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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 260/2012 and (EU) 2021/1230 as regards instant credit transfers in euro

Delegations will find attached document COM(2022) 546 final/2.

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Brussels, 26.10.2022
COM(2022) 546 final/2

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This document corrects document COM(2022)546 final
Concerns the EN version only
Minor correction in footnote 18
The text shall read as follows:

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EU) No 260/2012 and (EU) 2021/1230 as regards instant credit transfers in euro

(Text with EEA relevance)

{SEC(2022) 546 final} - {SWD(2022) 546 final} - {SWD(2022) 547 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Instant payments (IPs) are a form of credit transfer whereby funds pass from the payer's account to the payee's in a matter of seconds, at any time, day or night, and any day of the year. This distinguishes IPs from other credit transfers, which are processed by payment service providers (PSPs)[1] only during business hours, with the funds credited to the payee only by the end of the following business day.

IPs are a major technological innovation in payments. They allow releasing funds that are locked in the financial system, making them immediately available to end users – consumers and businesses in the EU – for consumption and investment. IPs also offer opportunities for banks and financial technology companies (fintechs) to develop new solutions for payments at the point of interaction (PoI), whether at physical points of sale or in e-commerce transactions (e.g. using mobile payment applications on smartphones). Such solutions would help to reduce the currently high level of concentration in the PoI market, in particular for cross-border payments.

In the EU, the architecture for IPs in euro already exists. It comprises several payment systems offering instant settlement, and the Single Euro Payments Area (SEPA) instant credit transfer scheme (SCT Inst. Scheme) launched in November 2017 by the European Payments Council (EPC)[2].

The significant potential benefits of IPs to consumers and businesses in the EU are however impeded by the slow rollout and low uptake of IPs. At the end of 2021, only 11% of euro credit transfers sent in the EU were IPs[3]. The reasons for this are identified in the impact assessment accompanying this proposal (see below).

In the Commission Communication of 5 December 2018, 'Towards a stronger international role of the euro'[4], the Commission supported a fully integrated IP market in the EU, to reduce risks and vulnerabilities in retail payments and to increase the autonomy of existing payment solutions. In its Communication of 24 September 2020 'Retail Payments Strategy for the EU'[5], the Commission announced that, if appropriate, it would propose legislation requiring PSPs in the EU to offer IPs in euro by end-2021. The Council, in its Conclusions of 22 March 2021[6], highlighted promoting the widespread use of IPs as an objective of the retail payments strategy. Moreover, in its Communication of 20 January 2021, 'The European economic and

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1 A PSP is a provider of payment services as defined in Annex I to Directive 2015/2366 (PSD2), such as a credit institution, payment institution or electronic money institution.

2 The EPC is a private law association of PSPs, founded in 2002, which functions as a decision-making and coordination body of the European payments industry, and with the main task of developing the Single Euro Payment Area.

3 Source: EPC.

4 COM (2018) 796 final of 5 December 2018.

5 COM (2020) 592 final of 24 September 2020.

6 7225/21.

financial system: fostering openness, strength and resilience'[7], the Commission reiterated the importance of its retail payments strategy and of digital innovation in finance as a way of strengthening the single market for financial services and thereby reinforcing its open strategic autonomy in the macro-economic and financial fields. Subsequently, the Commission included an initiative on IPs in the Commission work programme for 2022[8].

The Council, in its Conclusions of 5 April 2022[9], referred to the Commission's intention to present a legislative initiative on IPs, recalling the objective of fostering the development of competitive home-grown and pan-European market-based payments solutions, and stressing the importance of defining and effectively implementing a framework for an independent, efficient, well-functioning, open and autonomous European payments area.

- **Consistency with existing policy provisions**

Universal availability of euro IPs is a necessary part of updating and modernising SEPA. SEPA allows European consumers, businesses and public administrations to make and receive cross-border payments in euro as easily as domestic payments, and enables the public to use their existing payment accounts in their home Member State to receive their salary or pay bills between different Member States. The SEPA project was launched with the Commission's support in 2002, prompting the European banking industry to create the EPC which, at the request of the Commission and European Central Bank (ECB), committed to developing harmonised schemes of rules and procedures for executing euro payments, in close dialogue with all stakeholders (including merchants and consumers). The SEPA scheme for euro credit transfers was launched in 2008, and for SEPA direct debits in 2009. These two schemes were effectively made mandatory for payments in euro by the 2012 SEPA Regulation.[10] The SCT Inst. Scheme was launched in 2017.

Two EU legal acts in the field of payments, the 2015 Directive on payment services in the internal market (PSD2)[11] and the Regulation on cross-border payments[12], already apply to IPs and will continue to do so after the entry into force of this proposal. PSD2 lays down rules and obligations for PSPs and consumer rights for many types of commonly used payments in the EU, including credit transfers; it is currently being evaluated and any possible proposals for amendments will take full account of the present proposal. The Regulation on cross-border payments requires that the same price be charged for euro cross-border payments as for domestic payments of the corresponding type in the national currency (including credit transfers and therefore IPs), processed by the same PSP (see below for further explanation on the interaction of the Regulation on cross-border payments with this proposal).

When providing IPs, as for any other types of payments, PSPs must ensure that they have in place appropriate and real-time fraud, money laundering and terrorist financing prevention tools, in full conformity with existing EU legislation. This initiative has no incidence on the

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7 COM (2021) 32 final of 19 January 2021.

8 COM (2021) 645 final of 19 October 2021.

9 6301/22.

10 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.

11 Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market.

