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## COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	23 June 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) No .../.. of 23.6.2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for the cooperation and exchange of information between competent authorities relating to the exercise of the right of establishment and the freedom to provide services of payment institutions

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Delegations will find attached document C(2017) 4250 final.

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Encl.: C(2017) 4250 final



Brussels, 23.6.2017  
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**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of 23.6.2017**

**supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for the cooperation and exchange of information between competent authorities relating to the exercise of the right of establishment and the freedom to provide services of payment institutions**

(Text with EEA relevance)

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE DELEGATED ACT

Article 28(5) of Directive (EU) No 2015/2366 empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation No (EU) 1093/2010, delegated acts specifying the framework for cooperation and exchange of information between competent authorities for passport notifications.

In accordance with Article 10(1) of Regulation No (EU) 1093/2010 establishing the EBA, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

### 2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Article 28(5) of Directive (EU) No 2015/2366. A consultation paper was published on the EBA internet site on 11 December 2015, and the consultation closed on 11 March 2016. Moreover, the EBA invited the EBA's Banking Stakeholder Group set up in accordance with Article 37 of Regulation No (EU) 1093/2010 to provide advice on them. Together with the draft technical standards, the EBA has submitted an explanation on how the outcome of these consultations has been taken into account in the development of the final draft technical standards submitted to the Commission.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has submitted its Impact Assessment, including its analysis of the costs and benefits, related to the draft technical standards submitted to the Commission. This analysis is available at <https://www.eba.europa.eu/regulation-and-policy/passporting-and-supervision-of-branches/regulatory-technical-standards-on-passporting-under-psd2>, pages 43-46 of the Final Draft Regulatory Technical Standards package.

### 3. LEGAL ELEMENTS OF THE DELEGATED ACT

These Regulatory Technical Standards (RTS) specify the framework for cooperation and exchange of information between competent authorities for passporting under Article 28(5) of the revised Payment Services Directive (PSD2).

They stipulate in particular the information that national supervisors will have to exchange with one another and, in doing so, distinguish the notifications related to

branch establishments, engagement of agents and/or distributors, and free provision of services.

Finally, these RTS define specific features that the notifications shall have in terms of format, transmission channel and language.

**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of 23.6.2017**

**supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for the cooperation and exchange of information between competent authorities relating to the exercise of the right of establishment and the freedom to provide services of payment institutions**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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<sup>1</sup>, and in particular Article 28(5) thereof,

Whereas:

- (1) In order to enhance cooperation between competent authorities and ensure a consistent and efficient notification process for payment institutions intending to exercise the right of establishment and the freedom to provide services on a cross-border basis, it is necessary to specify the framework for cooperation, and for the exchange of information, between competent authorities of the home and of the host Member States, specifying the method, means and details of cooperation and, in particular, the scope and treatment of information to be submitted, including common terminology and standard notification templates.
- (2) For the purposes of having a common terminology and standard notification templates, it is necessary to define some technical terms in order to make a clear distinction between branch applications, services applications and agent applications with regard to payment institutions wishing to carry out their activities in another Member State.
- (3) The establishment of standard procedures covering the language and means of communication of passport applications between competent authorities of home and host Member States facilitates the exercise of the right of establishment and the freedom to provide services and the efficiency of the performance of the respective tasks and responsibilities of the competent authorities of home and host Member States.

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<sup>1</sup> OJ L 337, 23.12.2015, p. 35.

- (4) Competent authorities in home Member States should be required to assess the accuracy and completeness of the information submitted by payment institutions intending to provide services in another Member State to ensure the quality of the passport notifications. To this end, competent authorities in home Member States should inform payment institutions of the particular aspects in which passport applications are deemed to be incomplete or incorrect to facilitate the process of identification, communication and submission of the missing or incorrect elements. Further, the assessment of completeness and accuracy should ensure an efficient notification process by clearly determining the one-month period and the three-month period referred to, respectively, in the first subparagraph of Article 28(2) and in the first subparagraph, of Article 28(3) of Directive (EU) 2015/2366 as having commenced on the date of receipt of a passport application containing information that is assessed as complete and correct by the home competent authorities.
- (5) Where a procedure for settlement of disagreements between competent authorities of different Member States has been initiated, in accordance with Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>2</sup>, competent authorities of the home Member State should inform the payment institution that a decision concerning the passport application is deferred pending resolution under that provision.
- (6) To ensure an efficient and smooth notification process, allowing competent authorities of home and host Member States to perform their respective assessments in accordance with Directive (EU) 2015/2366, the information to be shared between competent authorities in relation to a passport application should be clearly defined for branch passport applications, agent passport applications and services passport applications, respectively. It is also appropriate to provide standard templates for the transmission of such information. Where available, those templates should also include the Legal Entity Identifier for legal entities.
- (7) To facilitate the identification of payment institutions operating cross-border in different Member States, it is appropriate to determine the format of the relevant unique identification number used in each Member State to identify payment institutions, their branches or agents engaged by payment institutions to provide payment services in the host Member State.
- (8) Where a payment institution carrying out its activities in another Member State changes the information communicated in the initial application, competent authorities of the home Member State should transmit only the information which is affected by the changes in accordance with Article 28(4) of Directive (EU) 2015/2366 to the competent authorities of the host Member State.
- (9) In accordance with point (a) of Article 6(1) of Directive 2009/110/EC of the European Parliament and of the Council<sup>3</sup>, electronic money institutions, in addition to issuing

