



**Isle of Man  
Government**

*Reiltys Ellan Vannin*

# Consultation Document



**European Union (Information Accompanying Transfers of  
Funds) Order 2016**

**and the**

**Information Accompanying Transfers of Funds  
Regulations 2016**

**Implementing Regulation (EU) 2015/847  
and FATF Recommendation 16**

Cabinet Office  
Oik Coonceil ny Shirveishee

August 2016

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**European Union (Information Accompanying Transfers of Funds) Order  
2016**

**and the**

**Information Accompanying Transfers of Funds Regulations 2016**

**Implementing Regulation (EU) 2015/847 and FATF Recommendation 16**

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## Introduction

1. At present electronic transfers of funds by payment service providers between the Isle of Man and the United Kingdom are treated as if they were transfers within the UK for the purpose of the requirements in respect of the information accompanying such transfers. It is considered to be desirable for this situation to continue.
2. The UK is subject to EU legislation in this area and treating transfers of funds between the UK and the Island as if they were UK domestic transfers has been authorised by the European Commission as a derogation from the relevant EU legislation because the Island has implemented the same rules as the EU legislation.
3. Following the strengthening of the international standards concerning wire transfers, the EU has adopted legislation to implement new standards.
4. If transfers of funds between the Island and the UK are to continue to be treated as if they were transfers within the UK for the purpose of the information requirement until such time as the UK formally leaves the EU, the Island must implement the same rules as those in the new EU legislation.

## Background

5. Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on the information on the payer accompanying transfers of funds implements old Special Recommendation VII<sup>1</sup> of the Financial Action Task Force (FATF) in the Member States of the European Union.
6. Under this EU Regulation there are stricter requirements for the information accompanying electronic transfers of funds between an EU Member State and a 3<sup>rd</sup> country or territory than for transfers between Member States or within a Member State. However, this EU Regulation permits the European Commission to authorise a Member State to conclude agreements, under national arrangements, with a country or territory which does not form part of the territory of the EU, derogating from this Regulation, in order to allow for transfers of funds between that country or territory and the Member State concerned to be treated as transfers of funds within that Member State.
7. The Commission may only authorise such a derogation if all of the following conditions apply:
  - (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 European Community 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.

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<sup>1</sup> The FATF's 40 Recommendations and 9 Special Recommendations were replaced with a revised set of 40 Recommendations in February 2012 – [International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation](#).

8. In relation to the United Kingdom the Isle of Man meets conditions (a) and (b) above. To comply with condition (c) above, the powers in the [European Communities \(Isle of Man\) Act 1973](#) were used to make an Order<sup>2</sup> to apply, with certain modifications, Regulation (EC) No 1781/2006 as part of the law of Island and then to make Regulations<sup>3</sup> to implement/enforce this EU Regulation as it has effect in the Island.
9. Following a review of the Island's legislation by the Commission, the UK was authorised to conclude an agreement with the Isle of Man to allow transfers of funds between the United Kingdom and the Island to be treated as transfers of funds within the United Kingdom<sup>4</sup>. Similar arrangements apply between the UK and each of the Channel Islands.
10. In 2015 the European Union adopted a new Regulation which will repeal and replace Regulation (EC) No 1781/2006. 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 will implement Recommendation 16 of the FATF's revised Recommendations in the Member States of the European Union. Regulation (EU) 2015/847 will apply from 26 June 2017.
11. FATF Recommendation 16 contains strengthened requirements with a view to preventing wire transfers being used for the purpose of money laundering or the financing of terrorism & proliferation. As a result, Regulation (EU) 2015/847 also contains strengthened requirements compared to Regulation (EC) No 1781/2006.
12. Like Regulation (EC) No 1781/2006, Regulation (EU) 2015/847 permits the European Commission to authorise Member States to enter into derogation arrangements with non-EU countries or territories. The conditions for such arrangements are the same as those in set out Regulation (EC) No 1781/2006. In other words, for a derogation to be permitted the non-EU country or territory concerned must require payment service providers under its jurisdiction to apply the same rules as those established under Regulation (EU) 2015/847. This condition applies even when there is an existing derogation under Regulation (EC) No 1781/2006.
13. Although Regulation (EU) 2015/847 does not apply until 26 June 2017, a Member State that has been authorised to apply a derogation under Regulation (EC) No 1781/2006 must submit updated information to the European Commission by 26 March 2017 to allow the Commission to carry out an appraisal of whether the "same rules" as Regulation (EU) 2015/847 condition has been met. This appraisal must take place within three months of the receipt of the updated information and if the Commission does not consider that the same rules condition has been met the Decision authorising the existing derogation will be repealed, so ending approval for the derogation.
14. Despite the fact that the UK has voted to leave the European Union, it is extremely unlikely that "Brexit" will take place before 26 June 2017; indeed, it appears that Article 50 of the Treaty on European Union, which will trigger the period of up to two years<sup>5</sup> negotiation on the terms of the UK's exit from the EU, will not be formally

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<sup>2</sup> European Communities (Wire Transfers Regulation) (Application) Order 2007 ([SD 332/07](#)), subsequently amended by European Communities (Wire Transfers Regulation) (Application) (Amendment) Order 2007 ([SD 992/07](#))

<sup>3</sup> EC Wire Transfers Regulation (Enforcement) Regulations 2007 ([SD 956/07](#)), subsequently amended by EC Wire Transfers Regulation (Enforcement) (Amendment) Regulations 2007 ([SD 944/08](#)).

<sup>4</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.

<sup>5</sup> The period can be extended but only with the unanimous agreement of the other 27 EU Member States.

invoked until early 2017. As such, if the wire transfers derogation is to continue until the UK actually leaves the EU, it is necessary for the Isle of Man to apply and implement the provisions of Regulation (EU) 2015/847. The issue has been discussed with Jersey and Guernsey and each of those jurisdictions is also working on the implementation of the same rules as Regulation (EU) 2015/847. The intention is that all three jurisdictions should submit their new legislation to the UK by the end of 2016 and the UK will then submit it to the European Commission as a package early in 2017.

15. When Brexit has taken place the derogation will no longer be required under EU legislation (it only applies between the Isle of Man and the UK, not between the Isle of Man and other EU Member States) but both the Island and the UK will still need legislation to implement FATF Recommendation 16. To protect the Island's reputation, the Isle of Man Government is committed to complying with international standards and best practice, including the FATF's Recommendations. Post-Brexit it is probable that, as at present, some form of MOU between the Isle of Man and the UK will be required under which the UK would agree to continue to treat UK-Isle of Man transfers as domestic provided the Island continues to adequately implement FATF Recommendation 16.

### **Implementing Regulation (EU) 2015/847**

16. For the Isle of Man, as with Regulation (EC) No 1781/2006, the most straightforward way to demonstrate compliance with the requirement that payment service providers under its jurisdiction must apply the same rules as those established under Regulation (EU) 2015/847, is to use the powers in the European Communities (Isle of Man) Act 1973 ("the 1973 Act").
17. The European Union (Information Accompanying Transfers of Funds) Order 2016 has therefore been drafted under the powers in section 2A of the 1973 Act to apply, with certain limited modifications, Regulation (EU) 2015/847 as part of the law of the Island. The draft Order is attached to this document at Appendix 1.
18. The Information Accompanying Transfers of Funds Regulations 2016 have been drafted under the powers in section 2B of the 1973 Act to implement/enforce Regulation (EU) 2015/847 as it would have effect in the Island by virtue of the draft Order. These draft Regulations are attached to this document at Appendix 2.
19. Under the draft Regulations the Isle of Man Financial Services Authority will be the competent authority with responsibility for ensuring that payment service providers in the Island comply with the requirement of Regulation (EU) 2015/847.
20. In addition, it should be noted that, as permitted by Article 17(1) of Regulation (EU) 2015/847, the draft Regulations do not lay down rules on administrative sanctions or measures for breaches of the provisions of the EU Regulation but instead makes breaches subject to criminal sanctions. This is the approach for the enforcement of Regulation (EC) No 1781/2006 and it is understood that it is also the approach that both Jersey and Guernsey intend to take for breaches of Regulation (EU) 2015/847.
21. Except for the purpose of making the Regulations referred to above, the Order would come into operation on 26 June 2017 and the Regulations would also come into operation on that date, i.e. the same date as the date from which Regulation (EU) 2015/847 applies in the United Kingdom.

