) No ~~1781/2006~~ ☒ (EU) 2015/847 ☒ is repealed.

<sup>31</sup> ~~Commission Decision 2010/259/EU of 4 May 2010 authorising the French Republic to conclude an agreement with the Principality of Monaco for transfers of funds between the French Republic and the Principality of Monaco to be treated as transfers of funds within the French Republic, pursuant to Regulation (EC) No 1781/2006 of the European Parliament and of the Council (OJ L 112, 5.5.2010, p. 23).~~

<sup>32</sup> ~~Commission Decision 2009/853/EC of 26 November 2009 authorising France to conclude an agreement with Saint Pierre et Miquelon, Mayotte, New Caledonia, French Polynesia and Wallis and Futuna respectively for transfers of funds between France and each of these territories to be treated as transfers of funds within France, pursuant to Regulation (EC) No 1781/2006 of the European Parliament and of the Council (OJ L 312, 27.11.2009, p. 71).~~

<sup>33</sup> ~~Commission Decision 2008/982/EC of 8 December 2008 authorising the United Kingdom to conclude an agreement with the Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man for transfers of funds between the United Kingdom and each of these territories to be treated as transfers of funds within the United Kingdom, pursuant to Regulation (EC) No 1781/2006 of the European Parliament and of the Council (OJ L 352, 31.12.2008, p. 34).~~

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in ~~the~~ Annex II.

*Article ~~3227~~*

**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*.

~~It shall apply from 26 June 2017.~~

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*