12 Regulation (EU) 2021/1230 of the European Parliament and of the Council of 14 July 2021 on cross-border payments in the Union (codification).

robustness of AML/CFT checks. In particular, the instantaneity of these payments, within less than 10 seconds, does not affect in any way the obligation from obliged entities to perform their required AML/CFT checks and, if necessary, to introduce suspicious transaction reports (STRs). These are usually ex-post requirements, contrary to sanctions screening obligations which must be performed before the transaction is executed (so within 10 seconds for IPs) and are therefore covered by the present proposal. Nor does this proposal affect in any manner the effectiveness and timeliness of the examination by the Financial Intelligence Units (FIUs) of such STRs.

- **Consistency with other EU policies**

The initiative is fully consistent with other Commission initiatives laid out in the Commission's digital finance strategy for the EU[13], adopted together with the retail payment strategy (RPS), aimed at promoting digital transformation of finance and the EU economy, and removing fragmentation in the digital single market.

It is also fully consistent with Commission Communication 'Towards a stronger international role of the euro'[14], in which the Commission supported a fully integrated instant payment system in the EU, to reduce risks and vulnerabilities in retail payment systems and to increase the autonomy of existing payment solutions. It is also consistent with the Commission's 2021 Communication on 'The European economic and financial system: fostering openness, strength and resilience'[15], which reiterated the importance of its retail payments strategy and of digital innovation in finance for strengthening the single market for financial services. The same Communication confirmed that the Commission and ECB services would jointly review at technical level a broad range of policy, legal and technical questions emerging from a possible introduction of a digital euro, taking into account their respective mandates provided for in the EU Treaties. A legislative initiative on digital euro has been included also in the Commission work programme for 2023.

The full deployment of IPs is one of the main elements of the retail payments strategy[16] of the ECB, who also provides the TARGET Instant Payment Settlement (TIPS) service. Therefore, the ECB may be invited to produce an opinion on this proposal.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The appropriate legal basis is Article 114 of the Treaty on the Functioning of the European Union (TFEU), which tasks the European institutions with laying down provisions to establish the single market and ensure its proper functioning in line with Article 26 TFEU. This is the legal basis used for existing EU legislation in the area of payments, such as the SEPA Regulation, PSD2, and the Regulation on cross-border payments.

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13 COM (2020) 591 final of 24 September 2020.
14 COM (2018) 796 final of 5 December 2018.
15 COM (2021) 32 final of 19 January 2021.
16 https://www.ecb.europa.eu/pub/pdf/other/ecb.eurosystemretailpaymentsstrategy~5a74eb9ac1.en.pdf

- **Subsidiarity (for non-exclusive competence)**

Only EU measures can require all relevant PSPs in the EU to provide the service of sending and receiving cross-border IPs. Member States alone cannot provide for harmonised EU rules on cross-border IPs, be it on sanctions screening or the protection of the payer in the event of fraud or errors. In addition, SEPA for non-instant credit transfers and direct debits was established by an EU Regulation and the present proposal further develops SEPA.

- **Proportionality**

Only PSPs offering a credit transfer service in euro to their customers are covered by the requirement to offer IPs in euro. The SEPA Regulation already excludes payment transactions carried out between and within PSPs, including their agents or branches, for their own account. Furthermore, payment institutions[17] and electronic money institutions[18] are not covered since currently, under the Settlement Finality Directive (SFD)[19], they cannot participate in settlement systems designated under that Directive, which includes many EU settlement systems widely used for credit transfers and IPs. This may be reconsidered in light of future amendments to SFD after it is reviewed. Nevertheless, under this proposal payment institutions and electronic money institutions will not be prevented from offering IPs to their PSUs on a voluntary basis. The proposal also provides for staggered deadlines for the services of receiving and sending IPs and for PSPs inside and outside the euro area.

- **Choice of the instrument**

Given that the SEPA Regulation lays down technical and business requirements for all credit transfers in euro and that IPs in euro are a new category of credit transfers in euro, it is appropriate for the present proposal to amend that Regulation.

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

- ***Ex post* evaluations/fitness checks of existing legislation**

On 23 November 2017, the Commission presented a report on the functioning of the SEPA Regulation in accordance with Article 15 of the Regulation[20]. The report concluded that, overall, the SEPA Regulation was being correctly applied across the EU and that there was no need for a follow-up legislative proposal.

However, since IPs did not exist when the SEPA Regulation was adopted in 2012, it did not contain specific provisions on this new category of credit transfers in euro. Adding specific provisions on IPs in euro to the SEPA Regulation reflects the modernisation of euro credit transfer technologies, allowing instant processing.

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17 As defined in Article 4(4) PSD2.

18 As defined in point (1) of Article 2 of Directive 2009/110/EC (Electronic Money Directive).

19 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.

20 https://ec.europa.eu/info/sites/default/files/171123-report-sepa-requirements_en.pdf

- **Stakeholder consultations**

To ensure that the Commission's proposal takes account of the views of all interested stakeholders, the consultation strategy for this initiative comprised:

– a public consultation to inform the Commission's retail payments strategy (RPS), open from 3 April to 26 June 2020[21];

– a public consultation on the inception impact assessment for the present initiative, open from 10 March to 7 April 2021[22];

– an open public consultation, open from 31 March to 23 June 2021[23];

– a targeted consultation of the payments industry, open from 24 March to 12 June 2021[24];

– consultations of stakeholders in two Commission Expert Groups: the financial services user group (FSUG), and the payment systems market expert group (PSMEG);

– ad hoc contacts with various stakeholders, either on their initiative or the Commission's;

– a webinar on the potential benefits of IPs for consumers and businesses, given by the Commission's Directorate- General for Financial Stability, Financial Services and Capital Markets Union on 10 June 2021[25];

– consultations of Member States' experts in the Commission Expert Group on banking payments and insurance, and the Expert Group on Union restrictive measures and extra-territoriality and ad hoc workshops on sanctions screening.