## Consultation

22. Comments are sought on both the principles and details of the proposed Order and Regulations.
23. Any comments or questions should be submitted in writing to:  
Mr Carlos Phillips  
Cabinet Office  
Government Office  
Bucks Road  
Douglas  
Isle of Man  
IM1 3PN  
  
or by email to: [carlos.phillips@gov.im](mailto:carlos.phillips@gov.im)
24. The closing date for the receipt of comments is **Friday 23 September 2016**.
25. When submitting your views please indicate if you are responding on behalf of an organisation.
26. To ensure that the process is transparent and consistent with the Government's Code of Conduct on Consultation responses can only be accepted if you provide your name with your response.
27. The purpose of consultation is not to be a referendum but an information, views and evidence gathering exercise from which to take an informed decision. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.
28. A summary of the responses will be published after the consultation has closed.
29. Unless specifically requested otherwise, any responses received may be published either in part or in their entirety along with the name of the person or body that has submitted the response. Please mark your response clearly if you wish your response and/or name to be kept confidential. Confidential responses will be included in any statistical summary and numbers of comments received.



*European Communities (Isle of Man) Act 1973*

## EUROPEAN UNION (INFORMATION ACCOMPANYING TRANSFERS OF FUNDS) ORDER 2016

*Approved by Tynwald:  
Coming into Operation in accordance with article 2*

The Council of Ministers makes the following Order under section 2A of the European Communities (Isle of Man) Act 1973<sup>6</sup>.

### 1 Title

This Order is the European Union (Information Accompanying Transfers of Funds) Order 2016.

### 2 Commencement

This Order comes into operation —

- (a) for the purpose of making regulations under section 2B of the European Communities (Isle of Man) Act 1973 on xxxxxxxxxx 2016; and
- (b) for all other purposes on 26 June 2017.

### 3 Application of EU Instrument

- (1) Regulation (EU) 2015/847<sup>7</sup> 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<sup>8</sup> (“Regulation (EU) 2015/847”) applies as part of the law of the Island, subject to the modifications set out in the Schedule.
- (2) Any reference in the Schedule to a numbered Article, without more, is a reference to the Article so numbered of Regulation (EU) 2015/847.

<sup>6</sup> 1973 c.14

<sup>7</sup> OJ L 151, 5.6.2015, p. 1

<sup>8</sup> OJ L 345, 8.12.2006, p.1. Regulation (EC) No 1781/2006 was applied to the Island with certain modifications by SD 332/07.



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#### 4 Revocation

The following are revoked —

- (a) European Communities (Wire Transfers Regulation) (Application) Order 2007<sup>9</sup>; and
- (b) European Communities (Wire Transfers Regulation) (Application) (Amendment) Order 2007<sup>10</sup>.

MADE

**W GREENHOW**  
*Chief Secretary*

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<sup>9</sup> SD 332/07  
<sup>10</sup> SD 992/07



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## SCHEDULE

[Article 3]

### MODIFICATIONS TO THE APPLIED EU INSTRUMENT

- (1) Except where otherwise provided below, references in Regulation (EU) 2015/847 to “Member State”, Member States” and “the Union” shall be read as if the Island were itself a Member State, its territory were included within the Union territory and for the purposes of European Union law were a separate country from the United Kingdom.
- (2) The reference to the Union does not include the Island in the term “High Representative of the Union for Foreign Affairs and Security Policy”.
- (3) In Article 1, for “Union” substitute **☒** Isle of Man **☒**.
- (4) In Article 2—
  - (a) in paragraph (1), for “Union” substitute **☒** Isle of Man **☒**;
  - (b) in paragraph (4), in point (b), for “a Member State” substitute **☒** the British Islands **☒**; and
  - (c) in paragraph (5) —
    - (i) for “its territory” substitute **☒** the British Islands **☒**; and
    - (ii) in point (a), for “Directive (EU) 2015/849” substitute **☒** the AML/CFT requirements or is subject to equivalent requirements under enactments of the United Kingdom, Bailiwick of Jersey or Bailiwick of Guernsey **☒**.
- (5) In Article 3—
  - (a) before paragraph (1) insert —

<b>☒</b> (A1) ‘the AML/CFT requirements’ has the same meaning as in the Code;	<b>☒</b> (A1) ‘the AML/CFT requirements’ has the same meaning as in the Code;
<b>☒</b> (A2) ‘the Code’ means Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 <sup>11</sup> as amended from time to time; <b>☒</b> ;	<b>☒</b> (A2) ‘the Code’ means Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 <sup>11</sup> as amended from time to time; <b>☒</b> ;
  - (b) in paragraph (1), for “terrorist financing as defined in Article 1(5) of Directive (EU) 2015/849” substitute **☒** the financing of terrorism as defined in paragraph 3 of the Code **☒**; and
  - (c) in paragraph (2), for “Article 1(3) and (4) of Directive (EU) 2015/849” substitute **☒** paragraph 3 of the Code **☒**;
  - (d) after paragraph (12), insert —

<b>☒</b> (13) ‘electronic money’ has the same meaning as in Article 1(3)(b) of Directive 2000/46/EC. <b>☒</b> .	<b>☒</b> (13) ‘electronic money’ has the same meaning as in Article 1(3)(b) of Directive 2000/46/EC. <b>☒</b> .
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- (6) In Article 4 —

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<sup>11</sup> SD 2015/0102

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- (a) in paragraph 5(a) —
- (i) for “Article 13 of Directive (EU) 2015/849” for substitute **63** Part 4 of the Code **22**; and
- (ii) for “Article 40 of that Directive” substitute **63** paragraphs 32 and 33 of the Code **22**; and
- (b) in paragraph 5(b), for “Article 14(5) of Directive (EU) 2015/849 applies” substitute **63** paragraphs 9 and 11 of the Code apply **22**.
- (7) In Article 5, in the title and in paragraph 1, for “Union” substitute **63** British Islands **22**.
- (8) In Article 6, in the title and in paragraphs 1 and 2, for “Union” substitute **63** British Islands **22**.
- (9) In Article 7 —
- (a) in paragraph 2, in each place, for “Union” substitute **63** British Islands **22**;
- (b) in paragraph 5(a) —
- (i) for “Article 13 of Directive (EU) 2015/849” substitute **63** Part 4 of the Code **22**; and
- (ii) for “Article 40 of that Directive” substitute **63** paragraphs 32 and 33 of the Code **22**; and
- (c) in paragraph 5(b), for “Article 14(5) of Directive (EU) 2015/849 applies” substitute **63** paragraphs 9 and 11 of the Code apply **22**.
- (10) In Article 8(1), for “Article 13 of Directive (EU) 2015/849” substitute **63** Part 3 of the Code **22**.
- (11) In Article 9(2), for “Directive (EU) 2015/849” substitute **63** the AML/CFT requirements **22**.
- (12) In Article 11(2), in each place, for “Union” substitute **63** British Islands **22**.
- (13) In Article 13, for “Directive (EU) 2015/849” substitute **63** the AML/CFT requirements **22**.
- (14) In Article 14, omit “including by means of a central contact point in accordance with Article 45(9) of Directive (EU) 2015/849, where such a contact point has been appointed,”.
- (15) In Article 15 —
- (a) in paragraph 1 —
- (i) for “Directive 95/46/EC, as transposed into national law” substitute **63** the Data Protection Act 2002 **22**; and
- (ii) omit the second sentence; and
- (b) in paragraph 3, for “Article 10 of Directive 95/46/EC” substitute **63** the Data Protection Act 2002 **22**.
- (16) In Article 16(3)—

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- (a) for “25 June 2015”, in the first place, substitute **66** the date referred to in article 2(a) of the European Union (Information Accompanying Transfers of Funds) Order 2016 **69**; and
  - (b) for “25 June 2015”, in the second place, substitute **66** that date **69**.
- (17) In Article 17—
    - (a) omit paragraph 3; and
    - (b) in paragraph 4, omit “In accordance with Article 58(4) of Directive (EU) 2015/849”.
  - (18) In Article 19, omit “In accordance with Article 60(1), (2) and (3) of Directive (EU) 2015/849,”.
  - (19) In Article 20, omit paragraph 2.
  - (20) In Article 22, omit paragraph 2.
  - (21) Omit Articles 23 to 27.
  - (22) After Article 27, omit the statement of application and effect.

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*EXPLANATORY NOTE*

*(This note is not part of the Order)*

This Order applies 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 as part of the law of the Isle of Man, subject to certain modifications.

The Order comes into operation for the purposes of making implementing Regulations under section 2B of the European Communities (Isle of Man) Act 1973 on xxxxxxxx 2016 and on 26 June 2017 (the date from which Regulation (EU) 2015/847 applies in the European Union) for all other purposes.

