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From: General Secretariat of the Council

To: Delegations

Subject: Proposal for a 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

- Letter to the Chair of the European Parliament Committee on Economic and Monetary Affairs

Following the Permanent Representatives' Committee meeting of 29 November 2023, which endorsed the final compromise text with a view to agreement, delegations are informed that the Presidency has sent the attached letter, together with its Annexes, to the Chair of the European Parliament Committee on Economic and Monetary Affairs.



Ms Irene TINAGLI
Chair of the Committee on Economic and Monetary Affairs
European Parliament
Rue Wiertz 60
B-1047 Brussels

Brussels, 29. 11. 2023

Subject: Proposal for a 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) 2015/2366as regards instant credit transfers in euro


Dear Ms TINAGLI,

Following the informal negotiations between the representatives of the three institutions, a draft overall compromise package was agreed today by the Permanent Representatives' Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise text contained in the Annex to this letter (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council, I also wish to thank you for your close cooperation which should enable us to reach agreement on this file at first reading.

Yours sincerely,


Marcos ALONSO ALONSO
Chair of the
Permanent Representatives Committee

Copy: Ms Mairéad McGUINNESS, Commissioner
Mr Michiel HOOGEVEEN, European Parliament, Rapporteur

Proposal for a

REGULATION (EU) No. .../...
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 procedure,

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

Whereas:

- (1) Regulation (EU) No 260/2012 of the European Parliament and of the Council³ 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 of instant credit transfers in euro ***at Union level***. 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 gains for ***payment service*** users (PSUs) and ***PSPs***, reduced market concentration, increased competition and choice of electronic payments, in particular for cross-border payments at ***POI***.

³ 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 provide for specific requirements for 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 payments more accessible, and to widen their benefits to PSUs, Member States whose currency is not the euro should be able to apply this 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 PSUs' protection from sending funds to an unintended payee or specifying the process of compliance with obligations flowing from Union *restrictive measures*. ***The differences in 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. Uniform rules on instant credit transfers in euro, including cross-border 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 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 *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 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 *internal market, undermines the Union's open strategic autonomy and limits potential benefits for PSUs*. Therefore, PSPs *providing the service of sending and receiving credit transfers in euro to their PSUs* should be required to offer the service of sending and receiving instant credit transfers in euro *to all their PSUs and with respect to all payment accounts such PSPs maintain for those PSUs, including payment accounts with basic features as referred to in Article 16 of Directive 2014/92/EU*.
- (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 during which the ECB and national central banks receive and send 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 at all times with Article 123 TFEU.*
- (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 these PSPs ask for the permission of their competent authorities to provide the 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 transaction limit. Competent authorities should be able to grant that permission based on their assessment of a PSP's access to liquidity in euro.*

- (11) There is a variety of *payment initiation channels in the Member States* 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, *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 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 *credit transfers* by default.
- (12) *Since some payment initiation channels, such as bank retail locations, are not available all the time, the time of receipt of a paper-based payment order for an instant credit transfer should be the moment when the payment order is inserted 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 a package of multiple payment orders for instant credit transfers 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 submitted in a package of multiple payment orders should be the moment when the ensuing individual payment 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 packages of multiple payment orders for instant credit transfers into individual instant payment 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 should be the moment when the PSP, immediately upon receiving that payment order, converts into euro the amount of the transaction 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 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 Council [1]. *Consequently, payment institutions and electronic money institutions are effectively prevented from participating in systems designated by Member States pursuant to that Directive. That inability to participate in such payment systems can impede payment institutions and electronic money institutions from providing euro instant credit transfers efficiently and competitively. It is therefore justified to amend Directive 98/26/EC in order to include payment institutions and electronic money institutions under the definition of the term 'institution' in that Directive, but only for the purpose of defining participants of a payment system.*