The outcome of these consultations is summarised in Annex 2 to the impact assessment accompanying this proposal.

- **Collection and use of expertise**

A number of inputs and sources of expertise were used in preparing this initiative, including the following:

– evidence supplied through the various consultations listed above;

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21 https://ec.europa.eu/info/consultations/finance-2020-retail-payments-strategy_en

22 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12931-Instant-payments_en

23 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12931-Instant-Payments/public-consultation_en

24 https://finance.ec.europa.eu/regulation-and-supervision/consultations/2021-instant-payments_en#:~:text=%E2%80%A2%E2%80%A2%E2%80%A2-,Target%20group,be%20addressed%20to%20all%20stakeholders.

25 https://finance.ec.europa.eu/events/webinar-exploring-potential-instant-payments-eu-consumers-and-businesses-2021-06-10_en

– a study carried out by a contractor, Fidelis Consulting, 'IPs, Current and foreseeable benefits', delivered in 2021[26];

– information provided regularly by the EPC on the membership and use of the SCT and SCT Inst. Schemes;

– information provided by the ECB and national payments committees;

– the ORBIS database;

– the European Banking Authority (EBA) register of payment and electronic money institutions under PSD2;

– a discussion paper on the EBA's preliminary observations on selected payment fraud data under PSD2, as reported by the industry;

– evidence provided by PSPs and other types of providers, especially on costs, through targeted consultations and bilateral contacts;

– evidence provided by the European Consumer Organisation (BEUC), in particular on pricing of IPs in euro.

• **Impact assessment**

This proposal is accompanied by an impact assessment[27], which was submitted to the Regulatory Scrutiny Board (RSB) on 27 April 2022 and, following a re-submission on 8 July 2022, approved on 7 September 2022.

The impact assessment considers that the key problem is the low uptake of euro IPs, measured as a percentage of all credit transfers in euro sent in the EU (about 11%). There are two consequences of this problem:

– unrealised benefits and efficiency gains from IPs, both at macro level and for specific categories of stakeholders, including consumers, merchants, corporate users, PSPs and financial technology companies (fintechs), and public administrations including tax authorities;

– limited choice of means of payment at the PoI, particularly for cross-border transactions.

Four problem drivers were identified, two on the supply side and two on the demand side:

– insufficient incentives for PSPs to offer euro IPs (supply-side driver);

– dissuasive transaction charges for IPs compared to alternative payment means (demand-side driver);

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26 https://op.europa.eu/en/publication-detail/-/publication/735d5b9d-0c5e-11ec-adb1-01aa75ed71a1/language-en/format-PDF/source-228471178

27 Commission Staff Working Document SWD(2022) 546.

– high rate of rejected IPs wrongly identified as involving persons on EU sanctions lists (supply-side driver).

– payer concerns about security of IPs (demand-side driver).

The impact assessment presents a package of preferred options, corresponding to the four problem drivers identified:

– a requirement for PSPs providing a regular euro credit transfer service (with targeted exclusions) to offer sending and receiving of IPs in euro;

– a requirement for PSPs not to charge more for IPs in euro than for regular credit transfers in euro;

– a requirement for sanctions screening in the form of very frequent checking of clients against EU sanctions lists (as is already done in certain Member States for domestic payments), rather than for each individual transaction;

– a requirement for PSPs to offer a service enabling customers to be notified when a mismatch is detected between the payee's name and international bank account number (IBAN), as supplied by the payer;

The above requirements are introduced through an amendment to the SEPA Regulation which also governs other types of euro payments, including non-instant credit transfers. However, the requirements pertaining to sanctions screening and payer protection are limited only to euro IPs, for which the underlying problem drivers were found to be the most impactful. With IPs it is impossible for PSPs to verify within 10 seconds whether the flagged transaction involves persons on EU sanctions lists and, as a result, such a transaction is unjustifiably rejected. For non-instant credit transfers this problem does not arise. Moreover, the feeling of having more options to recover funds in case of fraud or errors when non-instant credit transfers are used discourages payers from adopting IPs to a greater extent than for non-instant credit transfers.

The impact assessment identified material, but proportionate, one-off implementation costs involved in offering IPs for PSPs that do not yet do so, and, for most PSPs, in providing a way to check that the payee's IBAN matches the payee name. Ongoing costs for PSPs would be limited. Overall, the cost impact for PSPs would be neutral over time, in light of significant savings from the proposed new approach for sanctions screening, less time and effort spent following up fraud and errors, reduced costs related to handling cash and cheques, and the prospect of competing more effectively with the incumbents on the PoI market and offering innovative IP-based PoI solutions, including for cross-border payments.

A wide range of benefits will be derived from improved liquidity and cash-flow. These will accrue to all recipients of IPs, including consumers, merchants, corporate users and public administrations, including tax authorities, significantly boosting their economic efficiency. Currently, many billions of euro are in transit in payment systems at any given time and not available for consumption or investment.

Greater use of IPs will also stimulate the development of new payment solutions, so that IPs can be used at the PoI to buy goods and services, in particular in cross-border transactions. This will increase competition in the sector and produce cost reductions for merchants, who can potentially pass them on to consumers.