This Order revokes the European Communities (Wire Transfers Regulation) (Application) Order 2007 as amended with effect from 26 June 2017.

This Order and the implementing Regulations referred to above are necessary to ensure that electronic transfers of funds between the Isle of Man and UK can continue to be treated as transfers within the UK for the purposes of EU law.

A copy of Regulation (EU) No 2015/847 is included as an Annex, but the Annex does not form part of the Order.

**REGULATION (EU) 2015/847 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 20 May 2015  
on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006**

(Text with EEA relevance)

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<sup>3</sup>,

Whereas:

- (1) Flows of illicit money through transfers of funds can damage the integrity, stability and reputation of the financial sector, and threaten the internal market of the Union as well as international development. Money laundering, terrorist financing and organised crime remain significant problems which should be addressed at Union level. The soundness, integrity and stability of the system of transfers of funds and confidence in the financial system as a whole could be seriously jeopardised by the efforts of criminals and their associates to disguise the origin of criminal proceeds or to transfer funds for criminal activities or terrorist purposes.
- (2) In order to facilitate their criminal activities, money launderers and 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.
- (3) By reason of the scale of the action to be undertaken, the Union should ensure that the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by FATF 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 implemented uniformly throughout the Union and that, in particular, there is no discrimination or discrepancy between, on the one hand, national payments within a Member State and, on the other, cross-border payments between Member States. Uncoordinated action by Member States acting alone in the field of cross-border transfers of funds could have a significant impact on the smooth functioning of payment systems at Union level and could therefore damage the internal market in the field of financial services.
- (4) In order to foster a coherent approach in the international context and to increase the effectiveness of the fight against money laundering and terrorist financing, further Union action should take account of developments at international level, namely the revised FATF Recommendations.
- (5) The implementation and enforcement of this Regulation, including FATF Recommendation 16, represent relevant and effective means of preventing and combating money-laundering and terrorist financing.
- (6) This Regulation is not intended to impose unnecessary burdens or costs on payment service providers or on persons who use their services. In this regard, the preventive approach should be targeted and proportionate and should be in full compliance with the free movement of capital, which is guaranteed throughout the Union.
- (7) In the Union's Revised Strategy on Terrorist Financing of 17 July 2008 (the 'Revised Strategy'), it was pointed out that efforts must be maintained to prevent terrorist financing and to control the use by suspected terrorists of their own financial resources. It is recognised that FATF is constantly seeking to improve its Recommendations and is working towards a common understanding of how they should be implemented. It is noted in the Revised Strategy that implementation of the revised FATF Recommendations by all FATF members and members of FATF-style regional bodies is assessed on a regular basis and that a common approach to implementation by Member States is therefore important.
- (8) In order to prevent terrorist financing, measures with the purpose of freezing the funds and the economic resources of certain persons, groups and entities have been taken, including Council Regulations (EC) No 2580/2001<sup>4</sup>, (EC) No 881/2002<sup>5</sup> and (EU) No 356/2010<sup>6</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>7</sup> contains a number of such measures. Those measures do not, however, fully prevent terrorists or other criminals from accessing payment systems for transferring their funds.

- (9) The full traceability of transfers of funds can be a particularly important and valuable tool in the prevention, detection and investigation of money laundering and terrorist financing, as well as in the implementation of restrictive measures, in particular those imposed by Regulations (EC) No 2580/2001, (EC) No 881/2002 and (EU) No 356/2010, and in full compliance with Union regulations implementing such measures. It is therefore appropriate, in order to ensure the transmission of information throughout the payment chain, to provide for a system imposing the obligation on payment service providers to accompany transfers of funds with information on the payer and the payee.
- (10) This Regulation should apply without prejudice to the restrictive measures imposed by regulations based on Article 215 of the Treaty on the Functioning of the European Union (TFEU), such as Regulations (EC) No 2580/2001, (EC) No 881/2002 and (EU) No 356/2010, which may require that payment service providers of payers and of payees, as well as intermediary payment service providers, take appropriate action to freeze certain funds or that they comply with specific restrictions concerning certain transfers of funds.
- (11) This Regulation should also apply without prejudice to national legislation transposing Directive 95/46/EC of the European Parliament and of the Council. For example, personal data collected for the purpose of complying with this Regulation should not be further processed in a way that is incompatible with Directive 95/46/EC. In particular, further processing of personal data for commercial purposes should be strictly prohibited. The fight against money laundering and terrorist financing is recognised as an important public interest ground by all Member States. Therefore, in applying this Regulation, the transfer of personal data to a third country which does not ensure an adequate level of protection in accordance with Article 25 of Directive 95/46/EC should be permitted in accordance with Article 26 thereof. It is important that payment service providers operating in multiple jurisdictions with branches or subsidiaries located outside the Union should not be prevented from transferring data about suspicious transactions within the same organisation, provided that they apply adequate safeguards. In addition, the payment service providers of the payer and of the payee and the intermediary payment service providers should have in place appropriate technical and organisational measures to protect personal data against accidental loss, alteration, or unauthorised disclosure or access.
- (12) Persons that merely convert paper documents into electronic data and are acting under a contract with a payment service provider and persons that provide payment service providers solely with messaging or other support systems for transmitting funds or with clearing and settlement systems do not fall within the scope of this Regulation.
- (13) Transfers of funds corresponding to services referred to in points (a) to (m) and (o) of Article 3 of Directive 2007/64/EC of the European Parliament and of the Council<sup>8</sup> do not fall within the scope of this Regulation. It is also appropriate to exclude from the scope of this Regulation transfers of funds that represent a low risk of money laundering or terrorist financing. Such exclusions should cover payment cards, electronic money instruments, mobile phones or other digital or information technology (IT) prepaid or postpaid devices with similar characteristics, where they are used exclusively for the purchase of goods or services and the number of the card, instrument or device accompanies all transfers. However, the use of a payment card, an electronic money instrument, a mobile phone, or any other digital or IT prepaid or postpaid device with similar characteristics in order to effect a person-to-person transfer of funds, falls within the scope of this Regulation. In addition, Automated Teller Machine withdrawals, payments of taxes, fines or other levies, transfers of funds carried out through cheque images exchanges, including truncated cheques, or bills of exchange, and transfers of funds where both the payer and the payee are payment service providers acting on their own behalf should be excluded from the scope of this Regulation.
- (14) In order to reflect the special characteristics of national payment systems, and provided that it is always possible to trace the transfer of funds back to the payer, Member States should be able to exempt from the scope of this Regulation certain domestic low-value transfers of funds, including electronic giro payments, used for the purchase of goods or services.
- (15) Payment service providers should ensure that the information on the payer and the payee is not missing or incomplete.
- (16) In order not to impair the efficiency of payment systems, and in order to balance the risk of driving transactions underground as a result of overly strict identification requirements against the potential terrorist threat posed by small transfers of funds, the obligation to check whether information on the payer or the payee is accurate should, in the case of transfers of funds where verification has not yet taken place, be imposed only in respect of individual transfers of funds that exceed EUR 1 000, unless the transfer



appears to be linked to other transfers of funds which together would exceed EUR 1 000, the funds have been received or paid out in cash or in anonymous electronic money, or where there are reasonable grounds for suspecting money laundering or terrorist financing.