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<sup>2</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

<sup>3</sup> Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

electronic money, are entitled to the provision of payment services. Further, in accordance with Article 3(1) of that Directive, the procedures for passport notification of payment institutions apply *mutatis mutandis* to electronic money institutions. Article 3(4) of Directive 2009/110/EC also establishes that the provisions for passport notifications of payment institutions apply *mutatis mutandis* to electronic money institutions distributing electronic money in another Member State through natural or legal persons which act on their behalf. Article 3(5) of Directive 2009/110/EC provides that electronic money institutions shall not issue electronic money through agents, while they are allowed to provide payment services through agents subject to the conditions laid down in Article 19 of Directive (EU) 2015/2366. Notifications between competent authorities should therefore be facilitated with regard to the information relating to a passport application from an electronic money institution intending to exercise the right of establishment or the freedom to provide services, including by engaging an agent for the provision of payment services or by distributing and redeeming electronic money through distributors which act on their behalf in another Member State, in accordance with the applicable framework of the activities that electronic money institutions are entitled to perform.

- (10) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority (EBA) to the Commission.
- (11) EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010,

HAS ADOPTED THIS REGULATION:

## **Chapter 1**

### **General Provisions**

#### *Article 1* *Scope*

1. This Regulation establishes rules on the cooperation and exchange of information between competent authorities of home and host Member States regarding notifications for the exercise of the right of establishment or the freedom to provide services by payment institutions, in accordance with Article 28 of Directive 2015/2366.
2. This Regulation applies *mutatis mutandis* to notifications between competent authorities of home and host Member States for the exercise of the right of establishment or of the freedom to provide services by electronic money institutions, including where they distribute electronic money by engaging a natural or legal person, in accordance with Article 3(1), (4) and (5) of Directive 2009/110/EC and Article 111 of Directive 2015/2366.
3. The scope and treatment of information exchanged between competent authorities under the framework for cooperation defined in this Regulation does not entail any

consequence on the competence of the home and host authorities as defined under Directive (EU) 2015/2366.

## *Article 2* *Definitions*

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

- (a) ‘passport application’ means a branch passport application, a services passport application or an agent passport application;
- (b) ‘branch passport application’ means an application made in accordance with Article 28(1) of Directive (EU) 2015/2366 by an authorised payment institution wishing to establish a branch in another Member State;
- (c) ‘services passport application’ means an application made in accordance with Article 28(1) of Directive (EU) 2015/2366 by an authorised payment institution seeking to provide services in another Member State;
- (d) ‘agent passport application’ means an application made in accordance with Article 28(1) of Directive (EU) 2015/2366 by an authorised payment institution seeking to provide payment services in another Member State by engaging an agent as referred to in Article 19(5) of that Directive.

## *Article 3* *General requirements*

- 1. Notifications referred to in Article 1(1) shall be transmitted by means of the templates set out in Annexes II, III, V and VI.
- 2. Notifications referred to in Article 1(2) shall be transmitted by means of the templates set out in Annexes II, III, V and VI.
- 3. Notifications referred to in Article 1(2) where electronic money institutions distribute electronic money by engaging a natural or legal person shall be transmitted by means of the templates set out in Annexes IV and VI.
- 4. The templates referred to in paragraphs 1, 2 and 3, and the information contained therein, shall comply with the following requirements:
  - (a) they shall be in writing and in a language accepted by the competent authorities of both the home and the host Member States;
  - (b) they shall be transmitted by electronic means, where those means are accepted by the competent authorities of the host Member State in which the payment institution intends to provide payment services, followed by an electronic confirmation of receipt by those competent authorities, or transmitted by post with acknowledgement of receipt.
- 5. Each competent authority shall make the following information available to the other competent authorities:



- (a) the languages accepted, in accordance with point (a) of paragraph 4;
- (b) the e-mail address to which information and templates are to be transmitted where submitted by electronic means or the address to which information and templates are to be sent where submitted by post.

