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THE EUROPEAN PARLIAMENT

THE COUNCIL

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 260/2012 and (EU) 2021/1230 and Directives 98/26/EC and (EU) 2015/2366 as regards instant credit transfers in euro

REGULATION (EU) 2024/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

**amending Regulations (EU) No 260/2012 and (EU) 2021/1230
and Directives 98/26/EC and (EU) 2015/2366
as regards instant credit transfers in euro**

(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 Economic and Social Committee¹,

Having regard to the opinion of the European Central Bank²,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 146, 27.4.2023, p. 23.

² OJ C 106, 22.3.2023, p. 2.

³ Position of the European Parliament of 7 February 2024 (not yet published in the Official Journal) and decision of the Council of ...

Whereas:

- (1) Regulation (EU) No 260/2012 of the European Parliament and of the Council⁴ provides the foundation for the single euro payments area (SEPA). To create favourable conditions for increased competition, in particular for payments at the point of interaction (POI), the SEPA project should be continuously updated to reflect innovation and market developments in payments, promote the development of new Union-wide payment products, and facilitate access for new market entrants.
- (2) In 2017, a Union-wide scheme for the instant execution of credit transfers in euro was agreed between payment service providers (PSPs) under the auspices of the European Payments Council. The efforts of the European payments industry have not proven sufficient to ensure a high uptake of instant credit transfers in euro at Union level. Only a widespread and rapid increase in such uptake could unlock the full-scale network effects of instant credit transfers in euro, leading to benefits and economic efficiency gains for payment service users (PSUs) and PSPs, reduced market concentration, and increased competition and choice of electronic payments, in particular for cross-border payments at the POI.

⁴ 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).

- (3) Regulation (EU) No 260/2012 established technical and business requirements for credit transfers and direct debits in euro. Instant credit transfers in euro are a relatively new category of credit transfers in euro which emerged on the market only after the adoption of that Regulation. It is therefore necessary to establish specific requirements applicable to instant credit transfers in euro, in addition to the general requirements applicable to all credit transfers, to ensure the proper functioning and integration of the internal market.
- (4) To make instant credit transfers more accessible and to widen their benefits to PSUs, Member States whose currency is not the euro should be able to apply equivalent rules to those laid down in this amending Regulation to domestic instant credit transfers in their own currency.
- (5) A number of national regulatory solutions have already been adopted or proposed to increase the uptake of instant credit transfers in euro, including by strengthening the protection of PSUs from sending funds to an unintended payee and by specifying the process of compliance with obligations flowing from restrictive measures adopted by the Union. The differences among those national regulatory solutions pose a risk of fragmentation of the internal market that would result in the increase of compliance costs due to different sets of national regulatory requirements and a more difficult execution of cross-border instant credit transfers. Uniform rules on instant credit transfers in euro, including cross-border instant credit transfers, should therefore be introduced to prevent such obstacles from arising.

- (6) Prior to the emergence of instant credit transfers, payment transactions were generally bundled by PSPs and submitted to a retail payment system for processing, clearing and settlement purposes at pre-specified times. However, in retail payment systems currently used to process instant credit transfers in euro, payment transactions are submitted individually and processed round the clock and in real time. To reflect that, it is necessary to amend the definition of the term ‘retail payment system’ in Regulation (EU) No 260/2012.
- (7) Ensuring that all PSUs in the Union are able to place payment orders for, and receive, instant credit transfers in euro is a precondition for an increased uptake of such transactions. Currently, at least one third of PSPs in the Union do not offer the payment service of sending and receiving instant credit transfers in euro. Moreover, the rate at which PSPs have been introducing instant credit transfers into their range of services has been, over the last few years, too slow, which hinders further integration of the internal market, undermines the Union’s open strategic autonomy and limits potential benefits for PSUs. Therefore, PSPs providing the payment service of sending and receiving credit transfers in euro to their PSUs should be required to offer the payment service of sending and receiving instant credit transfers in euro to all of their PSUs. That requirement should apply with respect to all payment accounts which PSPs maintain for their PSUs, including payment accounts with basic features referred to in Directive 2014/92/EU of the European Parliament and of the Council⁵.

⁵ Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214).

- (8) To create an integrated market for instant credit transfers in euro, it is essential that such transactions are processed in accordance with a common set of rules and requirements. An instant credit transfer in euro enables funds to be credited to the account of the payee within seconds and round the clock. The round-the-clock availability every day of the year is an intrinsic feature of instant credit transfers, which should meet specific conditions, including as regards the time of receipt of payment orders, processing, crediting and value dating.
- (9) The European Central Bank (ECB) and national central banks, when not acting in their capacity as monetary authorities or other public authorities, should be able to limit the offer of a payment service of sending instant credit transfers in euro to the period of time during which the ECB and national central banks offer the payment service of sending and receiving non-instant credit transfers in euro. The reason to allow that limitation is that it may be necessary in order for the ECB or a national central bank, due to specificities of its internal operational arrangements, to comply with Article 123 of the Treaty on the Functioning of the European Union (TFEU) at all times.
- (10) PSPs located in a Member State whose currency is not the euro could have limited access to liquidity in euro outside of business hours. Therefore, it is proportionate to provide for the possibility that such PSPs request the prior permission of their competent authorities to provide the payment service of sending instant credit transfers from accounts denominated in the national currency of that Member State outside of business hours only up to a certain limit per transaction. Competent authorities should be able to grant such permission based on their assessment of a PSP's access to liquidity in euro.

- (11) There exist a variety of payment initiation channels in the Member States through which PSUs can place a payment order for a credit transfer in euro, for example, via online banking, a mobile application, an automated teller machine, a self-service terminal, in a branch or by phone. To ensure that all PSUs have access to instant credit transfers in euro, there should be no difference in terms of the payment initiation channels through which PSUs can place payment orders for instant credit transfers and other credit transfers. Moreover, where it is possible for a PSU to submit multiple payment orders for credit transfers in euro as a package to a PSP, it should also be possible to submit multiple payment orders for instant credit transfers in euro as a package. PSPs should be able to offer all credit transfers in euro initiated by their PSUs as instant credit transfers in euro by default.
- (12) Since some payment initiation channels, such as bank retail locations, are not available round the clock, the time of receipt of a paper-based payment order for an instant credit transfer should be the moment when the paper-based payment order is introduced into the internal system of the payer's PSP, which should occur as soon as such payment initiation channels are available.

- (13) Where a PSU submits multiple payment orders for instant credit transfers as a package to its PSP, that PSP should immediately start to unpack that package so as to turn it into individual instant credit transfer transactions. The time of receipt of a payment order for an instant credit transfer submitted in a package of multiple payment orders should be the moment when the ensuing individual instant credit transfer transaction has been unpacked, taking into account any capacity constraints of a retail payment system which have been communicated to the payer's PSP. Immediately upon unpacking, the payer's PSP should transmit that individual instant credit transfer transaction to the payee's PSP. That transmission should occur without prejudice to possible solutions to be provided by retail payment systems which allow for the conversion of multiple payment orders for instant credit transfers as packages into individual instant credit transfer transactions.
- (14) Where a payment order for an instant credit transfer in euro is submitted from a payment account that is not denominated in euro, the time of receipt of that payment order should be the moment when the payer's PSP, immediately after that payment order for an instant credit transfer in euro has been placed with it, converts the amount of the transaction into euro from the currency in which the payment account is denominated.