- (16) *Payment institutions and electronic money institutions should meet the requirements and respect the rules of payment systems 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 euro instant credit transfers, and of restoring as soon as possible the level playing field between banks and those institutions, it is necessary to grant Member States a short deadline to transpose and apply the amendment to Directive 98/26/EC, and appropriate deadlines for the provisions of this Regulation to apply to payment institutions and electronic money institutions. In order to ensure a proper level playing field for participants in systems designated under 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, certain provisions of Directive (EU) 2015/2366. 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 co-legislators when they consider [COM proposals PSD3/PSR]*

- (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 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. ***It would be undesirable that PSPs circumvent the aim of this 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) ***In order to allow PSUs greater discretion when making use of instant credit transfers, PSUs should be able to set individual limits, either on a daily or per transaction basis, on amounts that they can send by means of instant credit transfers. PSUs should be able to modify or lift any such limits at any time and without difficulty, and the effect of such changes should be immediate.***

- (19) *Ubiquitous instant credit transfers in euro offer opportunities for PSPs to develop new payment solutions, such as mobile payment applications, facilitating the use of euro instant credit transfers for payments at POI. Such payment solutions may 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 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 and services attached. Where it is possible for a PSU to submit payment orders for non-instant credit transfers without any additional features or services, that 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 and 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 variant based on euro instant credit transfer is not higher than the charge for the variant based on non-instant euro credit transfers.*

- (20) Security of credit transfers in euro, *both regular and instant*, is fundamental for increasing PSUs' confidence in such services and ensuring their use. Under Directive (EU) 2015/2366 of the European Parliament and of the Council⁴, 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 being sent to an unintended payee as a result of fraud or error, given that it may not be possible for the payer to recover the funds before they are credited to the payee's account. PSPs should have a certain degree of flexibility in defining the measures that are most suitable to deal with different payment initiation options. Those 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.* To avoid undue *friction* or delays in the processing of the transaction, the payer's PSP should *perform this service immediately after the payer provides relevant information about the payee and before the payer is offered the possibility to authorise the credit transfer.*

⁴ 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).

- (21) Some attributes of the name of the payee to whose account the payer wishes to make an instant 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 may result in a situation where the name of the payee and the payment account identifier supplied by the payer do not match exactly but almost match. In such cases,*** to avoid undue ***friction*** in the processing of instant credit transfers in euro and facilitate the payer's decision on 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.***

- (22) Authorising a payment transaction 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 the transaction to an unintended payee, as laid down in Article 88 of Directive (EU) 2015/2366, *insofar as they correctly perform the service ensuring verification of the payee to whom the payer intends to send a credit transfer. However, where PSPs, including payment initiation service providers, fail to correctly perform such service and where that failure results in a defectively executed payment transaction, such PSPs should without delay refund the payer the transferred amount and, where applicable, restore the debited payment account to the state in which it would have been had the transaction not taken place. PSPs should inform PSUs about the implications for PSP liability and PSU refunds rights of their choice to ignore a notification provided in accordance with the provisions of this Regulation.*

- (23) *The service ensuring verification of the payee 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. Those rules and standards could be developed by organisations composed of or representing PSPs.*
- (24) *PSUs that are not consumers submitting bulk payment orders should be able to opt out from using the verification service at any time during their contractual relationship with the PSP. After opting out, those PSUs should be able to opt in to again avail of the service.*

- (25) It is of critical importance that PSPs effectively comply with their obligations stemming from Union *restrictive measures* 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 *restrictive measures* 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 *listed* 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 *restrictive measures* 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 *in this specific context*. ***The obligation for PSPs to periodically verify their PSUs is related only to listed persons or entities, leaving 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 outside of the scope of this obligation.***

- (26) 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 ***immediately*** following the entry into force of a new restrictive measure adopted in accordance with Article 215 TFEU providing for asset freeze or prohibition ***to make*** funds or economic resources available. ***This obligation should apply to all PSPs sending or receiving instant credit transfers in euro***, thus ensuring that ***all*** PSPs comply with their obligations stemming from Union ***restrictive measures*** in an effective manner. ***The obligation to periodically verify whether their PSUs are listed persons or entities does not interfere with actions that PSPs should be able to take to comply with Union law related to the prevention of money laundering and terrorist financing, in particular risk-based requirements of such Union law, with restrictive measures, other than asset freeze or a prohibition to make funds or economic resources available, that are adopted in accordance with Article 215 TFEU, or with restrictive measures that are not adopted in accordance with Article 215 TFEU.***