- (17) For transfers of funds where verification is deemed to have taken place, payment service providers should not be required to verify information on the payer or the payee accompanying each transfer of funds, provided that the obligations laid down in Directive (EU) 2015/849 are met.
- (18) In view of the Union legislative acts in respect of payment services, namely Regulation (EC) No 924/2009 of the European Parliament and of the Council<sup>9</sup>, Regulation (EU) No 260/2012 of the European Parliament and of the Council<sup>10</sup> and Directive 2007/64/EC, it should be sufficient to provide that only simplified information accompany transfers of funds within the Union, such as the payment account number(s) or a unique transaction identifier.
- (19) In order to allow the authorities responsible for combating money laundering or terrorist financing in third countries to trace the source of funds used for those purposes, transfers of funds from the Union to outside the Union should carry complete information on the payer and the payee. Those authorities should be granted access to complete information on the payer and the payee only for the purposes of preventing, detecting and investigating money laundering and terrorist financing.
- (20) The Member State authorities responsible for combating money laundering and terrorist financing, and relevant judicial and law enforcement agencies in the Member States, should intensify cooperation with each other and with relevant third country authorities, including those in developing countries, in order further to strengthen transparency and the sharing of information and best practices.
- (21) As regards transfers of funds from a single payer to several payees that are to be sent in batch files containing individual transfers from the Union to outside the Union, provision should be made for such individual transfers to carry only the payment account number of the payer or the unique transaction identifier, as well as complete information on the payee, provided that the batch file contains complete information on the payer that is verified for accuracy and complete information on the payee that is fully traceable.
- (22) In order to check whether the required information on the payer and the payee accompanies transfers of funds, and to help identify suspicious transactions, the payment service provider of the payee and the intermediary payment service provider should have effective procedures in place in order to detect whether information on the payer and the payee is missing or incomplete. Those procedures should include ex-post monitoring or real-time monitoring where appropriate. Competent authorities should ensure that payment service providers include the required transaction information with the wire transfer or related message throughout the payment chain.
- (23) Given the potential threat of money laundering and terrorist financing presented by anonymous transfers, it is appropriate to require payment service providers to request information on the payer and the payee. In line with the risk-based approach developed by FATF, it is appropriate to identify areas of higher and lower risk, with a view to better targeting the risk of money laundering and terrorist financing. Accordingly, the payment service provider of the payee and the intermediary payment service provider should have effective risk-based procedures that apply where a transfer of funds lacks the required information on the payer or the payee, in order to allow them to decide whether to execute, reject or suspend that transfer and to determine the appropriate follow-up action to take.
- (24) The payment service provider of the payee and the intermediary payment service provider should exercise special vigilance, assessing the risks, when either becomes aware that information on the payer or the payee is missing or incomplete, and should report suspicious transactions to the competent authorities in accordance with the reporting obligations set out in Directive (EU) 2015/849 and with national measures transposing that Directive.
- (25) The provisions on transfers of funds in relation to which information on the payer or the payee is missing or incomplete apply without prejudice to any obligations on payment service providers and intermediary payment service providers to suspend and/or reject transfers of funds which breach a provision of civil, administrative or criminal law.
- (26) With the aim of assisting payment service providers to put effective procedures in place to detect cases in which they receive transfers of funds with missing or incomplete payer or payee information and to take follow-up actions, the European Supervisory Authority (European Banking Authority) (EBA), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>11</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>12</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>13</sup>, should issue guidelines.

- (27) To enable prompt action to be taken in the fight against money laundering and terrorist financing, payment service providers should respond promptly to requests for information on the payer and the payee from the authorities responsible for combating money laundering or terrorist financing in the Member State where those payment service providers are established.
- (28) The number of working days in the Member State of the payment service provider of the payer determines the number of days to respond to requests for information on the payer.
- (29) 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, 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 to keep records of information on the payer and the payee 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.
- (30) 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.
- (31) In order to ensure uniform conditions for the implementation of Chapter V 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>14</sup>.
- (32) 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.
- (33) 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>15</sup> pursuant to this Regulation, that Regulation should be repealed for reasons of clarity.
- (34) 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). 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.
- (35) This Regulation 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*.
- (36) 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.
- (37) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>16</sup> and delivered an opinion on 4 July 2013<sup>17</sup>,

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, for the purposes of preventing, detecting and investigating money laundering and terrorist financing, where at least one of the payment service providers involved in the transfer of funds is established in the ~~Union~~ **Isle of Man**.

*Article 2*

**Scope**

1. This Regulation shall apply to transfers of funds, in any currency, which are sent or received by a payment service provider or an intermediary payment service provider established in the ~~Union~~ **Isle of Man**.
2. This Regulation shall not apply to the services listed in points (a) to (m) and (o) of Article 3 of Directive 2007/64/EC<sup>18</sup>.
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.

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:

- (a) that involve the payer withdrawing cash from the payer's own payment account;
- (b) that transfer funds to a public authority as payment for taxes, fines or other levies within a ~~Member State~~ **the British Islands**;
- (c) where both the payer and the payee are payment service providers acting on their own behalf;
- (d) that are carried out through cheque images exchanges, including truncated cheques.

5. A Member State may decide not to apply this Regulation to transfers of funds within ~~its territory~~ **the British Islands** to a payee's payment account permitting payment exclusively for the provision of goods or services where all of the following conditions are met:

- (a) the payment service provider of the payee is subject to ~~Directive (EU) 2015/849~~ **the AML/CFT requirements or is subject to equivalent requirements under enactments of the United Kingdom, the Bailiwick of Jersey or the Bailiwick of Guernsey**;
- (b) the payment service provider of the payee is able to trace back, through the payee, by means of a unique transaction identifier, the transfer of funds from the person who has an agreement with the payee for the provision of goods or services;
- (c) the amount of the transfer of funds does not exceed EUR 1 000.

*Article 3*

**Definitions**

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

- (A1) 'AML/CFT requirements' has the same meaning as in the Code;
- (A2) 'the Code' means Anti-Money Laundering and Countering the Financing of Terrorism Code 2015<sup>19</sup> as amended from time to time;

- (1) ‘terrorist financing’ means ~~terrorist financing as defined in Article 1(5) of Directive (EU) 2015/849~~ **the financing of terrorism as defined in paragraph 3 of the Code;**
- (2) ‘money laundering’ means the money laundering activities referred to in ~~Article 1(3) and (4) of Directive (EU) 2015/849~~ **paragraph 3 of the Code;**
- (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 2007/64/EC<sup>20</sup>, natural or legal persons benefiting from a waiver pursuant to Article 26<sup>21</sup> thereof and legal persons benefiting from a waiver pursuant to Article 9 of Directive 2009/110/EC<sup>22</sup> of the European Parliament and of the Council<sup>23</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 (14) of Article 4 of Directive 2007/64/EC<sup>24</sup>;
- (8) ‘funds’ means funds as defined in point (15) of Article 4 of Directive 2007/64/EC<sup>25</sup>;
- (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 of Regulation (EU) No 260/2012<sup>26</sup>;
  - (b) a direct debit as defined in point (2) of Article 2 of Regulation (EU) No 260/2012<sup>27</sup>;
  - (c) a money remittance as defined in point (13) of Article 4 of Directive 2007/64/EC<sup>28</sup>, 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;
- (10) ‘batch file transfer’ means a bundle of several individual transfers of funds put together for transmission;
- (11) ‘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;
- (12) ‘person-to-person transfer of funds’ means a transaction between natural persons acting, as consumers, for purposes other than trade, business or profession.
- (13) **‘electronic money’ has the same meaning as in Article 1(3)(b) of Directive 2000/46/EC<sup>29</sup>.**

## 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.
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.
  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 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~~ **Part 4 of the Code**; and the information obtained pursuant to that verification has been stored in accordance with ~~Article 40 of that Directive~~ **paragraphs 32 and 33 of the Code**; or
    - (b) ~~Article 14(5) of Directive (EU) 2015/849~~ **applies paragraphs 9 and 11 of the Code apply.**
  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~~ British Islands**

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~~ **British Islands**, 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<sup>30</sup>, 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 1 000, 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 1 000 that do not appear to be linked to other transfers of funds which, together with the transfer in question, exceed EUR 1 000, 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(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~~ British Islands**

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~~ **British Islands**, 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<sup>31</sup>, where the payment service provider of the payee is established outside the ~~Union~~ **British Islands**, transfers of funds not exceeding EUR 1 000 that do not appear to be linked to other transfers of funds which, together with the transfer in question, exceed EUR 1 000, 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 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 provider of the payer is established in the ~~Union~~ **British Islands**, 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~~ **British Islands**, the information referred to in Article 4(1) and (2);
- (c) for batch file transfers where the payment service provider of the payer is established outside the ~~Union~~ **British Islands**, the information referred to in Article 4(1) and (2) in respect of that batch file transfer.

3. In the case of transfers of funds exceeding EUR 1 000, 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 69 and 70 of Directive 2007/64/EC<sup>32</sup>.

4. In the case of transfers of funds not exceeding EUR 1 000 that do not appear to be linked to other transfers of funds which, together with the transfer in question, exceed EUR 1 000, 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~~ **Part 4 of the Code** and the information obtained pursuant to that verification has been stored in accordance with ~~Article 40 of that Directive~~ **paragraphs 32 and 33 of the Code**; or
- (b) ~~Article 14(5) of Directive (EU) 2015/849~~ **applies paragraphs 9 and 11 of the Code** apply 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 13 of Directive (EU) 2015/849~~ **Part 3 of the**

**Code**, 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) or (2), 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~~ **the AML/CFT requirements**.