- **Regulatory fitness and simplification**

The present initiative is not a regulatory fitness and performance programme (REFIT) initiative. Although it takes the form of an amendment to the SEPA Regulation, which lays down requirements for credit transfers and direct debits in euro, it is not based on an evaluation of that Regulation, and it does not amend that Regulation beyond what is necessary to incorporate new provisions on IPs specifically.

In line with the 'one-in, one-out' principle, the Commission has committed to 'compensate to the extent possible' adjustment costs of new initiatives and to offset new administrative costs by correspondingly reducing administrative costs of other initiatives[28]. However, this proposal does not involve administrative costs for businesses, citizens or public authorities, as the initiative will not lead to any increased oversight or supervision of PSPs, or to specific reporting obligations. There are also no regulatory fees and charges arising from the initiative.

Although adjustment costs do not need to be offset according to the 'one in one out principle', the recurrent cost savings for PSPs from the new approach to sanctions screening are likely to more than offset adjustment costs generated by the other components of this proposal, giving negative adjustment costs (i.e. savings) for the initiative overall[29].

- **Fundamental rights**

The initiative is consistent with fundamental rights.

To the extent processing of personal data is necessary for the compliance with this initiative, the processing must be in line with the General Data Protection Regulation (GDPR)[30].

This initiative lays down an obligation to verify the discrepancies between the name and payment account identifier of the payee in case of euro IPs. When payees are natural persons, processing of their names and payment account identifiers is proportionate and necessary to prevent fraudulent transactions and detect errors. The proposal further lays down a procedure to verify whether any of PSPs' customers are designated persons or entities subject to EU sanctions. It establishes clear rules concerning the frequency of and responsibility for such verifications. The initiative ensures that any personal data to carry out such verifications are adequate, relevant and limited to what is necessary.

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28 Administrative costs are defined as "costs borne by businesses, citizens, civil society organisations and public authorities as a result of administrative activities performed to comply with administrative obligations included in legal rules".

29 See Commission Staff Working Document SWD(2022) 546

30 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.

4. BUDGETARY IMPLICATIONS

The present proposal has no implications for the EU budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The general objective of increasing the volume of euro IPs relative to all euro credit transfers can be monitored on an ongoing basis based on data from the EPC, which manages the SCT and SCT Inst. schemes. Monitoring the uptake of euro IPs in various use cases (including at the PoI) and of volumes of euro IPs compared to cash or cards will require data to be synthesised from a number of different sources, with the assistance of the ECB and the EBA. There will be no new reporting requirements for PSPs.

- **Detailed explanation of the specific provisions of the proposal**

Subject matter, scope and definitions

The proposal introduces additional provisions into the SEPA Regulation on IPs in euro and specifies which PSPs must comply with these provisions.

Four new definitions are introduced:

– ‘instant credit transfer’, which sets out key technical requirements and clarifies that it is a sub-category of credit transfers in euro;

– ‘PSU interface’ (payment service user interface), which further clarifies provisions on the right of payment service users to initiate IPs through the same channels they use to initiate other credit transfers, and provisions on charges for corresponding credit transfer transactions in euro;

– ‘payment account identifier’, which clarifies that a ‘payment account identifier’ referred to in Article 5, point 1(a), of the SEPA Regulation and in Article 5c of the present proposal, should be considered as the unique identifier referred to in Article 88 of PSD2 and defined in Article 4, point (33) of that Directive; and

– ‘listed persons or entities’, which clarifies that PSPs should follow the procedure laid down in Article 5d of the present proposal to ensure that they comply with EU sanctions involving the obligation to freeze the assets of individual persons or entities and not to make funds or economic resources directly or indirectly available to them.

Moreover, the existing definition of ‘retail payment system’ is amended to reflect various ways of settling retail payment transactions, including non-batch settlement (per individual transaction) and the round-the-clock execution of IPs in real time.

Mandatory provision of instant credit transfers in euro (Article 5a)

PSPs that provide credit transfers in euro will be required to offer the service of sending and receiving IPs in euro. A number of technical specifications are laid down for this service, including the requirement to receive payment orders and be reachable for IPs 24 hours a day, 365 days a year, without any possibility to set up cut-off times or limit the processing of IPs to business days only. Payment institutions and electronic money institutions are excluded from this requirement given their restricted access to payment systems.

Customer (PSU) interfaces via which orders for credit transfers may be submitted must also allow the submitting of orders for IPs. Where a PSP provides the option of submitting multiple payment orders for credit transfers packaged together in bulk, it must offer the same service for euro IPs.

The introduction of these requirements will be staggered, with four separate dates as follows:

– receiving of IPs in euro for PSPs in the euro area: 6 months after entry into force of the Regulation;

– sending of IPs in euro for PSPs in the euro area: 12 months after entry into force;

– receiving of IPs in euro for PSPs outside the euro area: 30 months after entry into force;

– sending of IPs in euro for PSPs outside the Euro area: 36 months after entry into force.

Charges for IPs (Article 5b and amendment to Regulation (EU) 2021/1230)

Charges applied by PSPs for sending or receiving euro IPs should be no higher than the same PSP's charges for sending or receiving a non-instant credit transfer in euro. This requirement will apply to all PSPs offering euro IPs, including those not required to offer IPs (such as payment institutions and electronic money institutions). It will apply for PSPs in the euro area as from 6 months after entry into force of the Regulation, and for PSPs outside the euro area as from 30 months after entry into force.