- (27) The infringements of this Regulation should be subject to penalties, imposed by the competent ***or judicial*** 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 ***restrictive measures***, it is in particular appropriate to harmonise ***a mutual standard*** across the Union ***for the upper level of*** penalties for the infringement by PSPs of their obligations to verify whether their PSUs are listed persons or entities. ***It should be possible to impose penalties not only on PSPs, but also on natural persons who are members of senior management or management body of a PSP.***

- (28) 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 *restrictive measures* 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. ***If the euro is introduced as the currency of any such Member State before the expiry of those dates, the PSPs in that Member State should comply with this Regulation within one year after joining the euro area, but not earlier than the respective dates specified for PSPs in Member States whose currency is the euro and not later than the respective dates specified for PSPs in Member States whose currency is not 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 from the date of the Commission's legislative proposal, in order to monitor any effects of this Regulation on the pricing of accounts, credit transfers and instant credit transfers. The Commission should also evaluate the scope and effectiveness of screening PSUs to verify whether a relevant PSU is a listed person or entity in preventing unnecessary hindering of instant credit transfers. The Commission should also submit to the European Parliament and the Council a report assessing remaining obstacles to effecting instant credit transfers in various circumstances, including payments at 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) or Bluetooth.*

- (30) Under Article 3 of Regulation (EU) 2021/1230 of the European Parliament and of the Council⁵, 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 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.

⁵ 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 instant credit transfers, or the service *ensuring verification of the identity of the* 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 Council⁶. 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 *to make* funds or economic resources available.

⁶ *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).*

- (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 Member States because they cannot impose obligations on PSPs located in other Member States, but can rather, by reason of scale *and effects of 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 its 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 Council⁷ and delivered an opinion on **19 12 2022**⁸,

HAVE ADOPTED THIS REGULATION:

⁷ ***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).***

⁸ ***OJ C ..., ..., p.***

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 the payer can place a **■** payment order *with* 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) *'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;

(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;

(1e) ‘legal entity identifier’ or ‘LEI’ means a unique alphanumeric reference code based on the ISO 17442 standard assigned to a legal entity;’;

(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 of the European Parliament and of the Council;’;

(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 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 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 the PSP neither sends nor receives non-instant credit transfer transactions in euro with respect to such accounts. That limit shall be set by competent authorities and shall not be lower than EUR 25 000. Competent authorities may grant the prior permission at the request of the PSP for a period of one year. At the request of the PSP they may also extend that permission for further periods of one year following a re-assessment by the competent authorities of the PSP's access to liquidity in euro. Competent authorities shall inform the Commission on an annual basis of 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 receiving and sending 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 calendar day or hour.*

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

By way of derogation from the first and second subparagraph of this paragraph, the time of receipt shall be:

- (i) for a non-electronic payment order, the moment when the payer's PSP has transposed the payment order information into its internal system, which shall occur as soon as possible after the order has been placed by the payer with its PSP.*

- (ii) for an individual payment order belonging to a package as referred to in paragraph 7, 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 its PSP and complete that conversion as soon as possible;*
- (iii) for a payment order from payment accounts denominated in currencies other than euro, the moment when the amount of the transaction has been converted into euro. That currency conversion shall take place immediately after the payment order has been placed by the payer with its PSP.*

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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) they 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 can 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 the necessary conditions for processing the payment are met and whether the necessary funds are available, reserve **or debit** the amount **from** the account of the payer and **immediately** send the payment transaction to the payee's PSP;

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- (c) *notwithstanding Articles 83 and 87 (2) of Directive (EU) 2015/2366, the payee's PSP shall, within 10 seconds from the time of receipt of the payment order 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 transaction to the payer's PSP;*