#### *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~~ **British Islands**, 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~~ **British Islands**, the information referred to in Article 4(1) and (2);
- (c) for batch file transfers where the payment service provider of the payer or of the payee is established outside the ~~Union~~ **British Islands**, 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) or (2), 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~~ **the AML/CFT requirements**.

### CHAPTER III

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

#### *Article 14*

#### **Provision of information**

Payment service providers shall respond fully and without delay, ~~including by means of a central contact point in accordance with Article 45(9) of 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 15*

#### **Data protection**

1. The processing of personal data under this Regulation is subject to ~~Directive 95/46/EC, as transposed into national law~~ **the Data Protection Act 2002**. ~~Personal data that is processed pursuant to this Regulation by the Commission or by the ESAs is subject to Regulation (EC) No 45/2001.~~

2. Personal data shall be processed by payment 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 shall provide new clients with the information required pursuant to ~~Article 10 of Directive 95/46/EC~~ **the Data Protection Act 2002** 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 under this Regulation when processing personal data for the purposes of the prevention of money laundering and terrorist financing.

4. Payment service providers shall ensure that the confidentiality of the data processed is respected.

#### *Article 16*

#### **Record retention**

1. Information on the payer and the payee 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 for a period of five years.

2. Upon expiry of the retention period referred to in paragraph 1, payment 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~~ **the date referred to in article 2(a) of the European Union (Information Accompanying Transfers of Funds) Order 2016**, 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~~ **that date**. 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 17*

#### **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 VI, Section 4, of 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, 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.

~~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. They shall notify the Commission and the Joint Committee of the ESAs without delay of any subsequent amendments thereto.~~

4. ~~In accordance with Article 58(4) of 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 18 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 18 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 18*

#### **Specific provisions**

Member States shall ensure that their administrative sanctions and measures include at least those laid down by Article 59(2) and (3) of Directive (EU) 2015/849<sup>33</sup>, 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;
- (b) repeated, systematic or serious failure by a payment service provider to retain records, in breach of Article 16;
- (c) failure by a payment service provider to implement effective risk-based procedures, in breach of Articles 8 or 12;
- (d) serious failure by an intermediary payment service provider to comply with Article 11 or 12.

#### *Article 19*

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

~~In accordance with Article 60(1), (2) and (3) of Directive (EU) 2015/849, the competent authorities shall publish administrative sanctions and measures imposed in the cases referred to in Articles 17 and 18 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 20*

#### **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 60(4) of Directive (EU) 2015/849<sup>34</sup>.

~~2. As regards administrative sanctions and measures imposed in accordance with this Regulation, Article 62 of Directive (EU) 2015/849 shall apply.~~

#### *Article 21*

#### **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 61(2) of Directive (EU) 2015/849<sup>35</sup>.

2. Payment 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 concerned.

#### *Article 22*

#### **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.

~~2. After Member States have notified the rules referred to in paragraph 1 of this Article to the Commission and to the Joint Committee of the ESAs 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, with particular regard to cross-border cases.~~

### ~~CHAPTER V~~

### ~~IMPLEMENTING POWERS~~

#### *Article 23*

#### **Committee procedure**

~~1. The Commission shall be assisted by the Committee on the Prevention of Money Laundering and Terrorist Financing (the 'Committee'). The 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 VI DEROGATIONS

### Article 24

#### **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.

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>36</sup>, Commission Decision 2010/259/EU<sup>37</sup>, Commission Decision 2009/853/EC<sup>38</sup> or Commission Decision 2008/982/EC<sup>39</sup> shall provide the Commission with updated information necessary for an appraisal under point (c) 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 (c) of the second subparagraph of paragraph 1 is no longer met, it shall repeal the relevant Commission Decision or Commission Implementing Decision.

### Article 25

#### **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, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010, on measures to be taken in accordance with this Regulation, in particular as regards the implementation of Articles 7, 8, 11 and 12.

**CHAPTER VII**  
**FINAL PROVISIONS**

*Article 26*

**Repeal of Regulation (EC) No 1781/2006**

Regulation (EC) No 1781/2006 is repealed. 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.

*Article 27*

**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 Strasbourg, 20 May 2015.

*For the European Parliament*  
*The President*  
M. SCHULZ

*For the Council*  
*The President*  
Z. KALNIŅA-LUKAŠEVICA

**CORRELATION TABLE**

<b>Regulation (EC) No 1781/2006</b>	<b>This Regulation</b>
Article 1	Article 1
Article 2	Article 3
Article 3	Article 2
Article 4	Article 4(1)
Article 5	Article 4
Article 6	Article 5
Article 7	Article 7
Article 8	Article 7
Article 9	Article 8
Article 10	Article 9
Article 11	Article 16
Article 12	Article 10
—	Article 11
—	Article 12
—	Article 13
Article 13	—
Article 14	Article 15
Article 15	Articles 17 to 22
Article 16	Article 23
Article 17	Article 24
Article 18	—
Article 19	—
—	Article 26
Article 20	Article 27

**ENDNOTES:**

<sup>1</sup> OJ C 166, 12.6.2013, p. 2.

<sup>2</sup> OJ C 271, 19.9.2013, p. 31.

<sup>3</sup> Position of the European Parliament of 11 March 2014 (not yet published in the Official Journal) and position of the Council at first reading of 20 April 2015 (not yet published in the Official Journal). Position of the European Parliament of 20 May 2015 (not yet published in the Official Journal).

<sup>4</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).

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- <sup>5</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 Al-Qaida network (OJ L 139, 29.5.2002, p. 9).
- <sup>6</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>7</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).
- <sup>8</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>9</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>10</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).
- <sup>11</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>12</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>13</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).
- <sup>14</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).
- <sup>15</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>16</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>17</sup> OJ C 32, 4.2.2014, p. 9.
- <sup>18</sup> Points (a) to (m) and (o) of Article 3 of Directive 2007/64/EC are:
- “(a) payment transactions made exclusively in cash directly from the payer to the payee, without any intermediary intervention;
  - (b) payment transactions from the payer to the payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee;
  - (c) professional physical transport of banknotes and coins, including their collection, processing and delivery;
  - (d) payment transactions consisting of the non-professional cash collection and delivery within the framework of a non-profit or charitable activity;
  - (e) services where cash is provided by the payee to the payer as part of a payment transaction following an explicit request by the payment service user just before the execution of the payment transaction through a payment for the purchase of goods or services;
  - (f) money exchange business, that is to say, cash-to-cash operations, where the funds are not held on a payment account;
  - (g) payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee:
    - (i) paper cheques in accordance with the Geneva Convention of 19 March 1931 providing a uniform law for cheques;
    - (ii) paper cheques similar to those referred to in point (i) and governed by the laws of Member States which are not party to the Geneva Convention of 19 March 1931 providing a uniform law for cheques;

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- (iii) paper-based drafts in accordance with the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;
  - (iv) paper-based drafts similar to those referred to in point (iii) and governed by the laws of Member States which are not party to the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;
  - (v) paper-based vouchers;
  - (vi) paper-based traveller's cheques; or
  - (vii) paper-based postal money orders as defined by the Universal Postal Union;
  - (h) payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses and/or central banks and other participants of the system, and payment service providers, without prejudice to Article 28;

*NOTE: Article 28 concerns access to payment systems and states:*

*1. Member States shall ensure that the rules on access of authorised or registered payment service providers that are legal persons to payment systems shall be objective, non-discriminatory and proportionate and that those rules do not inhibit access more than is necessary to safeguard against specific risks such as settlement risk, operational risk and business risk and to protect the financial and operational stability of the payment system.*

*Payment systems shall impose on payment service providers, on payment service users or on other payment systems none of the following requirements:*

- (a) any restrictive rule on effective participation in other payment systems;*
- (b) any rule which discriminates between authorised payment service providers or between registered payment service providers in relation to the rights, obligations and entitlements of participants; or*
- (c) any restriction on the basis of institutional status.*

*2. Paragraph 1 shall not apply to:*

- (a) payment systems designated under Directive 98/26/EC;*
- (b) payment systems composed exclusively of payment service providers belonging to a group composed of entities linked by capital where one of the linked entities enjoys effective control over the other linked entities; or*
- (c) payment systems where a sole payment service provider (whether as a single entity or as a group):*
  - acts or can act as the payment service provider for both the payer and the payee and is exclusively responsible for the management of the system, and*
  - licenses other payment service providers to participate in the system and the latter have no right to negotiate fees between or amongst themselves in relation to the payment system although they may establish their own pricing in relation to payers and payees.*

- (i) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in point (h) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services and any other entities allowed to have the custody of financial instruments;
- (j) services provided by technical service providers, which support the provision of payment services, without them entering at any time into possession of the funds to be transferred, including processing and storage of data, trust and privacy protection services, data and entity authentication, information technology (IT) and communication network provision, provision and maintenance of terminals and devices used for payment services;
- (k) services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services;
- (l) payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services;
- (m) payment transactions carried out between payment service providers, their agents or branches for their own account;
- (n) ...
- (o) services by providers to withdraw cash by means of automated teller machines acting on behalf of one or more card issuers, which are not a party to the framework contract with the customer withdrawing

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money from a payment account, on condition that these providers do not conduct other payment services as listed in the Annex.”