For certain euro IP transactions, namely cross-border euro IPs executed by a PSP located in a non-euro area Member State, the application of Regulation (EU) 2021/1230 on cross-border payments could lead to a higher charge than required by this proposal. Article 3(1) of Regulation (EU) 2021/1230 provides that, 'Charges levied by a payment service provider on a payment service user in respect of cross-border payments in euro shall be the same as the charges levied by that payment service provider for corresponding national payments of the same value in the national currency of the Member State in which the payment service provider of the payment service user is located'. A cross-border euro IP and a domestic IP in the national currency would be such corresponding payments.

When pricing a cross-border euro IP, a PSP located outside the euro area would be obliged, under the current proposal, to charge either the same as or less than it charges for a non-instant cross-border euro credit transfer, and, under the Regulation on cross-border payments, exactly the same as for a domestic IP denominated in the national currency. However, compliance with both requirements would not be possible where such a PSP currently applies

higher charges for a domestic IP in the national currency than for cross-border non-instant credit transfers in euro.

In order to fully achieve the objective to steer PSUs towards IPs in euro, Regulation (EU) 2021/1230 is amended to ensure that a cross-border euro IP should be priced at the same or a lower level than a corresponding regular cross-border euro credit transfer, even if this means that the price for such cross-border euro IP is not the same as the price for a corresponding domestic IP in the national currency.

Discrepancies between the name and payment account identifier of a payee (Article 5c)

All PSPs offering the service of sending of euro IPs (including those not under an obligation to do so) are required to provide their PSUs with a service checking that the payee's IBAN[31] matches the payee's name and notifying the PSU of any detected discrepancy. The notification must be given before the payer finalises the IP payment order and before the PSPs executes the IP. The user remains free to decide whether to submit the payment order for an IP in all cases.

The use of such a service by a user does not affect the PSP's liability for non-execution, defective or late execution of IPs, as laid down in Articles 88 and 89 of PSD2.

PSPs should notify PSUs of any detected discrepancy between the payee's name and payment account identifier, as provided by the payer, for both national and cross-border instant credit transfers in euro. This proposal does not prevent PSPs from offering such a service with respect to also other types of credit transfers and not just to instant ones.

PSPs may charge a fee for the use of such a service and PSUs are not obliged to use it.

This requirement will apply to PSPs in the euro area as from 12 months after entry into force, and for PSPs outside the euro area as from 36 months after entry into force. These deadlines are fully aligned with the dates for the introduction of the requirement to offer the service of sending euro IPs.

Screening IPs for EU sanctions (Article 5d)

PSPs are required to follow a harmonised approach so that EU sanctions can be applied without the duplications, inefficiencies and resultant frictions caused by PSPs applying divergent screening processes. The harmonised approach relates to the specific types of sanctions applicable to individual persons and entities, i.e. the requirement to freeze assets and not to make funds or economic resources available to such persons and entities. A consolidated list of such persons and entities is maintained by the Commission services[32].

PSPs are required to verify at least once a day whether any of their customers are designated persons or entities subject to EU sanctions, and in any event immediately after the entry into force of any new or amended designations.

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31 IBAN serves as the unique identifier as defined in Article 4(33) of PSD2 and payment account identifier as referred to in Article 5 of Regulation (EU) No 260/2012.

32 https://data.europa.eu/data/datasets/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions?locale=en

A harmonised approach provides PSPs with much needed legal certainty and thus eliminate frictions that prevent the effective execution of euro IPs, while not compromising the overall effectiveness of sanctions screening.

Where a payer or payee's PSP fails to carry out the required verification and is subsequently involved in executing an IP for a payer or a payee subject to EU sanctions, it is liable for any financial damage to the other PSP involved in the IP resulting from penalties under EU sanctions regulations. This requirement will apply to all PSPs covered by Article 5d as from 6 months after entry into force.

Penalties (Article 11)

Penalties for PSPs' non-compliance with legal requirements contained in this proposal are the responsibility of the Member States. Penalties must be effective, proportionate and dissuasive. Minimum levels for the penalties which national authorities may impose for failing to comply with EU sanctions obligations are laid down in the new paragraph 1b of Article 11 of the SEPA Regulation. Member States must notify the Commission of the applicable penalties in their jurisdiction.

2022/0341 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EU) No 260/2012 and (EU) 2021/1230 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 Committee[33],

Having regard to the opinion of the European Central Bank[34],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Regulation (EU) No 260/2012 of the European Parliament and of the Council[35] provides the foundation for the single euro payments area (SEPA). To create favourable conditions for increased competition, in particular for payments at 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 at Union level of instant credit transfers in euro. Only a widespread and rapid increase in that uptake can unlock the full-scale network effects of instant credit transfers in euro, leading to benefits and economic efficiency

33 OJ C […], […], p. […].
34 OJ C […], […], p. […].
35 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).

gains for payments services users (PSUs) and providers, reduced market concentration, increased competition and choice of electronic payments, in particular for cross-border payments at PoI.

(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 provide for specific requirements for instant credit transfers in euro, in addition to the general requirements applicable to all credit transfers.

(4) 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 PSUs' protection from sending funds to an unintended payee or specifying the process of compliance with obligations flowing from Union sanctions. Those national regulatory solutions pose a risk of fragmentation of the internal market, thus increasing the compliance costs due to different sets of national regulatory requirements, and making the execution of cross-border instant credit transfers more difficult.

(5) Prior to the emergence of instant credit transfers, payment transactions were generally bundled by PSPs and submitted to a retail payment system for 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, processed in real time and round the clock. To reflect this, it is necessary to amend the definition of 'retail payment system'.