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- (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 transferred; and*

(e) immediately upon receiving the confirmation referred to in point (c), or where no such confirmation is received by the payer's PSP within 10 seconds from the time of receipt, the payer's PSP shall, free of charge, inform the payer, as well as, where applicable, the payment initiation service provider, whether or not the amount transferred 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 account of the payee within 10 seconds from the time of receipt, the payer's PSP shall restore the payment account of the payer to the state in which it would have been had the transaction not taken place.*

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6. *Upon the request of the PSU, a PSP shall offer a PSU the possibility of determining a maximum amount that is able to be transferred 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 initiation of a payment order for an instant credit transfer. Where a PSU's payment order for an instant credit transfer exceeds the maximum amount, the payer's PSP shall not execute the instant credit transfer, shall notify the PSU thereof and shall inform the PSU how to modify the maximum amount.*
7. When providing instant credit transfers ■ , 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.

PSPs may not impose limits on the number of payment orders that can be submitted in a package for instant credit payment which are lower than the limits they impose in respect of packages of other types of 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 service of receiving instant credit transfers in euro by ... [PO please insert the date = **9** 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 = **18** 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 = **33** 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 = **39 months after the date of entry into force of this Regulation**].

By way of derogation from the second subparagraph, until [50 months after the date of entry into force of this Regulation] such PSPs shall not be obliged to offer PSUs the service of sending instant credit transfers from payment accounts denominated in the national currency, during the time when those PSPs neither send nor receive non-instant credit transfer transactions 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 service of sending and receiving instant credit transfers in euro by ... [36 months after 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 service of receiving instant credit transfers in euro by ... [36 months after the date of entry into force of this amending Regulation] and the service of sending instant credit transfers in euro by ... [39 months after the date of entry into force of this amending Regulation].

Article 5b

Charges in respect of **■** credit transfers *and verification of a 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, corresponding, credit *transfers*.

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2. *The services referred to in Article 5c shall be provided to PSUs free of charge.*
3. PSPs located in a Member State whose currency is the euro shall comply with this Article by ... [PO please insert the date = **9** 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 = 33 months after the date of entry into force of this Regulation]. ■

Article 5c

Verification of a payee in *the* case of ■ credit transfers

1. *A payer's PSP shall offer to the payer a service ensuring verification of the payee to whom the payer intends to send a credit transfer.*

The payer's PSP shall perform that service immediately after the payer provides relevant information about the payee, and before the payer is offered the possibility to authorise that credit transfer.

The payer's PSP shall offer that service regardless of the payment initiation channel used by the payer to place a payment order for the credit transfer.

That service shall be provided in accordance with the following:

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- (a) *Where the payee's payment account identifier specified in point (1)(a) of the Annex and name have been inserted in the payment order by the payer, the payer's PSP shall provide a service for matching the payment account identifier 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 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 may 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 almost match, the payer's PSP shall indicate to the payer the name of the payee associated with the payment account identifier provided.*

- (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 payee's payment account identifier specified in point (1)(a) of the Annex 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, or an LEI, and where those same data elements are available in the system of the payee's PSP, the payee's PSP, upon the request of the payer's PSP, shall verify whether the payment account identifier and a data element 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.*

- (c) *Where a payment account identified through a payment account identifier 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 referred to 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 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 identity of the payee before authorising the credit transfer.*
- 2. Where the payment account identifier or the name of the payee is provided by a payment initiation service provider as defined in Article 4, point (18), of Directive (EU) 2015/2366, 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.*

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4. *In the case of paper-based payment orders, the payer's PSP shall perform the service described in paragraph 1 at the time of receipt of the payment order, unless the payer is not present at the time of receipt.*

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5. PSPs shall ensure that the *performance of the services described in paragraphs 1 and 2* does not prevent payers from authorising the **■** credit transfer concerned.

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6. PSPs shall *provide to PSUs that are not consumers the means* to opt out from receiving the service *described* in paragraph 1 *when submitting multiple payment orders as a package*.