- (15) Payment institutions and electronic money institutions should contribute to facilitating the uptake of instant credit transfers in euro and should therefore be subject to the requirements of this amending Regulation. However, payment institutions and electronic money institutions are not included in the list of entities which fall under the definition of the term ‘institution’ in Directive 98/26/EC of the European Parliament and of the Council⁶. Consequently, payment institutions and electronic money institutions are effectively prevented from participating in systems designated by Member States pursuant to that Directive. The resulting inability to participate in such payment systems can impede payment institutions and electronic money institutions from providing instant credit transfers in euro efficiently and competitively. It is therefore justified to amend Directive 98/26/EC in order to include payment institutions and electronic money institutions in the list of entities which fall under the definition of the term ‘institution’ in that Directive, but only for the purpose of defining participants of a payment system.

⁶ Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

- (16) Payment institutions and electronic money institutions should meet the requirements and respect the rules of payment systems designated by Member States pursuant to Directive 98/26/EC to be allowed to participate in those systems. Given the importance of the potential contribution of payment institutions and electronic money institutions to facilitating the uptake of instant credit transfers in euro, and the importance of restoring the level playing field between banks and those institutions as soon as possible, it is necessary to grant Member States a short deadline for transposing and applying the amendments to Directive 98/26/EC, and appropriate deadlines for applying this amending Regulation to payment institutions and electronic money institutions. In order to ensure a proper level playing field for participants in systems designated by Member States pursuant to that Directive, to maintain the stability and integrity of those systems and to ensure a comprehensive risk management by payment institutions and by electronic money institutions, it is necessary to further elaborate, for payment institutions and electronic money institutions requesting participation and participating in such systems designated by Member States pursuant to Directive 98/26/EC, certain provisions of Directive (EU) 2015/2366 of the European Parliament and of the Council⁷. Those provisions concern the safeguarding of users' funds, governance arrangements and business continuity arrangements. It is anticipated that the amendments to Directive (EU) 2015/2366 will be further reviewed by the European Parliament and the Council when they consider the Commission proposal for a Directive of the European Parliament and of the Council on payment services and electronic money services in the Internal Market amending Directive 98/26/EC and repealing Directives (EU) 2015/2366 and 2009/110/EC and the Commission proposal for a Regulation of the European Parliament and of the Council on payment services in the internal market and amending Regulation (EU) No 1093/2010.

⁷ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

- (17) PSUs are very sensitive to the level of charges for substitutable payment methods. The level of charges can therefore steer them towards or away from a given payment method. In national markets where higher transaction-level charges for instant credit transfers in euro have been applied, when compared to charges for other credit transfers in euro, the uptake of instant credit transfers is low. That has prevented the attainment of the critical mass of instant credit transfers in euro that is necessary to realise the full network effects for both PSPs and PSUs. Therefore, all types of charges applied to payers and payees for the execution of instant credit transfers in euro, including per-transaction charges or lump-sum charges, should not exceed such charges applied to the same PSU for corresponding types of other credit transfers in euro. It would be undesirable that PSPs circumvent the aim of that requirement. When identifying corresponding types of credit transfers, it should be possible to use criteria including the payment initiation channel or the payment instrument used to initiate the payment, customer status, and additional features or services.

- (18) Ubiquitous instant credit transfers in euro offer opportunities for PSPs to develop new payment solutions, such as mobile payment applications, facilitating the use of instant credit transfers in euro for payments at the POI. Such payment solutions could include additional features or services offered to payers and payees, such as payment initiation, dispute resolution or refunds. PSPs should be able to decide on the charges for such additional features or services on top of the underlying instant credit transfer. An instant-credit-transfer-based payment solution encompassing additional features or services should not be considered to be of corresponding nature to a non-instant credit transfer offered without the same additional features or services. Where it is possible for a PSU to submit payment orders for non-instant credit transfers without any additional features or services, the same possibility should also be available for instant credit transfers in euro. It should be ensured that, from the PSU's perspective, it is not more expensive to send or receive an instant credit transfer in euro than it is to send or receive a non-instant credit transfer in euro provided with the same additional features or services. In particular, PSPs offering different variants of a payment solution where the only distinguishing characteristic between them would be the use of instant credit transfers in one and non-instant in the other, should ensure that the total charge for the instant credit transfer in euro variant is not higher than the charge for the non-instant credit transfer in euro variant.

- (19) In order to allow PSUs greater discretion when making use of instant credit transfers, a PSU should be able to set an individual limit fixing a maximum amount, either on a daily or per transaction basis, that it can send by means of instant credit transfer. PSUs should be able to modify or lift those individual limits at any time, without difficulty and with immediate effect.
- (20) Security of credit transfers in euro, both instant and non-instant, is fundamental for increasing PSUs' confidence in the payment service of sending and receiving credit transfers and ensuring its use. Under Directive (EU) 2015/2366, the only determinant of the correct execution of the transaction with respect to the payee is the unique identifier, as defined in that Directive, and PSPs are not required to verify the name of the payee. PSPs should have in place robust and up-to-date fraud detection and prevention measures, designed to prevent a credit transfer from being sent to an unintended payee as a result of fraud or error, given that it might not be possible for the payer to recover the funds before those funds are credited to the payee's account. PSPs should have a certain degree of flexibility in designing the most suitable measures for dealing with different payment initiation options. Such measures should not result in PSUs incurring any additional charges or fees. PSPs should therefore provide a service ensuring verification of the payee to whom the payer intends to send a credit transfer (service ensuring verification). To avoid undue friction or delays in the processing of the transaction, the payer's PSP should perform such service immediately after the payer provides the relevant information about the payee and before the payer is offered the possibility of authorising the credit transfer.

- (21) Some attributes of the name of the payee to whose account the payer wishes to make a credit transfer, such as the presence of diacritics or different possible transliterations of names in different alphabets, differences between habitually used names and names indicated on formal documents, might result in a situation where the name of the payee provided by the payer and the name associated with the payment account identifier, specified in point (1)(a) of the Annex to Regulation (EU) No 260/2012 (payment account identifier), which was provided by the payer, do not match exactly but nevertheless almost match. In such cases, to avoid undue friction in the processing of credit transfers in euro and facilitate the payer's decision whether to proceed with the intended transaction, the PSP should indicate to the payer the name of the payee associated with the payment account identifier provided by the payer in a manner which ensures compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council⁸.

⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

- (22) Authorising a credit transfer where the payee has not been verified can result in the funds being transferred to an unintended payee. PSPs should not be held liable for the execution of a transaction to an unintended payee on the basis of an incorrect unique identifier, as laid down in Article 88 of Directive (EU) 2015/2366, insofar as PSPs correctly perform the service ensuring verification. However, where PSPs, including payment initiation service providers, fail to correctly perform such service and where such failure results in a defectively executed payment transaction, such PSPs should refund the payer the transferred amount without delay and, where applicable, restore the debited payment account to the state in which it would have been had the payment transaction not taken place. PSPs should inform PSUs of the implications for PSP liability and PSU refund rights of the choice of the PSUs to ignore a notification provided in accordance with this amending Regulation.
- (23) The service ensuring verification should as far as possible be carried out in accordance with a Union-wide set of rules and standards in order to encourage a smooth and interoperable implementation. That set of rules and standards could be developed by organisations composed of, or representing, PSPs.
- (24) PSUs that are not consumers and that submit multiple payment orders as a package should be able to opt out from receiving the service ensuring verification at any time during their contractual relationship with the PSP. After opting out from receiving the service ensuring verification, those PSUs should be able to opt in to avail themselves again of the service ensuring verification.

(25) It is of critical importance that PSPs comply effectively with their obligations stemming from restrictive measures adopted by the Union in accordance with Article 215 TFEU in respect of a person, body or entity that is subject to an asset freeze or a prohibition on making funds or economic resources available to it, or for its benefit, either directly or indirectly (targeted financial restrictive measures). Union law, however, does not lay down rules on the procedure or tools to be used by PSPs to ensure their compliance with those obligations. PSPs thus apply various methods, based on their individual choice or on the guidance provided by the national authorities concerned. The practice of complying with obligations stemming from targeted financial restrictive measures by screening the payer and the payee involved in each credit transfer transaction, whether national or cross-border, leads to a very high number of credit transfers being flagged as potentially involving persons or entities subject to targeted financial restrictive measures. However, the large majority of such flagged transactions turn out, after verification, not to involve any of the persons or entities subject to targeted financial restrictive measures. Due to the nature of instant credit transfers, it is impossible for PSPs to verify, within the required short time limit, those flagged transactions and, as a result, they are rejected. That situation creates operational challenges for PSPs to offer the payment service of sending and receiving instant credit transfers to their PSUs across the Union in a reliable and predictable way. To provide for greater legal certainty, to increase the efficiency of PSPs' efforts to comply, in the context of instant credit transfers in euro, with their obligations stemming from targeted financial restrictive measures and to prevent unnecessary hindering of sending and receiving instant credit transfers, PSPs should periodically, and at least daily, verify whether their PSUs are persons or entities subject to targeted financial restrictive measures, and should no longer apply transaction-based screening in that specific context. The obligation of PSPs to periodically verify their PSUs is related only to persons or entities subject to targeted financial restrictive measures. Other types of restrictive measures adopted in accordance with Article 215 TFEU or restrictive measures that are not adopted in accordance with Article 215 TFEU fall outside the scope of that obligation.

- (26) To prevent the initiation of instant credit transfers from payment accounts belonging to persons or entities subject to targeted financial restrictive measures and to immediately freeze funds sent to such payment accounts, PSPs should carry out verifications of their PSUs immediately following the entry into force of a new targeted financial restrictive measure. That obligation should apply to all PSPs sending or receiving instant credit transfers in euro, thereby ensuring that all PSPs comply in an effective manner with their obligations stemming from targeted financial restrictive measures. The obligation of PSPs to periodically verify whether their PSUs are persons or entities subject to targeted financial restrictive measures does not interfere with actions that PSPs should be able to take to comply with Union law on the prevention of money laundering and terrorist financing, in particular with its risk-based requirements, to comply with restrictive measures, other than an asset freeze or a prohibition on making funds or economic resources available, that are adopted in accordance with Article 215 TFEU, or to comply with restrictive measures that are not adopted in accordance with Article 215 TFEU.

- (27) Infringements of the provisions introduced by this amending Regulation should be subject to penalties, imposed by the competent authorities or judicial authorities of the Member States. Such penalties should be effective, proportionate and dissuasive. To facilitate mutual trust among PSPs and among the relevant competent authorities in the uniform and thorough implementation of a harmonised approach to compliance with PSP obligations stemming from targeted financial restrictive measures, it is in particular appropriate to harmonise a mutual standard across the Union for the ceiling of the penalties to be imposed for the infringement by PSPs of their obligations to verify whether their PSUs are persons or entities subject to targeted financial restrictive measures. It should be possible to impose penalties not only on PSPs, but also on natural persons who are members of the senior management or management body of a PSP.
- (28) PSPs need sufficient time to meet the obligations laid down in this amending Regulation. It is therefore appropriate to introduce those obligations gradually, allowing PSPs a more efficient use of their resources. The obligation to offer the payment service of sending instant credit transfers should therefore apply later, preceded by the obligation to offer the payment service of receiving instant credit transfers, since the sending of instant credit transfers tends to be the more costly and complex of the two services to implement and therefore necessitates more time for its implementation. The service ensuring verification is relevant for PSPs offering the payment service of sending credit transfers.

The obligation to offer the service ensuring verification should therefore apply from the same time as the obligation to offer the payment service of sending instant credit transfers. The obligations related to charges and harmonised procedure to ensure compliance with obligations stemming from targeted financial restrictive measures should apply as soon as PSPs are obliged to offer the payment service of receiving instant credit transfers. To allow PSPs located in Member States whose currency is not the euro to efficiently allocate the resources needed for the implementation of instant credit transfers in euro, the obligations laid down in this amending Regulation should apply to such PSPs as of later dates than to PSPs located in Member States whose currency is the euro. The introduction of the various obligations should be gradual as in the case of PSPs located in the euro area. If the euro is introduced as the currency of a Member State whose currency is not the euro before those later dates, the PSPs in that Member State should comply with this amending Regulation within one year of joining the euro area and not later than the respective dates specified for PSPs in Member States whose currency is not the euro. However, such PSPs should be able to comply with this amending Regulation earlier than the respective dates specified for PSPs in Member States whose currency is the euro.

- (29) The Commission should submit a report to the European Parliament and to the Council evaluating the development of charges for payment accounts as well as for national and cross-border credit transfers and instant credit transfers in euro and in other currencies since the date of the adoption of the Commission's legislative proposal for this amending Regulation, in other words 26 October 2022, in order to monitor any effects of this amending Regulation on the pricing of accounts, non-instant credit transfers and instant credit transfers. The Commission should also evaluate the scope and effectiveness of the obligation of a PSP to periodically verify whether its PSUs are persons or entities subject to targeted financial restrictive measures in preventing unnecessary hindering of sending and receiving instant credit transfers. The Commission should also submit to the European Parliament and to the Council a report assessing remaining obstacles to effecting instant credit transfers in various circumstances, including payments at the POI. That report should assess the level of standardisation of the technologies which are relevant to the use of instant credit transfers, such as QR codes, near-field communication (NFC) and Bluetooth.