#### *Article 4*

#### *Assessment of completeness and accuracy*

1. On receipt of a passport application by a payment institution, the competent authorities of the home Member State shall assess the completeness and accuracy of the information provided pursuant to Article 28(1) of Directive (EU) 2015/2366.
2. Where the information provided in the application is assessed to be incomplete or incorrect pursuant to paragraph 1, the competent authority of the home Member State shall inform the payment institution without delay, indicating in which respect the information is considered to be incomplete or incorrect.
3. The time periods referred to in the first subparagraph of Article 28(2) and the first subparagraph of Article 28(3) of Directive (EU) 2015/2366 shall be considered as having commenced on the date of receipt of a complete and accurate passport application.

#### *Article 5*

#### *Settlement of disagreements between competent authorities*

Where a procedure for settlement of disagreements between competent authorities of different Member States has been initiated in accordance with Article 27 of Directive (EU) 2015/2366 in relation to a passport application from a payment institution pursuant to Article 28 of that Directive, the competent authorities of the home Member State shall inform the payment institution of the deferral of a decision on the application pending resolution under Article 19 of Regulation (EU) No 1093/2010.

## **Chapter 2**

### **Branch passport application**

#### *Article 6*

#### *Information to be transmitted*

1. For the purposes of the first subparagraph of Article 28(2) of Directive (EU) 2015/2366, where a branch passport application is submitted by a payment institution, the competent authorities of the home Member State shall communicate the following information to the competent authorities of the host Member State:
  - (a) the date of receipt of a complete and accurate passport application from the payment institution in accordance with Article 4;
  - (b) the Member State in which the payment institution intends to operate;

- (c) the type of the passport application;
  - (d) the name, the address and, where applicable, the authorisation number and the unique identification number of the payment institution in the home Member State in accordance with the formats set out in Annex I;
  - (e) where available, the Legal Entity Identifier of the payment institution;
  - (f) the identity and contact details of a contact person at the payment institution submitting the branch notification;
  - (g) the address of the branch to be established in the host Member State;
  - (h) the identity and contact details of the persons responsible for the management of the branch to be established in the host Member State;
  - (i) the payment services to be provided in the host Member State;
  - (j) the organisational structure of the branch to be established in the host Member State;
  - (k) a business plan, including a forecast budget calculation for the first three financial years, which demonstrates that the branch is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly in the host Member State;
  - (l) a description of the branch's governance arrangements and internal control mechanisms, including administrative procedures and risk management procedures, which demonstrates that these governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate with regard to the payment service business in the host Member State and comply with requirements on money laundering and terrorist financing under Directive (EU) 2015/849 of the European Parliament and of the Council<sup>4</sup>.
2. Where a payment institution has informed the competent authorities in the home Member State of its intention to outsource operational functions of payment services to other entities in the host Member State, the competent authorities of the home Member State shall inform the competent authorities of the host Member State accordingly.

*Article 7*  
*Transmission of the information*

1. The competent authorities of the home Member State shall transmit the information referred to in Article 6 to the competent authorities of the host Member State by

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<sup>4</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

means of the template set out in Annex II, and inform the payment institution that they have transmitted the information.

2. Where there are multiple notifications to communicate, competent authorities may communicate aggregated information by using the fields set out in Annex II.

#### *Article 8*

#### *Communication of changes to the application*

1. Where, in accordance with Article 28(4) of Directive (EU) 2015/2366, a payment institution notifies the competent authorities of the home Member State of any relevant change to a previous application, the competent authorities of the home Member State shall communicate those relevant changes to the competent authorities of the host Member State.
2. For the purposes of paragraph 1, the competent authorities of the home Member State shall transmit the relevant changes to the competent authorities of the host Member State by compiling only those parts of the template set out in Annex II to this Regulation that are affected by the changes.

#### *Article 9*

#### *Information on the start of activities of the branch*

For the purposes of the third subparagraph of Article 28(3) of Directive (EU) 2015/2366, the competent authorities of the home Member State shall communicate the date from which a payment institution commences its activities in a host Member State to the competent authorities of that host Member State without undue delay, by means of the template set out in Annex VI to this Regulation.