*NOTE 1: the Annex to Directive 2007/64/EC is as follows:*

*PAYMENT SERVICES (DEFINITION 3 IN ARTICLE 4)*

- 1. Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.*
- 2. Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account.*
- 3. Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider:*
  - execution of direct debits, including one-off direct debits,*
  - execution of payment transactions through a payment card or a similar device,*
  - execution of credit transfers, including standing orders.*
- 4. Execution of payment transactions where the funds are covered by a credit line for a payment service user:*
  - execution of direct debits, including one-off direct debits,*
  - execution of payment transactions through a payment card or a similar device,*
  - execution of credit transfers, including standing orders.*
- 5. Issuing and/or acquiring of payment instruments.*
- 6. Money remittance.*
- 7. Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.*

*NOTE 2: paragraph (n) of Article 3 of Directive 2007/64/EC is:*

*“(n) payment transactions between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group;”*

*This type of transaction is not excluded from the scope of the EU Regulation.*

**DEFINITIONS FOR THE PURPOSES OF THE ABOVE POINTS (from Article 4 of Directive 2007/64/EC):**

4. ‘payment institution’ means a legal person that has been granted authorisation in accordance with Article 10 to provide and execute payment services throughout the Community;
5. ‘payment transaction’ means an act, initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;
6. ‘payment system’ means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and/or settlement of payment transactions;
7. ‘payer’ means a natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order;
8. ‘payee’ means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction;
9. ‘payment service provider’ means bodies referred to in Article 1(1) and legal and natural persons benefiting from the waiver under Article 26;  
*NOTE 1: See Endnote 2 below for the text of Article 1(1) of Directive 2007/64/EC*  
*NOTE 2 See Endnote 3 below for the text of Article 26 of Directive 2007/64/EC.*
10. ‘payment service user’ means a natural or legal person making use of a payment service in the capacity of either payer or payee, or both;
12. ‘framework contract’ means a payment service contract which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account;
13. ‘money remittance’ means a payment service where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee;

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14. 'payment account' means an account held in the name of one or more payment service users which is used for the execution of payment transactions;
  15. 'funds' means banknotes and coins, scriptural money and electronic money as defined in Article 1(3)(b) of Directive 2000/46/EC;  
*NOTE: Article 1(3)(b) of Directive 2000/46/EC states:*  
*"electronic money" shall mean monetary value as represented by a claim on the issuer which is:*
    - (i) stored on an electronic device;
    - (ii) issued on receipt of funds of an amount not less in value than the monetary value issued;
    - (iii) accepted as means of payment by undertakings other than the issuer.
  16. 'payment order' means any instruction by a payer or payee to his payment service provider requesting the execution of a payment transaction;
  19. 'authentication' means a procedure which allows the payment service provider to verify the use of a specific payment instrument, including its personalised security features;
  22. 'agent' means a natural or legal person which acts on behalf of a payment institution in providing payment services;
  23. 'payment instrument' means any personalised device(s) and/or set of procedures agreed between the payment service user and the payment service provider and used by the payment service user in order to initiate a payment order;
  24. 'means of distance communication' refers to any means which, without the simultaneous physical presence of the payment service provider and the payment service user, may be used for the conclusion of a payment services contract;
  28. 'direct debit' means a payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the payer's consent given to the payee, to the payee's payment service provider or to the payer's own payment service provider;
  29. 'branch' means a place of business other than the head office which is a part of a payment institution, which has no legal personality and which carries out directly some or all of the transactions inherent in the business of a payment institution; all the places of business set up in the same Member State by a payment institution with a head office in another Member State shall be regarded as a single branch;
  30. 'group' means a group of undertakings, which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries have a holding as well as undertakings linked to each other by a relationship referred to in Article 12(1) of Directive 83/349/EEC.

<sup>19</sup> SD 2015/0102.

<sup>20</sup> Article 1(1) of Directive 2007/64/EC states:

"This Directive lays down the rules in accordance with which Member States shall distinguish the following six categories of payment service provider:

- (a) credit institutions within the meaning of Article 4(1)(a) of Directive 2006/48/EC, including branches within the meaning of Article 4(3) of that Directive located in the Community of credit institutions having their head offices inside or, in accordance with Article 38 of that Directive, outside the Community;
- (b) electronic money institutions within the meaning of Article 1(3)(a) of Directive 2000/46/EC;
- (c) post office giro institutions which are entitled under national law to provide payment services;
- (d) payment institutions within the meaning of this Directive;
- (e) the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities;
- (f) Member States or their regional or local authorities when not acting in their capacity as public authorities."

<sup>21</sup> Article 26 of Directive 2007/64/EC states:

"Article 26 Conditions

1. Notwithstanding Article 13, Member States may waive or allow their competent authorities to waive the application of all or part of the procedure and conditions set out in Sections 1 to 3, with the exception of Articles 20, 22, 23 and 24, and allow natural or legal persons to be entered in the register provided for in Article 13, where:

- (a) the average of the preceding 12 months' total amount of payment transactions executed by the person concerned, including any agent for which it assumes full responsibility, does not exceed EUR 3 million per month. That requirement shall be assessed on the projected total amount of payment transactions in its business plan, unless an adjustment to that plan is required by the competent authorities; and



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(b) none of the natural persons responsible for the management or operation of the business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes.

2. Any natural or legal person registered in accordance with paragraph 1 shall be required to have its head office or place of residence in the Member State in which it actually carries on its business.

3. The persons referred to in paragraph 1 shall be treated as payment institutions, save that Article 10(9) and Article 25 shall not apply to them.

4. Member States may also provide that any natural or legal person registered in accordance with paragraph 1 may engage only in certain activities listed in Article 16.

5. The persons referred to in paragraph 1 shall notify the competent authorities of any change in their situation which is relevant to the conditions specified in that paragraph. Member States shall take the necessary steps to ensure that where the conditions set out in paragraphs 1, 2 and 4 are no longer fulfilled, the persons concerned shall seek authorisation within 30 calendar days in accordance with the procedure laid down in Article 10.

6. This Article shall not be applied in respect of provisions of Directive 2005/60/EC or national anti-money-laundering provisions.”

<sup>22</sup> Article 9 of Directive 2009/110/EC states:

“Article 9 - Optional exemptions

1. Member States may waive or allow their competent authorities to waive the application of all or part of the procedures and conditions set out in Articles 3, 4, 5 and 7 of this Directive, with the exception of Articles 20, 22, 23 and 24 of Directive 2007/64/EC, and allow legal persons to be entered in the register for electronic money institutions if both of the following requirements are complied with:

- (a) the total business activities generate an average outstanding electronic money that does not exceed a limit set by the Member State but that, in any event, amounts to no more than EUR 5 000 000; and
- (b) none of the natural persons responsible for the management or operation of the business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes.

Where an electronic money institution carries out any of the activities referred to in Article 6(1)(a) that are not linked to the issuance of electronic money or any of the activities referred to in Article 6(1)(b) to (e) and the amount of outstanding electronic money is unknown in advance, the competent authorities shall allow that electronic money institution to apply point (a) of the first subparagraph on the basis of a representative portion assumed to be used for the issuance of electronic money, provided that such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the competent authorities.

Where an electronic money institution has not completed a sufficiently long period of business, that requirement shall be assessed on the basis of projected outstanding electronic money evidenced by its business plan subject to any adjustment to that plan having been required by the competent authorities.

Member States may also provide for the granting of the optional exemptions under this Article to be subject to an additional requirement of a maximum storage amount on the payment instrument or payment account of the consumer where the electronic money is stored.

A legal person registered in accordance with this paragraph may provide payment services not related to electronic money issued in accordance with this Article only if conditions set out in Article 26 of Directive 2007/64/EC are met.

2. A legal person registered in accordance with paragraph 1 shall be required to have its head office in the Member State in which it actually pursues its business.