- (30) Under Regulation (EU) 2021/1230 of the European Parliament and of the Council⁹, charges applied by a PSP located in a Member State whose currency is not the euro in respect of cross-border credit transfers in euro are to be the same as charges applied by that PSP in respect of national credit transfers in the national currency of that Member State. In situations where such a PSP applies higher charges for national instant credit transfers in the national currency than for national non-instant credit transfers in the national currency, and therefore also higher charges than for cross-border non-instant credit transfers in euro, the level of charges that such a PSP would be required to apply under Regulation (EU) 2021/1230 in respect of cross-border instant credit transfers in euro would be higher than charges for cross-border non-instant credit transfers in euro. In such situations, to avoid conflicting requirements and taking into account the key objective of steering PSUs towards instant credit transfers in euro, it is appropriate to require that charges applied to payers and payees for cross-border instant credit transfers in euro do not exceed the charges applied for cross-border non-instant credit transfers in euro.

⁹ Regulation (EU) 2021/1230 of the European Parliament and of the Council of 14 July 2021 on cross-border payments in the Union (OJ L 274, 30.7.2021, p. 20).

- (31) Regulations (EU) No 260/2012 and (EU) 2021/1230 and Directives 98/26/EC and (EU) 2015/2366 should therefore be amended accordingly.
- (32) Any processing of personal data in the context of providing credit transfers, or the service ensuring verification, as well as verifying whether PSUs are persons or entities subject to targeted financial restrictive measures, should be in line with Regulation (EU) 2016/679. Processing of the names and the payment account identifiers of natural persons is proportionate and necessary to prevent fraudulent transactions, detect errors, and ensure compliance with targeted financial restrictive measures.
- (33) Since the objectives of this Regulation, namely to provide the necessary uniform rules for cross-border instant credit transfers in euro at Union level and to increase the overall uptake of instant credit transfers in euro, cannot be sufficiently achieved by the Member States because they cannot impose obligations on PSPs located in other Member States, but can rather, by reason of scale and 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. 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.

- (34) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council¹⁰ and delivered an opinion on 19 December 2022¹¹,

HAVE ADOPTED THIS REGULATION:

¹⁰ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

¹¹ OJ C 60, 17.2.2023, p. 12.

Article 1
Amendments to Regulation (EU) No 260/2012

Regulation (EU) No 260/2012 is amended as follows:

(1) Article 2 is amended as follows:

(a) the following points are inserted:

- ‘(1a) “instant credit transfer” means a credit transfer which is executed immediately, 24 hours a day and on any calendar day;
- (1b) “payment initiation channel” means any method, device or procedure through which payers can place payment orders with their PSP for a credit transfer, including online banking, a mobile banking application, an automated teller machine, or in any other way on the premises of the PSP;
- (1c) “payment initiation service provider” means a payment initiation service provider as defined in Article 4, point (18), of Directive (EU) 2015/2366 of the European Parliament and of the Council*;
- (1d) “name of the payee” means, in respect of a natural person, the name and surname and, in respect of a legal person, the commercial or legal name;

- (1e) “targeted financial restrictive measure” means an asset freeze imposed on a person, body or entity or a prohibition on making funds or economic resources available to a person, body or entity, or for its benefit, either directly or indirectly, pursuant to restrictive measures adopted in accordance with Article 215 TFEU;
- (1f) “Legal Entity Identifier” or “LEI” means a unique alphanumeric reference code based on the ISO 17442 standard assigned to a legal entity;

* Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).’;

- (b) point (5) is replaced by the following:

‘(5) “payment account” means a payment account as defined in Article 4, point (12), of Directive (EU) 2015/2366;’;

- (c) point (22) is replaced by the following:

‘(22) “retail payment system” means a payment system the main purpose of which is to process, clear or settle credit transfers or direct debits which are primarily of small amount, and that is not a large-value payment system;’;

(2) the following articles are inserted:

‘Article 5a

Instant credit transfer transactions

1. PSPs that offer to their PSUs a payment service of sending and receiving credit transfers shall offer to all of their PSUs a payment service of sending and receiving instant credit transfers.

PSPs as referred to in the first subparagraph shall ensure that all payment accounts that are reachable for credit transfers are also reachable for instant credit transfers 24 hours a day and on any calendar day.

2. By way of derogation from paragraph 1, and subject to having obtained the prior permission of its competent authorities based on those authorities' assessment of its access to liquidity in euro, a PSP located in a Member State whose currency is not the euro shall not be obliged to offer PSUs the payment service of sending instant credit transfers in euro beyond a limit per transaction, from payment accounts denominated in the national currency of that Member State, during the time when that PSP neither sends nor receives non-instant credit transfer transactions in euro with respect to such payment accounts. That limit shall be set by the competent authorities and shall not be lower than EUR 25 000. Competent authorities may grant prior permission at the request of the PSP for a period of one year. At the request of the PSP, competent authorities may extend that prior permission by further periods of one year following a reassessment by the competent authorities of the PSP's access to liquidity in euro. Competent authorities shall inform the Commission on an annual basis of prior permissions and extensions granted in accordance with this paragraph.

The ECB and any national central bank, when not acting in its capacity as monetary authority or other public authority, may limit its offer of a payment service of sending instant credit transfers to the period of time during which it offers a payment service of sending and receiving non-instant credit transfers.

3. Notwithstanding Article 78(1), second subparagraph, of Directive (EU) 2015/2366, the time of receipt of a payment order for an instant credit transfer shall be the moment it has been received by the payer's PSP, regardless of the hour or calendar day.

Notwithstanding Article 78(2) of Directive (EU) 2015/2366, if the payer and the payer's PSP agree that execution of the payment order for an instant credit transfer is to take place at a specific time on a specific day or at the moment when the payer has put funds at the disposal of the PSP, the time of receipt of the payment order for an instant credit transfer shall be deemed to be the agreed time, regardless of the hour or calendar day.

By way of derogation from the first and second subparagraphs of this paragraph, the time of receipt of the payment order for an instant credit transfer shall be:

- (a) for a non-electronic payment order for an instant credit transfer, the moment when the payer's PSP has introduced the payment order information into its internal system, which shall occur as soon as possible after the non-electronic payment order for an instant credit transfer has been placed by the payer with the payer's PSP;

- (b) for an individual payment order for an instant credit transfer belonging to a package as referred to in paragraph 7 of this Article, where the conversion of that package into individual payment transactions is carried out by the payer's PSP, the moment when the ensuing payment transaction has been unpacked by the payer's PSP; the payer's PSP shall start the conversion of the package immediately after it has been placed by the payer with the payer's PSP and complete that conversion as soon as possible;
 - (c) for a payment order for an instant credit transfer from payment accounts that are not denominated in euro, the moment when the amount of the payment transaction has been converted into euro; such currency conversion shall take place immediately after the payment order for an instant credit transfer has been placed by the payer with the payer's PSP.
4. When carrying out instant credit transfers, PSPs shall, in addition to the requirements set out in Article 5, comply with the following requirements:
- (a) PSPs shall ensure that payers are able to place a payment order for an instant credit transfer through all of the same payment initiation channels as the ones through which those payers are able to place a payment order for other credit transfers;