## **Chapter 3**

### **Agent passport application**

#### *Article 10*

#### *Information to be transmitted*

1. For the purposes of the first subparagraph of Article 28(2) of Directive (EU) 2015/2366, where an agent passport application is submitted by a payment institution, the competent authorities of the home Member State shall communicate the following information to the competent authorities of the host Member State:
  - (a) the date of receipt of a complete and accurate passport application from the payment institution in accordance with Article 4;
  - (b) the Member State in which the payment institution intends to operate by engaging an agent;
  - (c) the type of the passport application;

- (d) the nature of the passport application and, where the use of the agent in the host Member State does not give rise to an establishment, a description of the circumstances taken into account by the competent authority in the home Member State in its assessment;
  - (e) the name, the address and, where applicable, the authorisation number and the unique identification number of the payment institution in the home Member State in accordance with the formats set out in Annex I;
  - (f) where available, the Legal Entity Identifier of the payment institution;
  - (g) the identity and contact details of a contact person within the payment institution submitting the agent passport notification;
  - (h) the identity and contact details of the agent engaged by the payment institution;
  - (i) the unique identification number of the agent in the Member State where it is located, where applicable, in accordance with the formats provided in Annex I;
  - (j) where applicable, the identity and contact details of the persons responsible for the central contact point, where this has been appointed in accordance with Article 29(4) of Directive (EU) 2015/2366;
  - (k) the payment services to be provided in the host Member State by engaging the agent;
  - (l) a description of the internal control mechanisms that will be applied by the agent in order to comply with requirements on anti-money laundering and terrorist financing under Directive (EU) 2015/849;
  - (m) the identity and contact details of directors and persons responsible for the management of the agent to be used in the provision of payment services and, for agents other than payment service providers, evidence that they are fit and proper persons.
2. Where a payment institution has informed competent authorities in the home Member State of its intention to outsource operational functions of payment services to other entities in the host Member State, the competent authorities of the home Member State shall inform the competent authorities of the host Member State accordingly.

*Article 11*  
*Transmission of the information*

1. The competent authorities of the home Member State shall transmit the information referred to in Article 10 to the competent authorities of the host Member State by means of the template set out in Annex III, and inform the payment institution that they have transmitted the information.
2. Where there are multiple notifications to communicate, competent authorities may communicate aggregated information by using the fields set out in Annex III.

*Article 12*  
*Communication of changes to the application*

1. Where, in accordance with Article 28(4) of Directive (EU) 2015/2366, a payment institution notifies the competent authorities of the home Member State of any relevant change to a previous agent passport application, the competent authorities of the home Member State shall communicate those relevant changes to the competent authorities of the host Member State.
2. For the purposes of paragraph 1, the competent authorities of the home Member State shall transmit the relevant changes to the competent authorities of the host Member State by compiling only those parts of the template set out in Annex III that are affected by the changes.

*Article 13*  
*Information on the start of the activities of the agent*

For the purposes of the third subparagraph of Article 28(3) of Directive (EU) 2015/2366, the competent authorities of the home Member State shall communicate the date from which a payment institution commences its activities through an agent in a host Member State to the competent authorities of that host Member State without undue delay, by means of the template laid down in Annex VI to this Regulation.

## **Chapter 4**

### **Services passport application**

*Article 14*  
*Information to be transmitted*

1. For the purposes of the first subparagraph of Article 28(2) of Directive (EU) 2015/2366, where a services passport application is submitted by a payment institution, the competent authorities of the home Member State shall communicate the following information to the competent authorities of the host Member State:
  - (a) the date of receipt of a complete and accurate passport application from the payment institution in accordance with Article 4;
  - (b) the Member State in which the payment institution intends to provide services;
  - (c) the type of the passport application;
  - (d) the name, the address and where applicable, the authorisation number and the unique identification number of the payment institution in the home Member State in accordance with the formats set out in Annex I
  - (e) where available, the Legal Entity Identifier of the payment institution;
  - (f) the identity and contact details of a contact person within the payment institution submitting the services passport application;

- (g) the intended date of start of the provision of services in the host Member State;
  - (h) the payment service(s) to be provided in the host Member State.
2. Where a payment institution has informed the competent authorities in the home Member State of its intention to outsource operational functions of payment services to other entities in the host Member State, the competent authorities of the home Member State shall inform the competent authorities of the host Member State accordingly.

*Article 15*  
*Transmission of information*

1. The competent authorities of the home Member State shall transmit the information referred to in Article 14 to the competent authorities of the host Member State by means of the template set out in Annex V, and inform the payment institution that they have transmitted the information.
2. Where there are multiple notifications to communicate, competent authorities may communicate aggregated information by using the fields set out in Annex V.

*Article 16*  
*Communication of changes to a services passport application*

1. Where, in accordance with Article 28(4) of Directive (EU) 2015/2366, a payment institution notifies the competent authorities of the home Member State of any relevant change to a previous services passport application, the competent authorities of the home Member State shall communicate those relevant changes to the competent authorities of the host Member State.
2. For the purposes of paragraph 1, the competent authorities of the home Member State shall transmit the relevant changes to the competent authorities of the host Member State by compiling only those parts of the template set out in Annex V that are affected by the changes.

## **Chapter 5**

### **Final provisions**

*Article 17*  
*Entry into force*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 23.6.2017

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*