3. A legal person registered in accordance with paragraph 1 shall be treated as an electronic money institution. However, Article 10(9) and Article 25 of Directive 2007/64/EC shall not apply to it.

4. Member States may provide for a legal person registered in accordance with paragraph 1 to engage only in some of the activities listed in Article 6(1).

5. A legal person referred to in paragraph 1 shall:

- (a) notify the competent authorities of any change in its situation which is relevant to the conditions specified in paragraph 1; and
- (b) at least annually, on date specified by the competent authorities, report on the average outstanding electronic money.

6. Member States shall take the necessary steps to ensure that where the conditions set out in paragraphs 1, 2 and 4 are no longer met, the legal person concerned shall seek authorisation within 30 calendar days in accordance with Article 3.

Any such person that has not sought authorisation within that period shall be prohibited, in accordance with Article 10, from issuing electronic money.

7. Member States shall ensure that their competent authorities are sufficiently empowered to verify continued compliance with the requirements laid down in this Article.

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8. This Article shall not apply in respect of the provisions of Directive 2005/60/EC or national anti-money-laundering provisions.

9. Where a Member State avails itself of the waiver provided for in paragraph 1, it shall notify the Commission accordingly by 30 April 2011. The Member State shall notify the Commission forthwith of any subsequent change. In addition, the Member State shall inform the Commission of the number of legal persons concerned and, on an annual basis, of the total amount of outstanding electronic money issued at 31 December of each calendar year, as referred to in paragraph 1.”

<sup>23</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).

<sup>24</sup> See Endnote 18 above for the text of point (14) of Article 4 of Directive 2007/64/EC.

<sup>25</sup> See Endnote 18 above for the text of point (15) of Article 4 of Directive 2007/64/EC.

<sup>26</sup> Point (1) of Article 2 of Regulation (EU) No 260/2012 states:

“‘credit transfer’ means a national or cross-border payment service for crediting a payee’s payment account with a payment transaction or a series of payment transactions from a payer’s payment account by the PSP which holds the payer’s payment account, based on an instruction given by the payer;”

<sup>27</sup> Point (2) of Article 2 of Regulation (EU) No 260/2012 states:

“‘direct debit’ means a national or cross-border payment service for debiting a payer’s payment account, where a payment transaction is initiated by the payee on the basis of the payer’s consent;”

<sup>28</sup> See Endnote 18 above for the text of point (13) of Article 4 of Directive 2007/64/EC.

<sup>29</sup> Article 1(3)(b) of Directive 2000/46/EC states:

"electronic money" shall mean monetary value as represented by a claim on the issuer which is:

- (i) stored on an electronic device;
- (ii) issued on receipt of funds of an amount not less in value than the monetary value issued;
- (iii) accepted as means of payment by undertakings other than the issuer.

<sup>30</sup> Articles 1, 2 and 5 of Regulation (EU) No 260/2012, are applied, with modifications, as part of the law of the Island in respect of any payment transaction using the SEPA Credit Transfer Scheme or the SEPA Direct Debit Scheme administered by the EPC by SD 2015/0248 with effect from 31 October 2016.

<sup>31</sup> See previous Endnote

<sup>32</sup> Directive 2007/64/EC has been implemented in the Island, in part, by SD 2015/0206 in respect of SEPA applicants, SEPA participants and SEPA payment transactions. Articles 69 and 70 of that Directive state:

*“Article 69*

**Payment transactions to a payment account**

1. Member States shall require the payer's payment service provider to ensure that, after the point in time of receipt in accordance with Article 64, the amount of the payment transaction is credited to the payee's payment service provider's account at the latest by the end of the next business day. Until 1 January 2012, a payer and his payment service provider may agree on a period no longer than three business days. These periods may be extended by a further business day for paper-initiated payment transactions.

2. Member States shall require the payment service provider of the payee to value date and make available the amount of the payment transaction to the payee's payment account after the payment service provider has received the funds in accordance with Article 73.

*NOTE: Article 73 of the Directive states:*

*Value date and availability of funds*

*1. Member States shall ensure that the credit value date for the payee's payment account is no later than the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account.*

*The payment service provider of the payee shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account.*

*2. Member States shall ensure that the debit value date for the payer's payment account is no earlier than the point in time at which the amount of the payment transaction is debited to that payment account.*

3. Member States shall require the payee's payment service provider to transmit a payment order initiated by or through the payee to the payer's payment service provider within the time limits agreed between the payee and his payment service provider, enabling settlement, as far as direct debit is concerned, on the agreed due date.

*Article 70*

**Absence of payee's payment account with the payment service provider**

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Where the payee does not have a payment account with the payment service provider, the funds shall be made available to the payee by the payment service provider who receives the funds for the payee within the period specified in Article 69.”

<sup>33</sup> Article 58(2) and (3) of Directive (EU) 2015/849 states:

2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative sanctions and measures that can be applied include at least the following:

- (a) a public statement which identifies the natural or legal person and the nature of the breach;
- (b) an order requiring the natural or legal person to cease the conduct and to desist from repetition of that conduct;
- (c) where an obliged entity is subject to an authorisation, withdrawal or suspension of the authorisation;
- (d) a temporary ban against any person discharging managerial responsibilities in an obliged entity, or any other natural person, held responsible for the breach, from exercising managerial functions in obliged entities;
- (e) maximum administrative pecuniary sanctions of at least twice the amount of the benefit derived from the breach where that benefit can be determined, or at least EUR 1 000 000.

*NOTE: Paragraph (1) of Article 58 of the Directive states:*

*1. Member States shall ensure that this Article applies at least to breaches on the part of obliged entities that are serious, repeated, systematic, or a combination thereof, of the requirements laid down in:*

- (a) Articles 10 to 24 (customer due diligence);*
- (b) Articles 33, 34 and 35 (suspicious transaction reporting);*
- (c) Article 40 (record-keeping); and*
- (d) Articles 45 and 46 (internal controls).*

3. Member States shall ensure that, by way of derogation from paragraph 2(e), where the obliged entity concerned is a credit institution or financial institution, the following sanctions can also be applied:

- (a) in the case of a legal person, maximum administrative pecuniary sanctions of at least EUR 5 000 000 or 10 % of the total annual turnover according to the latest available accounts approved by the management body; where the obliged entity is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Article 22 of Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting Directives according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;
- (b) in the case of a natural person, maximum administrative pecuniary sanctions of at least EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 25 June 2015. 4. Member States may empower competent authorities to impose additional types of administrative sanctions in addition to those referred to in points (a) to (d) of paragraph 2 or to impose administrative pecuniary sanctions exceeding the amounts referred to in point (e) of paragraph 2 and in paragraph 3.

<sup>34</sup> Article 60(4) of Directive (EU) 849/2015 states:

Member States shall ensure that when determining the type and level of administrative sanctions or measures, the competent authorities shall take into account all relevant circumstances, including where applicable:

- (a) the gravity and the duration of the breach;
- (b) the degree of responsibility of the natural or legal person held responsible;
- (c) the financial strength of the natural or legal person held responsible, as indicated for example by the total turnover of the legal person held responsible or the annual income of the natural person held responsible;
- (d) the benefit derived from the breach by the natural or legal person held responsible, insofar as it can be determined;
- (e) the losses to third parties caused by the breach, insofar as they can be determined;
- (f) the level of cooperation of the natural or legal person held responsible with the competent authority;
- (g) previous breaches by the natural or legal person held responsible.

<sup>35</sup> Article 61(2) of Directive 2015/849 states:

The mechanisms referred to in paragraph 1 shall include at least:

- (a) specific procedures for the receipt of reports on breaches and their follow-up;

- 
- (b) appropriate protection for employees or persons in a comparable position, of obliged entities who report breaches committed within the obliged entity;
  - (c) appropriate protection for the accused person;
  - (d) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in compliance with the principles laid down in Directive 95/46/EC;
  - (e) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the obliged entity, unless disclosure is required by national law in the context of further investigations or subsequent judicial proceedings.

*NOTE: Paragraph 1 of Article 62 of the Directive states:*

*Member States shall ensure that competent authorities establish effective and reliable mechanisms to encourage the reporting to competent authorities of potential or actual breaches of the national provisions transposing this Directive.*

<sup>36</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).

<sup>37</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>38</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>39</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).