- (b) notwithstanding Article 83 of Directive (EU) 2015/2366, immediately after the time of receipt of a payment order for an instant credit transfer, the payer's PSP shall verify whether all of the necessary conditions for processing the payment transaction are met and whether the necessary funds are available, reserve or debit the amount of the payment transaction from the account of the payer, and immediately send the payment transaction to the payee's PSP;
- (c) notwithstanding Article 83 and Article 87(2) of Directive (EU) 2015/2366, the payee's PSP shall, within 10 seconds of the time of receipt of the payment order for an instant credit transfer by the payer's PSP, make the amount of the payment transaction available on the payee's payment account in the currency in which the payee's account is denominated and confirm the completion of the payment transaction to the payer's PSP;
- (d) notwithstanding Article 87(1) of Directive (EU) 2015/2366, the payee's PSP shall ensure that the credit value date for the payee's payment account is the same date as the date on which the payee's payment account is credited by the payee's PSP with the amount of the payment transaction; and

- (e) immediately upon receiving the confirmation of completion referred to in point (c), or where no such confirmation of completion is received by the payer's PSP within 10 seconds of the time of receipt of the payment order for an instant credit transfer, the payer's PSP shall, free of charge, inform the payer, as well as, where applicable, the payment initiation service provider, whether the amount of the payment transaction has been made available on the payee's payment account.
5. Notwithstanding Article 89 of Directive (EU) 2015/2366, where the payer's PSP has not received a message from the payee's PSP confirming that the funds were made available on the payee's payment account within 10 seconds of the time of receipt, the payer's PSP shall immediately restore the payment account of the payer to the state in which it would have been had the transaction not taken place.
 6. Upon the request of the PSU, a PSP shall offer a PSU the possibility of setting a limit fixing a maximum amount that can be sent by means of instant credit transfer. That limit may be either on a per day or per transaction basis, at the sole discretion of the PSU. PSPs shall ensure that PSUs are able to modify that maximum amount at any time prior to the placing of a payment order for an instant credit transfer. Where a PSU's payment order for an instant credit transfer exceeds, or leads to exceeding of, the maximum amount, the payer's PSP shall not execute the payment order for the instant credit transfer, shall notify the PSU thereof and shall inform the PSU as to how to modify the maximum amount.

7. When offering the payment service of sending and receiving instant credit transfers, PSPs shall offer their PSUs the possibility of submitting multiple payment orders as a package if PSPs offer such possibility to their PSUs for other credit transfers.

PSPs shall not impose limits on the number of payment orders that can be submitted in a package of instant credit transfers which are lower than the limits they impose in respect of packages of other credit transfers.

8. PSPs as referred to in paragraph 1 that are located in a Member State whose currency is the euro shall offer PSUs the payment service of receiving instant credit transfers in euro as laid down in this Article by ... [9 months from the date of entry into force of this amending Regulation], and the payment service of sending instant credit transfers in euro as laid down in this Article by ... [18 months from the date of entry into force of this amending Regulation].

PSPs as referred to in paragraph 1 that are located in a Member State whose currency is not the euro shall offer PSUs the payment service of receiving instant credit transfers in euro as laid down in this Article by ... [33 months from the date of entry into force of this amending Regulation], and the payment service of sending instant credit transfers in euro as laid down in this Article by ... [39 months from the date of entry into force of this amending Regulation].

By way of derogation from the second subparagraph of this paragraph, until ... [50 months from the date of entry into force of this amending Regulation] PSPs as referred to in paragraph 1 of this Article that are located in a Member State whose currency is not the euro shall not be obliged to offer PSUs the payment service of sending instant credit transfers in euro from payment accounts denominated in the national currency of that Member State, during the time when those PSPs neither send nor receive non-instant credit transfer transactions in euro with respect to such accounts.

Notwithstanding the first subparagraph of this paragraph, PSPs that are electronic money institutions as defined in Article 2, point (1), of Directive 2009/110/EC or payment institutions as defined in Article 4, point (4), of Directive (EU) 2015/2366 and that are located in a Member State whose currency is the euro shall offer PSUs the payment service of sending and receiving instant credit transfers in euro as laid down in this Article by ... [36 months from the date of entry into force of this amending Regulation].

Notwithstanding the second subparagraph of this paragraph, PSPs that are electronic money institutions as defined in Article 2, point (1), of Directive 2009/110/EC or payment institutions as defined in Article 4, point (4), of Directive (EU) 2015/2366 and that are located in a Member State whose currency is not the euro shall offer PSUs the payment service of receiving instant credit transfers in euro as laid down in this Article by ... [36 months from the date of entry into force of this amending Regulation] and the payment service of sending instant credit transfers in euro as laid down in this Article by ... [39 months from the date of entry into force of this amending Regulation].

Article 5b

Charges in respect of credit transfers and verification of the payee

1. Any charges levied by a PSP on payers and payees in respect of sending and receiving instant credit transfers shall not be higher than the charges levied by that PSP in respect of sending and receiving other credit transfers of corresponding type.
2. The services referred to in Article 5c shall be provided to all PSUs free of charge.
3. PSPs located in a Member State whose currency is the euro shall comply with this Article by ... [9 months from the date of entry into force of this amending Regulation].

PSPs located in a Member State whose currency is not the euro shall comply with this Article by ... [33 months from the date of entry into force of this amending Regulation].

Article 5c

Verification of the payee in the case of credit transfers

1. A payer's PSP shall offer the payer a service ensuring verification of the payee to whom the payer intends to send a credit transfer (service ensuring verification). The payer's PSP shall perform the service ensuring verification immediately after the payer provides relevant information about the payee and before the payer is offered the possibility of authorising that credit transfer. The payer's PSP shall offer the service ensuring verification regardless of the payment initiation channel used by the payer to place a payment order for the credit transfer. The service ensuring verification shall be provided in accordance with the following:
 - (a) where the payment account identifier specified in point (1)(a) of the Annex and the name of the payee have been inserted in the payment order for the credit transfer by the payer, the payer's PSP shall provide a service for matching the payment account identifier specified in point (1)(a) of the Annex with the name of the payee. Upon the request of the payer's PSP, the payee's PSP shall verify whether the payment account identifier specified in point (1)(a) of the Annex and the name of the payee provided by the payer match. Where they do not match, the payer's PSP shall, based on information provided by the payee's PSP, notify the payer thereof and inform the payer that authorising the credit transfer might lead to transferring the funds to a payment account not held by the payee indicated by the payer. Where the name of the payee provided by the payer and the payment account identifier specified in point (1)(a) of the Annex almost match, the payer's PSP shall indicate to the payer the name of the payee associated with the payment account identifier specified in point (1)(a) of the Annex provided by the payer;

- (b) where the payee is a legal person and the payer's PSP offers a payment initiation channel which allows the payer to place a payment order by providing the payment account identifier specified in point (1)(a) of the Annex to this Regulation together with data elements other than the name of the payee that unambiguously identify the payee, such as a fiscal number, a European unique identifier as referred to in Article 16(1), second subparagraph, of Directive (EU) 2017/1132 of the European Parliament and of the Council* or an LEI, and where those same data elements are available in the internal system of the payee's PSP, that PSP, upon the request of the payer's PSP, shall verify whether the payment account identifier specified in point (1)(a) of the Annex to this Regulation and the data element provided by the payer match. Where the payment account identifier specified in point (1)(a) of the Annex to this Regulation and the data element provided by the payer do not match, the payer's PSP shall, based on information provided by the payee's PSP, notify the payer thereof;