(6) 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 instant credit transfers in euro. Moreover, the rate at which PSPs have been adding instant credit transfers to their services has been, over the last few years, too slow, which hinders further integration of the Union's internal payments market. Therefore, PSPs should be required to offer the service of sending and receiving instant credit transfers in euro.

(7) 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. Therefore, it is appropriate that the definition of instant credit transfers refers to the specific conditions that they should meet regarding the time of receipt of payment orders, processing, crediting and value dating.

(8) There is a variety of interfaces through which PSUs can place a payment order for a credit transfer in euro, including via online banking, a mobile application, an automated teller machine, 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 interfaces through which PSUs can place payment orders for instant and other types of credit transfer transactions. Moreover, where it is possible for a PSU to submit to a

PSP payment orders for credit transfers packaged together, that same possibility should also be available with respect to instant credit transfers in euro. PSPs should be able to offer all credit transfers in euro initiated by their PSUs as instant by default.

(9) It would not be proportionate to impose on payment institutions and electronic money institutions an obligation to offer the service of sending and receiving instant credit transfers in euro, because those institutions cannot be admitted as participants in a payment system designated in accordance with Directive 98/26/EC of the European Parliament and of the Council[36]. Those institutions may therefore experience difficulties in accessing the infrastructure necessary to execute instant credit transfers. It is therefore appropriate to exclude payment institutions and electronic money institutions from the obligation to offer the service of sending and receiving instant credit transfers in euro.

(10) 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 those national markets where higher transaction-level charges for instant credit transfers in euro compared to charges for other types of credit transfers in euro have been applied, 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 PSPs and PSUs alike. 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 therefore not exceed such charges applied to the same PSU for corresponding types of other credit transfers in euro. When identifying corresponding types of credit transfers, it should be possible to use criteria including the PSU interface or the payment instrument used to initiate the payment, customer status and, where relevant, whether the payment is national or cross-border.

(11) Security of instant credit transfers in euro is fundamental for increasing PSUs' confidence in such services and ensuring their use. Payers intending to send a credit transfer to a given payee may, as a result of fraud or error, provide a payment account identifier which does not correspond to an account held by that payee. Under Directive (EU) 2015/2366 of the European Parliament and of the Council[37], the only determinant of the correct execution of the transaction with respect to the payee is the unique identifier, and PSPs are not required to verify the name of the payee. In the case of instant credit transfers, there is not enough time for the payer to realise the occurrence of a fraud or error and to try to recover the funds before they are credited to the payee's account. PSPs should therefore verify whether there is any discrepancy between the unique identifier of the payee and the name of the payee provided by the payer, and notify the payer placing a payment order for an instant credit transfer in euro about any such discrepancies detected. To avoid undue frictions or delays in the processing of the transaction instantly, the payer's PSP should provide such notification within no more than a few seconds from the moment the payer provided the payee information. To allow the payer to decide whether to proceed with the

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36 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).

37 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).

intended transaction, the payer's PSP should provide such notification before the payer authorises the transaction.

(12) Some attributes of the name of the payee to whose account the payer wishes to make an instant credit transfer may increase the likelihood of a discrepancy being detected by the PSP, including the presence of diacritics or different possible transliterations of names in different alphabets, differences between habitually used names and names indicated on formal identification documents in case of natural persons, or differences between commercial and legal names in case of legal persons. To avoid undue frictions in the processing of instant credit transfers in euro and facilitate the payer's decision on whether to proceed with the intended transaction, PSPs should indicate the degree of such discrepancy, including by indicating in the notification that there is 'no match' or 'close match'.

(13) Authorising a payment transaction where the PSP has detected a discrepancy and has notified that discrepancy to the PSU can result in the funds being transferred to an unintended payee. In such cases, PSPs should not be held liable for the execution of the transaction to an unintended payee, as laid down in Article 88 of Directive (EU) 2015/2366. PSPs should inform PSUs about the implications for PSP liability and PSU refunds rights of their choice to ignore the notified discrepancy. PSUs should be able to opt out from using that service at any time during their contractual relationship with the PSP. After opting out, PSUs should be able to opt in to again avail of the service.

(14) It is of critical importance that PSPs effectively comply with their obligations stemming from Union sanctions against persons, bodies or entities that are subject to an asset freeze or a prohibition to make funds or economic resources available to it, or for its benefit, either directly or indirectly, pursuant to restrictive measures adopted in accordance with Article 215 TFEU (listed persons or entities). 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 Union sanctions by screening the payer and the payee involved in each credit transfer transaction, either national or cross-border, leads to a very high number of credit transfers being flagged as potentially involving listed persons or entities. However, the large majority of such flagged transactions turn out, after verification, not to involve any such persons or entities. Due to the nature of instant credit transfers, it is impossible for PSPs to verify, within short time limits, such flagged transactions instantly and, as a result, they are rejected. That situation creates operational challenges for PSPs to offer instant credit transfers to their PSUs across the Union in a reliable and predictable way. To provide for greater legal certainty, increase the efficiency of PSPs' efforts to comply with their obligations stemming from Union sanctions in the context of instant credit transfers in euro, and to prevent unnecessary hindering of such transactions, PSPs should thus verify, at least daily, whether their PSUs are listed persons or entities, and should no longer apply transaction-based screening.

