



EUROPEAN CENTRAL BANK

EUROSYSTEM

**ECB-PUBLIC**

*COURTESY TRANSLATION*

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President

Mr Dimitrios Papadimoulis  
Member of the European Parliament  
European Parliament  
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Frankfurt am Main, 8 November 2017

L/MD/17/421

**Re: Your letter (QZ-093)**

Honourable Member of the European Parliament, dear Mr Papadimoulis,

Thank you for your letter, which was passed on to me by Mr Roberto Gualtieri, Chairman of the Committee on Economic and Monetary Affairs, accompanied by a cover letter dated 21 September 2017.

The Funds Transfer Regulation<sup>1</sup> lays down rules concerning the information on payers and payees that must accompany transfers of funds. These rules were established for the purposes of preventing, detecting and investigating money laundering and the financing of terrorism. More specifically, Articles 5(2) and 6(2) of the Regulation establish specific thresholds<sup>2</sup> above which payment service providers (PSPs), such as banks,<sup>3</sup> are required to provide certain information on the payer and the payee (or, in certain cases, the unique transaction identifier) when they carry out transfers of funds.<sup>4</sup> As these thresholds are laid down in a regulation, they are directly and uniformly applicable in all Member States. The Regulation also stipulates that, before transferring any funds, the payer's PSP needs to verify the accuracy of the required information (for both the payer and the payee) on the basis of documents, data or information obtained from a reliable

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<sup>1</sup> Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, pp. 1-18).

<sup>2</sup> These thresholds are set at €1,000 and apply to both individual transactions and groups of transactions, subject to certain conditions.

<sup>3</sup> For more information on payments and the system facilitating them, see:  
<https://www.ecb.europa.eu/paym/retpaym/undpaym/html/index.en.html>

<sup>4</sup> See Article 4(1) and (2) of the Regulation. The term "transfer of funds" is defined in Article 3(9) of the Regulation.

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and independent source.<sup>5</sup> The Regulation further sets out rules governing the detection of missing information on payers and payees, as well as the administrative sanctions and measures that are applicable in the event of its provisions being infringed. The requirements outlined above – including the specific thresholds – are uniformly binding and directly applicable in all Member States. Moreover, the EU legislator is responsible for all changes to the Regulation. There is, therefore, neither a role nor a need for harmonisation by the ECB.

The Funds Transfer Regulation is complemented by the Payment Services Directive (PSD)<sup>6</sup> and the revised Payment Services Directive (PSD2),<sup>7</sup> which establish a set of rules governing payments across the whole of the European Economic Area (EEA) in order to help consumers to make payments easily and safely. As regards consumer protection, they outline the liabilities of both payment service users (e.g. consumers) and payment service providers. Under the PSD and the PSD2, PSPs are fully liable to payers for the correct execution of payment transactions. If a transaction is not executed or is defective, the payer's PSP must correct it or refund the relevant amount to the payer. There are also rules governing refunds in the event of payment transactions being wrongly authorised by a PSP (see Article 74 of the PSD and Article 88 of the PSD2, confirming liability for incorrect unique identifiers).

The criteria established by the PSD for assessing the correctness of the execution of payment transactions concern the unique identifier for the beneficiary account. To this end, PSPs are required to refund the payer in the event of an error being made by the payer's PSP or the payee's PSP, as well as in the event of an unauthorised payment transaction (i.e. fraud). However, if the funds involved in a payment transaction reach the wrong recipient as a result of the payer providing an incorrect unique identifier, PSPs are only obliged to make reasonable efforts to recover the funds, trace the payment transaction and notify the payer of the outcome.

The PSD2 was adopted by the EU legislator in 2015 with a view to improving existing rules and taking account of progress in the area of payment services.<sup>8</sup> It will also increase the integration of retail payments in the European Union and better protect consumers against fraud, financial abuse and payment problems. As part of the secondary legislation stemming from the PSD2, the European Banking Authority (EBA) has, in close cooperation with the ECB, developed regulatory technical standards (RTSs) for payment service providers on the subject of strong customer authentication and secure communication. These RTSs are key to achieving the PSD2's objective of enhancing consumer protection, promoting innovation and improving

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<sup>5</sup> See Article 4(4) and (6) of the Regulation.

<sup>6</sup> Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market.

<sup>7</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market. Please note that the PSD will be repealed with effect from 13 January 2018.

<sup>8</sup> Member States are required to transpose the PSD2 into national law by 13 January 2018.

the security of payment services across the European Union.<sup>9</sup> In addition, Article 96(6) of the PSD2 states: “Member States shall ensure that payment service providers provide, at least on an annual basis, statistical data on fraud relating to different means of payment to their competent authorities. Those competent authorities shall provide EBA and the ECB with such data in an aggregated form.” In order to ensure that these high-level provisions are implemented in a consistent manner across the EU and the EEA, the EBA has, in close cooperation with the ECB, developed draft guidelines<sup>10</sup> on reporting requirements for data on fraud. These data will be used by the ECB, the EBA and competent authorities in the various Member States to assess the effectiveness of applicable regulations, identify trends in terms of fraud and potential risks, and decide on future regulatory or supervisory actions.

Yours sincerely,

[signed]

Mario Draghi

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<sup>9</sup> These RTSs are still under review by the European Commission, after which they will undergo a period of scrutiny by the European Parliament and the Council. They will apply 18 months after they enter into force.

<sup>10</sup> The public consultation period for these guidelines ended on 3 November 2017, and the final version is expected in January 2018.

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