- (c) where a payment account identified through a payment account identifier specified in point (1)(a) of the Annex provided by the payer is held by a PSP on behalf of multiple payees, additional information allowing the payee to be unambiguously identified may be provided by the payer to the payer's PSP. The PSP maintaining that payment account on behalf of multiple payees or, where appropriate, the PSP holding that payment account, shall, upon the request of the payer's PSP, confirm whether the payee indicated by the payer is among the multiple payees on whose behalf the payment account is maintained or held. The payer's PSP shall notify the payer if the payee indicated by the payer is not among the multiple payees on whose behalf the payment account is maintained or held;
- (d) in cases other than those described in points (a), (b) and (c) of this paragraph, and, in particular, where a PSP provides a payment initiation channel which does not require the payer to insert both the payment account identifier specified in point (1)(a) of the Annex and the name of the payee, the PSP shall ensure that the payee to whom the payer intends to send a credit transfer is correctly identified. For that purpose, the PSP shall inform the payer in a way that allows the payer to validate the payee before authorising the credit transfer.

2. Where the payment account identifier specified in point (1)(a) of the Annex or the name of the payee is provided by a payment initiation service provider, rather than by the payer, that payment initiation service provider shall ensure that the information concerning the payee is correct.
3. PSPs, for the purposes of paragraph 1, point (d), and payment initiation service providers, for the purposes of paragraph 2, shall maintain robust internal procedures to ensure that the information concerning payees is correct.
4. In the case of paper-based payment orders, the payer's PSP shall perform the service ensuring verification at the time of receipt of the payment order, unless the payer is not present at the time of receipt.
5. PSPs shall ensure that the performance of the service ensuring verification and of the service described in paragraph 2 does not prevent payers from authorising the credit transfer concerned.
6. PSPs shall provide PSUs that are not consumers with the means to opt out from receiving the service ensuring verification when submitting multiple payment orders as a package.

PSPs shall ensure that PSUs that opted out from receiving the service ensuring verification have the right to opt in at any time to receive that service.

7. Whenever the payer's PSP notifies the payer in accordance with paragraph 1, point (a), (b) or (c), that PSP shall at the same time inform the payer that authorising the credit transfer might lead to transferring the funds to a payment account not held by the payee indicated by the payer. A PSP shall provide that information to the PSU that is not a consumer when that PSU opts out from receiving the service ensuring verification when submitting multiple payment orders as a package. PSPs shall inform their PSUs of the implications for PSP liability and PSU refund rights resulting from a decision by PSUs to ignore a notification as referred to in paragraph 1, points (a), (b) and (c).
8. A PSP shall not be held liable for the execution of a credit transfer to an unintended payee on the basis of an incorrect unique identifier, as laid down in Article 88 of Directive (EU) 2015/2366, provided that it has fulfilled the requirements of this Article.

Where the payer's PSP fails to comply with paragraph 1 of this Article, or where the payment initiation service provider fails to comply with paragraph 2 of this Article, and where that failure results in a defectively executed payment transaction, the payer's PSP shall without delay refund the payer the amount transferred and, where applicable, restore the debited payment account to the state in which it would have been had the transaction not taken place.

Where the failure to comply occurs because the payee's PSP, or the payment initiation service provider, failed to comply with its obligations under this Article, the payee's PSP or, where relevant, the payment initiation service provider, shall compensate the payer's PSP for the financial damage caused to the payer's PSP by that failure.

Any further financial loss caused to the payer may be compensated in accordance with the law applicable to the contract concluded between the payer and the relevant PSP.

9. PSPs located in a Member State whose currency is the euro shall comply with this Article by ... [18 months from the date of entry into force of this amending Regulation].

PSPs located in a Member State whose currency is not the euro shall comply with this Article by ... [39 months from the date of entry into force of this amending Regulation].

Article 5d

Screening of PSUs by PSPs that offer instant credit transfers to verify whether a PSU is a person or entity subject to targeted financial restrictive measures

1. PSPs offering instant credit transfers shall verify whether any of their PSUs are persons or entities subject to targeted financial restrictive measures.

PSPs shall carry out such verifications immediately after the entry into force of any new targeted financial restrictive measures, and immediately after the entry into force of any amendments to such targeted financial restrictive measures, and at least once every calendar day.

2. During the execution of an instant credit transfer, the payer's PSP and the payee's PSP involved in the execution of that instant credit transfer shall not verify whether the payer or the payee whose payment accounts are used for the execution of that instant credit transfer are persons or entities subject to targeted financial restrictive measures in addition to carrying out verifications under paragraph 1 of this Article.

The first subparagraph of this paragraph is without prejudice to actions taken by PSPs in order to comply with restrictive measures, other than targeted financial restrictive measures, adopted in accordance with Article 215 TFEU, with restrictive measures that are not adopted in accordance with Article 215 TFEU, or with Union law on the prevention of money laundering and terrorist financing.

3. PSPs shall comply with this Article by ... [9 months from the date of entry into force of this amending Regulation].

* Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).’;

(3) in Article 11, the following paragraphs are inserted:

- ‘1a. By way of derogation from paragraph 1 of this Article, Member States shall, by ... [12 months from the date of entry into force of this amending Regulation], lay down rules on the penalties applicable to infringements of Articles 5a to 5d and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective, proportionate and dissuasive. Member States shall, by ... [12 months from the date of entry into force of this amending Regulation], notify the Commission of those rules and measures and shall notify it, without delay, of any subsequent amendment affecting them.
- 1b. With respect to penalties applicable to infringements of Article 5d, Member States shall ensure that such penalties include:
 - (a) in the case of a legal person, maximum administrative fines of at least 10 % of the total annual net turnover of the legal person in the preceding business year;

- (b) in the case of a natural person, maximum administrative fines of at least EUR 5 000 000, or the equivalent amount in the national currency in the Member States whose currency is not the euro on ... [date of entry into force of this amending Regulation].

For the purposes of point (a) of this paragraph, where the legal person is a subsidiary of a parent undertaking, as defined in Article 2, point (9), of Directive 2013/34/EU of the European Parliament and of the Council*, or of any undertaking which effectively exercises a dominant influence over that legal person, the relevant turnover shall be the turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year.

- 1c. The penalties referred to in paragraph 1a of this Article shall not be applied in respect of infringements of the reachability requirement in Article 5a(1), second subparagraph, where the payment accounts maintained by PSPs are not reachable for instant credit transfers due to planned maintenance where periods of non-availability are both foreseeable and short or to a planned downtime of all instant credit transfers under the relevant payment scheme, provided that PSUs have been informed in advance of those periods of planned maintenance or planned downtime.