(15) To prevent the initiation of instant credit transfers from payment accounts belonging to listed persons or entities and to immediately freeze funds sent to such accounts, PSPs should carry out verifications of their PSUs as soon as possible following the entry into force of a new restrictive measure adopted in accordance with Article 215 TFEU providing for asset freeze or prohibition of making funds or economic resources

available, thus ensuring that PSPs comply with their obligations stemming from Union sanctions in an effective manner.

(16) Failure of one PSP to carry out timely verifications of its PSUs could result in a failure of the other PSP involved in carrying out the same instant credit transfer transaction to freeze funds of a listed person or entity or not to make funds or economic resources available to such person or entity. PSPs that incur penalties for non-compliance with their obligations stemming from Union sanctions due to the failure of another PSP to carry out timely verifications of its PSUs should be compensated for those penalties by that PSP.

(17) The infringements of this Regulation should be subject to penalties, imposed by the competent authorities of the Member States. Such penalties should be effective, proportionate and dissuasive. To facilitate the mutual trust of PSPs and the relevant competent authorities in the uniform and thorough implementation of a harmonised approach to compliance with PSP obligations stemming from Union sanctions, it is in particular appropriate to harmonise across the Union the minimum levels for penalties for the infringement by PSPs of their obligations to verify whether their PSUs are listed persons or entities.

(18) PSPs need sufficient time to meet the obligations laid down in this Regulation. It is therefore appropriate to introduce those obligations gradually, allowing PSPs a more efficient use of their resources. The obligation to offer the service of sending instant credit transfers should therefore apply later, preceded by the obligation to offer the service of receiving instant credit transfers, since the sending of instant credit transfers tends to be more costly and complex of the two services to implement and therefore necessitates more time. The service of notifying detected discrepancies between the name and payment account identifier of the payee to the payer is only relevant for PSPs offering the service of sending instant credit transfers. The obligation to offer that service should therefore apply from the same time as the obligation to offer the service of sending instant credit transfers. The obligations related to charges and harmonised procedure to ensure compliance with obligations stemming from Union sanctions should apply as soon as PSPs are obliged to offer the 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 Regulation should apply to such PSPs as of a later date than to PSPs located in Member States whose currency is the euro with the same gradual approach for introducing various obligations as for PSPs located in the euro area.

(19) Under Article 3 of Regulation (EU) 2021/1230 of the European Parliament and of the Council[38], 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-

[38] 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).

border non-instant credit transfers in euro, the level of charges that such a PSP would be required to apply under Article 3 of 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.

(20) Regulations (EU) No 260/2012 and (EU) 2021/1230 should therefore be amended accordingly.

(21) Any processing of personal data in the context of providing instant credit transfers, or the service detecting and notifying discrepancies between the name and payment account identifier of a payee, as well as verifying whether PSUs are listed persons or entities should be in line with the Regulation (EU) 2016/679 of the European Parliament and of the Council[39]. Processing of the names and the payment account identifiers of natural persons is proportionate and necessary to prevent fraudulent transactions, detect errors and ensure the compliance with restrictive measures adopted in accordance with Article 215 TFEU providing for asset freeze or prohibition of making funds or economic resources available.

(22) 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 Member States because they cannot impose obligations on PSPs located in other Member States, but can rather, by reason of scale, 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 its objectives.

(23) 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 Council[40] and delivered an opinion on [XX XX 2022][41],

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39 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.

40 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 (Text with EEA relevance.), (OJ L 295, 21.11.2018, p. 39–98).

41 OJ C […], […], p. […].

HAVE ADOPTED THIS REGULATION:

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 (1a) to (1d) are inserted:

'(1a) 'instant credit transfer' means a credit transfer which meets all of the following conditions:

(a) the time of receipt of the payment order for such credit transfer is the moment when the payer instructs his or her PSP to execute that credit transfer, regardless of the day or hour;

(b) the payment order for such credit transfer is immediately processed by the payer's PSP, regardless of the day or hour;

(c) the payee's payment account is credited with the amount transferred within 10 seconds after the time of receipt of the payment order;

(d) 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 with the amount transferred;

(1b) 'PSU interface' means any method, device or procedure through which the payer can place a paper-based or electronic payment order to its PSP for a credit transfer, including online banking, mobile banking application, automated teller machine, or in any other way on the premises of the PSP;

(1c) 'payment account identifier' means a unique identifier as defined in Article 4, point (33), of Directive (EU) 2015/2366 of the European Parliament and of the Council[*1];

(1d) 'listed persons or entities' means natural or legal persons, bodies or entities that are subject to an asset freeze or a prohibition to make funds or economic resources available to it, or for its benefit, either directly or indirectly, pursuant to restrictive measures adopted in accordance with Article 215 TFEU;

[*1] 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 (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 5a to 5d 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 their PSUs a payment service of sending and receiving instant credit transfers.

However, this paragraph shall not apply to electronic money institutions as defined in Article 2, point (1), of Directive 2009/110/EC and payment institutions as defined in Article 4, point (4), of Directive (EU) 2015/2366.

2. When carrying out instant credit transfers, PSPs shall, in addition to the requirements set out in Article 5, comply with the following requirements:

(a) they shall ensure that payers are able to place a payment order for an instant credit transfer through the same PSU interfaces as the ones through which those payers can place a payment order for other credit transfers;

(b) after receiving a payment order for an instant credit transfer, they shall immediately verify whether all the necessary conditions for processing the payment are met and whether the necessary funds are available, reserve the amount on the account of the payer and instantly send the payment transaction to the payee's PSP;

(c) they shall ensure that all payment accounts they maintain are reachable for instant credit transfers 24 hours a day and on any calendar day;

(d) after having received an instant credit transfer, they shall immediately make the amount of that transaction available on the payee's payment account.