PSPs shall also ensure that PSUs that opted out from receiving the service *described* in paragraph 1, 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, points (a), (b) or (c), that PSP shall at the same time inform the payer that authorising the credit transfer may lead to transferring the funds to a payment account not held by the payee indicated by the payer.*

A PSP shall provide that information when a PSU, which is not a consumer, opts out from receiving the service described in paragraph 1 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 points (a), (b) and (c) of paragraph 1.

8. *A PSP shall not be held liable for the execution of a credit transfer in euro to an unintended payee in accordance with 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, or where the payment initiation service provider fails to comply with paragraph 2, and where that failure results in a defectively executed payment transaction, the payer's PSP shall without delay refund the payer the transferred amount 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 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 the payment initiation service provider as relevant, 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 ... [PO please insert the date = **18** 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 = **39** months after the date of entry into force of this Regulation]. ■

Article 5d

Screening of PSUs *to verify whether a PSU is a listed person or entity* in case of instant credit transfers

1. PSPs *offering* 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 *to make* 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.

The first subparagraph of this paragraph is without prejudice to actions taken by PSPs in order to comply with restrictive measures adopted in accordance with Article 215 TFEU other than asset freeze or than a prohibition to make funds or economic resources available to listed persons or entities, in accordance with restrictive measures that are not adopted in accordance with Article 215 TFEU, or in accordance with Union law related to the prevention of money laundering and terrorist financing.

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3. PSPs shall comply with this Article by ... [PO please insert the date = 9 months after the date of entry into force of this Regulation].

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(3) *In Article 16, the following paragraph is added:*

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If the euro is introduced as the currency of any Member State before ... [PO please insert the date = 36 months after the date of entry into force of this amending Regulation], the PSPs in that Member State shall comply with Articles 5a to 5c within one year of the date on which the Member State concerned joined the euro area, but not earlier than the respective dates specified for PSPs in the Member States whose currency is the euro and not later than the respective dates specified for PSPs in Member States whose currency is not the euro.

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

‘1a. By way of derogation from paragraph 1, Member States shall by ... [PO please insert the date = **12** 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 = **12** 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, *maximum* administrative fines of *at least* 10 % of the total annual net turnover of that 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 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) *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 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.

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- 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 or that 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 those penalties are effective and have an equivalent effect to the administrative penalties imposed by competent authorities. In any event, the penalties imposed shall be effective, proportionate and dissuasive. Those Member States shall notify the Commission of those penalties by ... [PO please insert the = 12 months after 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).

(5) *the following Article is inserted:*

Article 15a

Review

1. *By ... [PO please insert the date = 54 months after the date of entry into force of this Regulation] the Commission shall present a report to the European Parliament and the Council accompanied, if appropriate, by a 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 national currencies of Member States and in euro since 26 October 2022, including the impact of Article 5b(1) on those charges;*
 - b) *the scope of the provisions of Article 5d and their effectiveness in preventing unnecessary hindering of instant credit transfers;*

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2. *PSPs shall report to their competent authorities on:*

- *the level of charges for credit transfers, instant credit transfers and payment accounts;*
- *the share of rejections, separately for national and cross-border payment transactions, due to the application of restrictive measures of asset freeze or a prohibition to make funds or economic resources available adopted in accordance with Article 215 TFEU;*

PSPs shall submit such reports every 12 months. The first report shall be submitted on ... [PO please insert the date = 12 months after the date of entry into force of this Regulation] and shall include information on the level of charges and on rejections during the period starting on 26 October 2022.

3. *By ... [PO please insert the date = 18 months after the date of entry into force of this Regulation], and annually thereafter, competent authorities shall provide the Commission and EBA with the information reported to them by PSPs under paragraph 2 of this Article, and 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.*
4. *The EBA shall develop draft implementing technical standards to specify uniform reporting templates, instructions and methodology on how to use those templates for the reporting referred to in paragraph 2.*

The EBA shall submit those implementing technical standards to the Commission by ... [PO please insert the date = 2 months after the date of entry into force of this 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.