1d. By way of derogation from paragraph 1b, where the legal system of the Member State does not provide for administrative penalties, this Article may be applied in such a manner that the penalty is initiated by the competent authority and imposed by judicial authorities, while ensuring that that penalty is effective, proportionate and dissuasive, and has an equivalent effect to the administrative penalties imposed by the competent authorities of the Member States the legal system of which does provide for administrative penalties. In any event, the penalties imposed shall be effective, proportionate and dissuasive. The Member States the legal system of which does not provide for administrative penalties shall notify the Commission of their penalties by ... [12 months from the date of entry into force of this amending Regulation] and shall notify it without delay of any subsequent amendment affecting them.

* Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).’;

(4) Article 15 is replaced by the following:

Article 15

Review

1. By 1 February 2017, the Commission shall present to the European Parliament, the Council, the European Economic and Social Committee, ECB and EBA a report on the application of this Regulation accompanied, if appropriate, by a proposal.
2. By ... [54 months from the date of entry into force of this amending Regulation] the Commission shall present a report to the European Parliament and to the Council accompanied, if appropriate, by a legislative proposal. The report shall contain an evaluation of:
 - (a) the development of charges for payment accounts as well as for national and cross-border credit transfers and instant credit transfers in euro and in the national currency of the Member States whose currency is not the euro since 26 October 2022, including the impact of Article 5b(1) on those charges; and
 - (b) the scope of Article 5d and its effectiveness in preventing unnecessary hindering of instant credit transfers.

3. PSPs shall report to their competent authorities on:
 - (a) the level of charges for credit transfers, instant credit transfers and payment accounts;
 - (b) the share of rejections, separately for national and cross-border payment transactions, due to the application of targeted financial restrictive measures.

PSPs shall submit such reports every 12 months. The first report shall be submitted on ... [12 months from the date of entry into force of this amending Regulation] and shall include information on the level of charges and on rejections during the period starting on 26 October 2022 until the end of preceding calendar year.

4. By ... [18 months from the date of entry into force of this amending Regulation], and annually thereafter, competent authorities shall provide the Commission and EBA with the information reported to them by PSPs under paragraph 3, and the information on the volume and value of instant credit transfers in euro which have been sent, both national and cross-border, by PSPs established in their Member State in the course of the preceding calendar year.
5. The EBA shall develop draft implementing technical standards to specify uniform reporting templates, instructions and methodology on how to use those reporting templates for the purposes of reporting as referred to in paragraph 3.

The EBA shall submit the draft implementing technical standards referred to in the first subparagraph of this paragraph to the Commission by ... [2 months from the date of entry into force of this amending Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

6. The Commission shall, by ... [36 months from the date of entry into force of this amending Regulation], submit to the European Parliament and to the Council a report on remaining obstacles to the availability and use of instant credit transfers. That report shall assess the level of standardisation of the technologies which are relevant to the use of instant credit transfers. The report may be accompanied, if appropriate, by a legislative proposal.’;

(5) in Article 16, the following paragraph is added:

- ‘9. If the euro is introduced as the currency of a Member State before ... [36 months from the date of entry into force of this amending Regulation], the PSPs in that Member State shall comply with Articles 5a, 5b and 5c within one year of the date on which the euro has been introduced as the currency of that Member State and not later than the respective dates specified in those Articles for PSPs in Member States whose currency is not the euro. However, such PSPs shall not be required to comply with Articles 5a, 5b and 5c earlier than the respective dates specified in those Articles for PSPs in the Member States whose currency is the euro.’.

Article 2
Amendments to Regulation (EU) 2021/1230

Regulation (EU) 2021/1230 is amended as follows:

(1) in Article 3, the following paragraph is added:

- ‘5. Paragraph 1 of this Article shall not apply where Article 5b(1) of Regulation (EU) No 260/2012 of the European Parliament and of the Council* would require a payment service provider located in a Member State that does not have the euro as its currency, with respect to an instant credit transfer, to levy a charge which would be lower than the charge which would be levied, with respect to the same instant credit transfer, if paragraph 1 of this Article were to be applied.

For the purposes of the first subparagraph of this paragraph, the term “instant credit transfer” means an instant credit transfer as defined in Article 2, point (1a), of Regulation (EU) No 260/2012, that is in euro and cross-border.

* 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).’;

(2) in Article 6, paragraph 2 is replaced by the following:

‘2. The payment service provider may levy charges additional to those levied in accordance with Article 3(1) of this Regulation on the payment service user where that user instructs the payment service provider to execute a cross-border payment without communicating the IBAN and, where appropriate and in accordance with Regulation (EU) No 260/2012, the related BIC for the payment account in the other Member State. Those charges shall be appropriate and in line with the costs. They shall be agreed between the payment service provider and the payment service user. The payment service provider shall inform the payment service user of the amount of the additional charges in good time before the payment service user is bound by such an agreement.’.

Article 3
Amendments to Directive (EU) 2015/2366

Directive (EU) 2015/2366 is amended as follows:

(1) Article 10(1) is replaced by the following:

- ‘1. Member States or competent authorities shall require payment institutions which provide payment services as referred to in points (1) to (6) of Annex I to this Directive and electronic money institutions as defined in Article 2, point (1), of Directive 2009/110/EC to safeguard all funds which have been received from the payment service users or through another payment service provider for the execution of payment transactions, in either of the following ways:
 - (a) funds shall not be commingled at any time with the funds of any natural or legal person other than payment service users on whose behalf the funds are held and, where they are still held by the payment institution or electronic money institution and not yet delivered to the payee or transferred to another payment service provider by the end of the business day following the day when the funds have been received, they shall be deposited in a separate account in a credit institution or in a central bank at the discretion of that central bank, or invested in secure, liquid low-risk assets as defined by the competent authorities of the home Member State; and they shall be insulated in accordance with national law in the interest of the payment service users against the claims of other creditors of the payment institution or electronic money institution, in particular in the event of insolvency;

- (b) funds shall be covered by an insurance policy or some other comparable guarantee from an insurance company or a credit institution, which does not belong to the same group as the payment institution or electronic money institution itself, for an amount equivalent to that which would have been segregated in the absence of the insurance policy or other comparable guarantee, payable in the event that the payment institution or electronic money institution is unable to meet its financial obligations.’;

(2) Article 35 is amended as follows:

- (a) paragraph 2 is replaced by the following:

‘2. Paragraph 1 shall not apply to payment systems composed exclusively of payment service providers belonging to a group.’;

- (b) the following paragraph is added:

‘3. Member States shall ensure that where a participant in a payment system designated under Directive 98/26/EC of the European Parliament and of the Council* allows an authorised or registered payment service provider that is not a participant in the system to pass transfer orders through the system that participant shall, when requested, give the same opportunity in an objective, proportionate and non-discriminatory manner to other authorised or registered payment service providers in line with paragraph 1 of this Article.

The participant shall provide the requesting payment service provider with full reasons for any rejection.

* Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).’;

(3) the following article is inserted:

‘Article 35a

Conditions for requesting participation in designated payment systems

1. By way of safeguard for the stability and integrity of payment systems, payment institutions and electronic money institutions requesting participation and participating in systems designated under Directive 98/26/EC shall have in place the following:
 - (a) a description of the measures taken for safeguarding payment service users’ funds;
 - (b) a description of the governance arrangements and internal control mechanisms for the payment services or electronic money services it intends to provide, including administrative, risk management and accounting procedures, of the payment institution or electronic money institution and a description of the arrangements for the use of information and communication technology services of the payment institution or electronic money institution, related to Articles 6 and 7 of Regulation (EU) 2022/2554 of the European Parliament and of the Council*; and
 - (c) a winding-up plan in case of failure.

For the purposes of the first subparagraph, point (a), of this paragraph:

- (a) where the payment institution or electronic money institution safeguards payment service users' funds by depositing funds in a separate account in a credit institution or by means of an investment in secure, liquid, low-risk assets as defined by the competent authorities of the home Member State, the description of the measures taken for such safeguarding shall contain, as applicable:
 - (i) a description of the investment policy to ensure that the assets that are chosen are liquid, secure and low-risk;
 - (ii) the number of persons that have access to the safeguarding account and their functions;
 - (iii) a description of the administration and reconciliation process to ensure that payment service users' funds are insulated in the interest of payment service users against the claims of other creditors of the payment institution or electronic money institution, in particular in the event of insolvency;
 - (iv) a copy of the draft contract with the credit institution;
 - (v) an explicit declaration by the payment institution or electronic money institution of compliance with Article 10 of this Directive;

- (b) where the payment institution or electronic money institution safeguards payment service users' funds through an insurance policy or comparable guarantee from an insurance company or a credit institution, the description of the measures taken for such safeguarding shall contain the following:
- (i) a confirmation that the insurance policy or comparable guarantee from an insurance company or a credit institution is from an entity that is not part of the same group of firms as the payment institution or electronic money institution;
 - (ii) details of the reconciliation process in place to ensure that the insurance policy or comparable guarantee is sufficient to meet the safeguarding obligations of the payment institution or electronic money institution at all times;
 - (iii) the duration and the terms of renewal of the coverage;
 - (iv) a copy of the insurance agreement or comparable guarantee, or drafts thereof.

For the purposes of the first subparagraph, point (b), the description shall demonstrate that the governance arrangements, internal control mechanisms and arrangements for the use of information and communication technology as referred to in that point are proportionate, appropriate, sound and adequate. In addition, governance arrangements and internal control mechanisms shall include:

- (a) a mapping of the risks identified by the payment institution or electronic money institution, including the type of risks and the procedures the payment institution or electronic money institution has in place or will put in place to assess and prevent such risks;
- (b) the different procedures to carry out periodical and permanent controls, including the frequency and the human resources allocated;
- (c) the accounting procedures by which the payment institution or electronic money institution records and reports its financial information;
- (d) the identity of the person or persons responsible for the internal control functions, including for periodic, permanent and compliance control, as well as an up-to-date curriculum vitae of that person or those persons;
- (e) the identity of any auditor that is not a statutory auditor as defined in Article 2, point 2, of Directive 2006/43/EC;

- (f) the composition of the management body and, if applicable, of any other oversight body or committee;
- (g) a description of the way outsourced functions are monitored and controlled so as to avoid impairment of the quality of the internal controls of the payment institution or electronic money institution;
- (h) a description of the way any agents and branches are monitored and controlled within the framework of the internal controls of the payment institution or electronic money institution;
- (i) where the payment institution or electronic money institution is the subsidiary of a regulated entity in another Member State, a description of the group governance.

For the purposes of the first subparagraph, point (c), the winding-up plan shall be adapted to the envisaged size and business model of the payment institution or electronic money institution and shall include a description of the mitigation measures to be adopted by the payment institution or electronic money institution in the event of the termination of its payment services, which would ensure the execution of pending payment transactions and the termination of existing contracts.

2. Member States shall define the procedure by which compliance with paragraph 1 is assessed. That procedure may take the form of self-assessment, of a requirement for an explicit decision by the competent authority, or of any other procedure that aims to ensure that the payment institutions and electronic money institutions concerned comply with paragraph 1.

* Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011 (OJ L 333, 27.12.2022, p. 1).’.

Article 4

Amendments to Directive 98/26/EC

In Directive 98/26/EC, Article 2 is amended as follows:

(1) point (b) is replaced by the following:

‘(b) “institution” shall mean:

- a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 of the European Parliament and of the Council*, including the entities listed in Article 2(5) of Directive 2013/36/EU;

- an investment firm as defined in Article 4(1), point (1), of Directive 2014/65/EU of the European Parliament and of the Council^{**}, excluding the institutions set out in Article 2(1) thereof;
- public authorities and publicly guaranteed undertakings; or
- any undertaking whose head office is outside the Union and whose functions correspond to those of the Union credit institutions or investment firms defined in the first and second indent,

which participates in a system, and which is responsible for discharging the financial obligations arising from transfer orders within that system;

- a payment institution as defined in Article 4, point (4), of Directive (EU) 2015/2366 of the European Parliament and of the Council^{***}, with the exception of a natural or legal person benefitting from an exemption pursuant to Article 32 or 33 of that Directive; or
- an electronic money institution as defined in Article 2, point (1), of Directive 2009/110/EC of the European Parliament and of the Council^{****}, with the exception of a legal person benefitting from a waiver under Article 9 of that Directive,

which participates in a system whose business consists of the execution of transfer orders as defined in point (i), first indent, and which is responsible for discharging the financial obligations arising from such transfer orders within that system.

If a system is supervised in accordance with national legislation and only executes transfer orders as defined in point (i), second indent, as well as payments resulting from such orders, a Member State may decide that undertakings which participate in such a system and which have responsibility for discharging the financial obligations arising from transfer orders within this system, can be considered institutions, provided that at least three participants of this system are covered by the categories referred to in the first subparagraph of this point and that such a decision is warranted on grounds of systemic risk;

* Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

** Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

*** Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

**** 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).’;

(2) point (f) is replaced by the following:

‘(f) “participant” shall mean an institution, a CCP, a settlement agent, a clearing house, a system operator or a clearing member of a CCP authorised pursuant to Article 17 of Regulation (EU) No 648/2012.

According to the rules of the system, the same participant may act as a CCP, a settlement agent or a clearing house or carry out part or all of those tasks.

A Member State may, for the purposes of this Directive, consider an indirect participant to be a participant where that is justified on the grounds of systemic risk, which shall, however, not limit the responsibility of the participant through which the indirect participant passes transfer orders to the system;’.

Article 5

Transposition of amendments to Directives (EU) 2015/2366 and 98/26/EC

Member States shall adopt, publish and apply, by ... [12 months from the date of entry into force of this amending Regulation], the laws, regulations and administrative provisions necessary to comply with Articles 3 and 4. They shall immediately communicate the text of those measures to the Commission.

When Member States adopt those measures, they shall contain a reference to this Regulation or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 6
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*.

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

Done at ...,

For the European Parliament
The President

For the Council
The President