3. When providing instant credit transfers in euro, PSPs shall offer to their PSUs the possibility to submit multiple payment orders as a package if they offer that possibility to their PSUs for other types of credit transfers.

4. PSPs as referred to in paragraph 1 that are located in a Member State whose currency is the euro shall offer PSUs the service of receiving instant credit transfers in euro by … [PO please insert the date = 6 months after the date of entry into force of this Regulation], and the service of sending instant credit transfers in euro by … [PO please insert the date = 12 months after the date of entry into force of this Regulation].

PSPs as referred to in paragraph 1 located in a Member State whose currency is not the euro shall offer PSUs the service of receiving instant credit transfers in euro by …[PO please insert the date = 30 months after the date of entry into force of this Regulation], and the service of sending instant credit transfers in euro by …[PO please insert the date = 36 months after the date of entry into force of this Regulation].

Article 5b

Charges in respect of instant credit transfers

1. Any charges applied by a PSP on payers and payees in respect of sending and receiving instant credit transfer transactions in euro shall not be higher than the charges applied by that PSP in respect of sending and receiving other, corresponding, credit transfer transactions in euro.

2. PSPs located in a Member State whose currency is the euro shall comply with this Article by …[PO please insert the date = 6 months after the date of entry into force of this Regulation].

PSPs located in a Member State whose currency is not the euro shall comply with this Article by …[PO please insert the date = 30 months after the date of entry into force of this Regulation].

Article 5c

Discrepancies between the name and payment account identifier of a payee in case of instant credit transfers

1. With regard to instant credit transfers, a payer's PSP shall verify whether the payment account identifier and the name of the payee provided by the payer match. Where they do not match, that PSP shall notify the payer of any discrepancies detected and the degree of any such discrepancy.

PSPs shall provide that service immediately after the payer provided to its PSP the payment account identifier of the payee and the name of the payee, and before the payer is offered the possibility to authorise the instant credit transfer.

2. PSPs shall ensure that the detection and notification of a discrepancy as referred to in paragraph 1 does not prevent payers from authorising the instant credit transfer concerned.

3. PSPs shall ensure that PSUs have the right to opt out from receiving the service referred to in paragraph 1 and shall inform their PSUs of the means to express such opt-out right.

PSPs shall also ensure that PSUs that opted out from receiving the service referred to in paragraph 1, have the right to opt in to receive that service.

4. PSPs shall inform their PSUs that authorising a transaction despite a detected and notified discrepancy or opting out from receiving the service referred to in paragraph 1 may lead to transferring the funds to a payment account not held by the payee indicated by the payer. PSPs shall provide that information at the same time as the notification of discrepancies referred to in paragraph 1 or when PSU opts out from receiving the service referred to in that paragraph.

5. The service referred to in paragraph 1 shall be provided to the payer regardless of the PSU interface used by the payer to place a payment order for an instant credit transfer.

6. PSPs located in a Member State whose currency is the euro shall comply with this Article by …[PO please insert the date = 12 months after the date of entry into force of this Regulation].

PSPs located in a Member State whose currency is not the euro shall comply with this Article by …[PO please insert the date = 36 months after the date of entry into force of this Regulation].

Article 5d

Screening of PSUs with regard to Union sanctions in case of instant credit transfers

1. PSPs executing instant credit transfers shall verify whether any of their PSUs are listed persons or entities.

PSPs shall carry out such verifications immediately after the entry into force of any new or amended restrictive measures adopted in accordance with Article 215 TFEU providing for asset freeze or prohibition of making funds or economic resources available , 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 such transfer shall not verify whether the payer or the payee whose payment accounts are used for the execution of that instant credit transfer are listed persons or entities in addition to carrying out verifications under paragraph 1.

3. A PSP that has failed to carry out the verifications referred to in paragraph 1 and executes an instant credit transfer causing another PSP involved in the execution of that instant credit transaction to fail to freeze assets of listed persons or entities, or to make funds or economic resources available to such persons or entities, shall compensate the financial damage caused to the other PSP resulting from penalties imposed on that other PSP under restrictive measures adopted in accordance with Article 215 TFEU providing for asset freeze or prohibition of making funds or economic resources available .

4. PSPs shall comply with this Article by …[PO please insert the date = 6 months after the date of entry into force of this Regulation].'

(3) in Article 11, the following paragraphs 1a and 1b are inserted:

'1a. By way of derogation from paragraph 1, Member States shall by … [PO please insert the date = 4 months after the date of entry into force of this 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 notify the Commission of those rules and measures by … [PO please insert the = 8 months after the date of entry into force] 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, administrative fines of up to not less than 10 % of the total annual net turnover of that legal person in the preceding business year;

(b) in the case of a natural person, administrative fines of up to not less than EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on …[PO please insert the date of entry into force of this Regulation].

For the purposes of point (a), 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[*2] or 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.

[*2] 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).'.

Article 2

Amendment to Regulation (EU) 2021/1230

In Article 3 of Regulation (EU) 2021/1230, the following paragraph 5 is added:

'5. Paragraph 1 of this Article shall not apply where Article 5b(1) of Regulation (EU) No 260/2012 would require a payment service provider located in a Member State whose currency is not the euro, 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 transfer, if paragraph 1 of this Article were to be applied.

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

Article 3

Entry into force

This Regulation shall enter into force 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 Brussels,

For the European Parliament	*For the Council*
The President	*The President*