## Appendix 2



## INFORMATION ACCOMPANYING TRANSFERS OF FUNDS REGULATIONS 2016

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Statutory Document No. XX/20XX



*European Communities (Isle of Man) Act 1973*

## INFORMATION ACCOMPANYING TRANSFERS OF FUNDS REGULATIONS 2016

*Laid before Tynwald:*

*Coming into Operation:*

*26 June 2017*

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The Council of Ministers makes the following Regulations under section 2B of the European Communities (Isle of Man) Act 1973.

### 1 Title

These Regulations are the Information Accompanying Transfers of Funds Regulations 2016.

### 2 Commencement

These Regulations come into operation on 26 June 2017.

### 3 Interpretation

(1) In these Regulations —

“**the 2008 Act**” means the Financial Services Act 2008;

“**the Authority**” means the Isle of Man Financial Services Authority;

“**breach of the EU Regulation**” includes —

- (a) an attempt, conspiracy or incitement to contravene a requirement of the EU Regulation; and
- (b) aiding, abetting, counselling or procuring a contravention of a requirement of the EU Regulation;

“**the EU Regulation**” means 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<sup>1</sup>, as that EU instrument applies as part of the law of the Island<sup>2</sup>;

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<sup>1</sup> OJ L No 141, 5.6.2015, p.1

<sup>2</sup> Regulation (EU) 2015/847 was applied to the Island, with modifications, by SD 2016/xxxx

“PSP” means a payment service provider.

- (2) Unless otherwise defined, expressions used in these Regulations and the EU Regulation have the same meaning as in the EU Regulation.
- (3) References in these Regulations to numbered Articles are references to the Articles so numbered of the EU Regulation.

#### **4 Competent authority**

The Authority is competent authority for the purposes of the EU Regulation.

#### **5 Duties of the Authority**

- (1) The Authority must —
  - (a) effectively monitor PSPs;
  - (b) take such measures as are necessary to ensure compliance by PSPs with the requirements of the EU Regulation and these Regulations; and
  - (c) establish effective mechanisms to encourage the reporting to it of breaches of the EU Regulation.
- (2) The mechanisms referred to in paragraph (1)(c) must include at least —
  - (a) specific procedures for the receipt of reports on breaches and their follow-up;
  - (b) appropriate protection for employees or persons in a comparable position, of obliged entities who report breaches committed within the obliged entity;
  - (c) appropriate protection for the accused person;
  - (d) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in compliance with the principles laid down in the Data Protection Act 2002;
  - (e) subject to the provisions of any other enactment that requires disclosure, clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the PSP.

#### **6 Statutory indemnity**

Section 33 (statutory indemnity) of the 2008 Act applies to the functions of the Authority under the EU Regulation and these Regulations as if they were functions conferred on the Authority by that Act.



## 7 Investigation and information

- (1) Section 15 of, and Schedule 2 to, the 2008 Act (inspection and investigation) apply for the purpose of ensuring compliance with the EU Regulation and these Regulations.
- (2) Section 31 of, and Schedule 5 to, the 2008 Act (restrictions on the disclosure of information) apply to information obtained for the purposes of the EU Regulation and these Regulations as if it were restricted information within the meaning of that Schedule.

## 8 Guidance

- (1) The Authority may give guidance consisting of such information and advice as it considers appropriate with respect to the operation of the EU Regulation and these Regulations.
- (2) The Authority may —
  - (a) publish its guidance; and
  - (b) offer copies of its published guidance for sale at a reasonable price.

## 9 Breaches of the EU Regulation by the PSP of the payer

The PSP of the payer commits an offence if that PSP fails to comply with any requirement in —

- (a) Article 4(1) read with Article 4(3) and Article 5(1) (information on the payer for transfers of funds within the British Islands);
- (b) Article 4(1) read with Article 4(3) and Article 6(1) or (2) (whichever is relevant) (information on the payer for transfers of funds to outside the British Islands);
- (c) Article 4(2) read with Article 4(3) (information on the payee);
- (d) Article 4(4) read with Article 4(5) and Article 5(3) (verification of information on the payer for transfers of funds within the British Islands);
- (e) Article 4(4) read with Article 4(5) and the second paragraph of Article 6(2) (verification of information on the payer for transfers of funds to outside the British Islands);
- (f) Article 4(6) (transfer of funds to be not executed without full compliance with requirements);
- (g) Article 5(2) (provision of information upon request to PSP of the payee or intermediary PSP);
- (h) Article 14 (provision of information);
- (i) Article 15 (data protection);
- (j) Article 16 (record retention); or

- (k) Article 21(2) (internal procedures for reporting of breaches).

## **10 Breaches of the EU Regulation by the PSP of the payee**

The PSP of the payee commits an offence if that PSP fails to comply with any requirement in —

- (a) Article 7(1) (detection of inadmissible information);
- (b) Article 7(2) (detection of missing information);
- (c) Article 7(3) or (4) (as the case may be) read with Article 7(5) (verification of accuracy of information on the payee);
- (d) Article 8(1) (transfers of funds with missing or incomplete information);
- (e) Article 8(2) (repeated failure by PSP of the payer to provide required information);
- (f) Article 9 (assessment and reporting)
- (g) Article 14 (provision of information);
- (h) Article 15 (data protection);
- (i) Article 16 (record retention); or
- (j) Article 21(2) (internal procedures for reporting of breaches).

## **11 Breaches of the EU Regulation by an intermediary PSP**

An intermediary PSP commits an offence if that PSP fails to comply with any requirement in —

- (a) Article 10 (retention of information on the payer and the payee);
- (b) Article 11(1) (detection of inadmissible information);
- (c) Article 11(2) (detection of missing information);
- (d) Article 12(1) (transfers of funds with missing or incomplete information);
- (e) Article 12(2) (repeated failure by PSP of the payer to provide required information);
- (f) Article 14 (provision of information);
- (g) Article 15 (data protection);
- (h) Article 16 (record retention); or
- (i) Article 21(2) (internal procedures for reporting of breaches).

## **12 Offences and penalties**

- (1) A PSP that commits an offence under regulation under 9, 10 or 11 is liable —
  - (a) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or both; or

- (b) on summary conviction, to custody for a term not exceeding 3 months or to a fine not exceeding £5,000, or both.
- (2) A person who commits an offence under paragraph 1(4) or 3(8) of Schedule 2 to the 2008 Act in relation to ensuring compliance with the EU Regulation and these Regulations is liable –
  - (a) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or both; or
  - (b) on summary conviction, to custody for a term not exceeding 3 months or to a fine not exceeding £5,000, or both.
- (3) A person who commits an offence under paragraph 1(5) of Schedule 5 to the 2008 Act in respect of information obtained for the purposes of the EU Regulation and these Regulations is liable on summary conviction to a fine not exceeding £5,000 or to a term of custody for a period not exceeding 6 months, or to both.
- (4) Proceedings for an offence under these Regulations shall be commenced in the Island –
  - (a) by the Authority; or
  - (b) by any other person who has obtained the consent of the Attorney General to do so.

### **13 Liability of officers of body corporate**

- (1) If a breach of the EU Regulation or these Regulations committed by a body corporate is shown –
  - (a) to have been committed with the consent or connivance of an officer of the body corporate; or
  - (b) to be attributable to any neglect on the part of any such officer, the officer and the body corporate each commits the breach and is liable to any administrative sanction or measure or criminal penalty which may be imposed for the breach.
- (2) In this section, “officer”, of the body corporate, means any or all of the following of or for the body corporate –
  - (a) a director, manager or secretary or other similar officer;
  - (b) anyone purporting to act as its director, manager or secretary;
  - (c) if its affairs are being managed by its members, a member; and
  - (d) if it has a registered agent under the legislation under which it is incorporated, the registered agent or anyone purporting to act as its registered agent.

**MADE**

**W GREENHOW**  
*Chief Secretary*



*EXPLANATORY NOTE**(This note is not part of the Regulations)*

These Regulations provide for the implementation of 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 (“the EU Regulation”), as applied as part of the law of the Island, with appropriate modifications, by the European Union (Information Accompanying Transfers of Funds) Order 2016 [SD 2016/xxxx].

The Regulations provide that the Isle of Man Financial Services Authority (“IOMFSA”) is the competent authority for the purposes of the EU Regulation; set out the duties on the IOMFSA and the powers of the IOMFSA to enforce the EU Regulation and these Regulations; establish that breaches of the EU Regulation are criminal offences and set out the penalties on conviction for such an offence; and deal with offences by bodies corporate.

The Regulations use the option, as permitted by the second paragraph of Article 17(1) of the EU Regulation, not to lay down rules on administrative sanctions or measures for breach of the provisions of the EU Regulation which are subject to criminal sanctions.



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