5. *The Commission shall, by ... [36 months after the entry into force of this amending Regulation], submit to the European Parliament and 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.'*

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Article 2
Amendment to Regulation (EU) 2021/1230

In Article 3 of Regulation (EU) 2021/1230, 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***, 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.

* 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).”

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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:

“Member States or competent authorities shall require payment institutions which provide payment services as referred to in points (1) to (6) of Annex I and electronic money institutions as defined in Article 2, paragraph 2 of Directive 2009/110 to safeguard all funds which have been received from 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/e-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 at 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/e-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/e-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 is unable to meet its financial obligations.”;

(2) Article 35(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.

3. *Member States shall ensure that where a participant in a system designated under Directive 98/26/EC 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.*

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

(3) *The following Article 35a is inserted:*

'Article 35a

1. *By way of safeguard for the stability and integrity of payment systems, payment institutions and e-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 applicant's 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, and a description of the applicant's arrangements for the use of information and communication technology services as referred to in Articles and 7 of Regulation (EU) 2022/2554;*

(c) a winding-up plan in case of failure.

For the purposes of point (a) of the first subparagraph:

- *where the applicant safeguards the payment service users' funds through depositing funds in a separate account in a credit institution or through an investment in secure, liquid, low risk assets, the description of the safeguarding measures shall contain, as applicable:*
 - (i) a description of the investment policy to ensure the assets chosen are liquid, secure and low risk, if applicable;*
 - (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, 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 of compliance with Article 10 of this Directive.*

- *where the applicant safeguards the funds of the payment service user through an insurance policy or comparable guarantee from an insurance company or a credit institution, the description of the safeguarding measures 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 applicant;*
 - (ii) details of the reconciliation process in place to ensure that the insurance policy or comparable guarantee is sufficient to meet the applicant's safeguarding obligations at all times;*
 - (iii) duration and renewal of the coverage;*
 - (iv) a copy of the insurance agreement or comparable guarantee, or drafts thereof.*

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

- (i) a mapping of the risks identified by the applicant, including the type of risks and the procedures the applicant has in place or will put in place to assess and prevent such risks;*
- (ii) the different procedures to carry out periodical and permanent controls including the frequency and the human resources allocated;*
- (iii) the accounting procedures by which the applicant records and reports its financial information;*

- (iv) the identity of the person(s) responsible for the internal control functions, including for periodic, permanent and compliance control, as well as an up-to-date curriculum vitae;*
- (v) the identity of any auditor that is not a statutory auditor pursuant to Directive 2006/43/EC;*
- (vi) the composition of the management body and, if applicable, of any other oversight body or committee;*
- (vii) a description of the way outsourced functions are monitored and controlled so as to avoid an impairment in the quality of the payment institution's internal controls;*

(viii) a description of the way any agents and branches are monitored and controlled within the framework of the applicant's internal controls;

(ix) where the applicant is the subsidiary of a regulated entity in another EU Member State, a description of the group governance.

For the purposes of point (c) of the first subparagraph, the winding-up plan shall be adapted to the envisaged size and business model of the applicant and shall include a description of the mitigation measures to be adopted by the applicant, in case 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. The 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 e-money institutions concerned comply with paragraph 1.'*

Article 4
Amendment to Directive 98/26/EC

In Directive 98/26/EC, Article 2:

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

'(b) 'institution' shall mean any of the following entities:

- *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**,

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- *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,*
- *any undertaking whose head office is outside the Union and whose functions correspond to those of the Union credit institutions or investment firms as 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 natural or legal persons benefitting from an exemption pursuant to Article 32 or 33 of that Directive,*
- *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 legal persons benefitting from an exemption pursuant to 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 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 central counterparty, 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 central counterparty, 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

Member States shall adopt, publish and apply, by ... [12 months after the date of entry into force of this amending Regulation as regards instant credit transfers in euro], the laws, regulations and administrative provisions necessary to comply with Articles 4 and 3. They shall immediately communicate the text of those measures to inform the Commission thereof.

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 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