



HNB

GUVERNER

Pursuant to Article 98 of the Anti Money Laundering and Terrorist Financing Law (Official Gazette 108/2017) and Article 43, paragraph (2), item (9) of the Act on the Croatian National Bank (Official Gazette 75/2008 and 54/2013), the Governor of the Croatian National Bank hereby issues the

Decision on the measures of payment service providers in accordance with Article 25 of Regulation (EU) 2015/847

I. GENERAL PROVISIONS

Subject matter of the Decision Article 1

This Decision prescribes:

- a) measures that payment service providers (hereinafter referred to as 'PSPs') should take in accordance with Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (text with EEA relevance) (OJ L 141, 5.6.2015) (hereinafter referred to as: 'the Regulation'), particularly with regard to the application of Articles 7, 8, 11 and 12 of the Regulation;
- b) the factors PSPs and intermediary payment service providers (hereinafter referred to as: 'IPSPs') should consider when establishing and implementing procedures to detect and manage transfers of funds that lack required information on the payer and/or the payee to ensure that these procedures are effective; and
- c) activities that PSPs and IPSPs should perform to manage the risk of money laundering (hereinafter referred to as: 'ML') or terrorist financing (hereinafter referred to as: 'TF') where the required information on the payer and/or the payee is missing or incomplete during transfer of funds.

Legal persons subject to the application of the Decision Article 2

Legal persons subject to the application of the provisions of this Decision are PSPs that are subject to the implementation of measures referred to in the Anti Money Laundering and Terrorist Financing Law (Official Gazette 108/2017) (hereinafter referred to as: 'the AMLTF Law').

Definitions

Article 3

The terms used in this Decision shall have the following meaning:

1. 'Competent authorities' means authorities supervising the implementation of the Regulation in accordance with Article 82, paragraph (8) of the AMLTF Law within the scope of their competence.
2. 'Risk' means the impact and likelihood of ML/TF taking place.
3. 'Risk factors' means variables that, either on their own or in combination, may increase or decrease the ML/TF risk posed by an individual business relationship, occasional transaction or fund transfer.
4. 'Risk-based approach' means an approach whereby competent authorities, PSP and IPSP identify, assess and understand the ML/TF risks to which PSP and IPSP are exposed and take anti money laundering and terrorist financing (hereinafter referred to as: 'AMLTF') measures that are proportionate to those risks.
5. 'Member State' means a member state of the European Union or a contracting party to the Agreement on the European Economic Area.
6. 'Missing information' means information on the payer or the payee as required by the Regulation that has not been provided.
7. 'Incomplete information' means information on the payer or the payee as required by the Regulation that has been provided only in part.
8. 'Real-time monitoring' refers to monitoring performed:
 - a) before the funds are credited to the payee's payment account with the PSP of the payee;
 - b) where the payee does not have a payment account with the PSP of the payee, before the funds are made available to the payee by the PSP that receives the funds; or
 - c) before the IPSP transfers the funds on behalf of the PSP of the payer or of another IPSP.
9. 'Ex-post monitoring' refers to monitoring performed:
 - a) after the funds have been credited to the payee's payment account with the PSP of the payee;
 - b) where the payee does not have a payment account with the PSP of the payee, after the funds have been made available to the payee by the PSP of the payee, or transmitted by the IPSP; or
 - c) after the IPSP has transferred the funds on behalf of the PSP of the payer or of another IPSP.

II. DETECTING MISSING INFORMATION AND MANAGING TRANSFERS OF FUNDS WITH MISSING INFORMATION

Establishing obligations under the Regulation

Article 4

- (1) PSP shall establish for each transfer of funds whether it acts as the PSP of the payer, as the PSP of the payee or as an IPSP.
- (2) The procedure referred to in the preceding paragraph will establish what information has to accompany a transfer of funds and the steps the PSP or IPSP has to take to comply with the Regulation.

Direct debits

Article 5

Where a transfer of funds is a direct debit as defined in Article 3, paragraph (9), point (b) of the Regulation, the PSP of the payee shall send required information on the payer and the payee to the PSP of the payer as part of the direct debit collection. The PSP of the payee and the IPSP may then assume that the information requirements in Article 4, paragraphs (2) and (4) and Article 5, paragraphs (1) and (2) of the Regulation are met.

Applying derogations and exemptions under the Regulation

Article 6

PSPs and IPSPs shall comply with the Regulation in respect of all transfers of funds that are at least partly carried out by electronic means and irrespective of the messaging or payment and settlement system used, unless the Regulation sets out exemptions and derogations.

Article 7

- (1) To apply exemptions and derogations set out by the Regulation, PSPs and IPSPs shall have in place systems and controls to ensure the conditions for these exemptions and derogations are met.
- (2) PSPs and IPSPs that are unable to establish that the conditions for exemptions and derogations under the Regulation are met shall comply with the Regulation in respect of all transfers of funds.

Article 8

In order to apply the derogation referred to in Article 5 of the Regulation:

- a) PSPs of the payee shall determine that the PSP of the payer is based in a Member State, and
- b) IPSPs shall determine that the PSP of the payer and the PSP of the payee are based in a Member State.

Article 9

PSPs and IPSPs shall treat countries as third countries if they are part of the Single Euro Payments Area (SEPA) but are not also Member States.

Article 10

When applying the exemption referred to in Article 2, paragraph (3) of the Regulation, PSPs and IPSPs shall ensure that the transfer of funds is accompanied by the number of the card, instrument or digital device and that that number is provided in a way that allows the transfer to be traced back to the payer.

Article 11

Where the card, instrument or device can be used to effect both person-to-person transfers of funds and payments for goods or services, PSPs and IPSPs shall apply the exemption referred to in Article 10 of this Decision only if they are able to determine that the transfer of funds constitutes a payment for goods or services.

Article 12

(1) In order to apply rules in Articles 5, 6 and 7 of the Regulation related to transfers of funds that do not exceed EUR 1000, PSPs and IPSPs shall have in place policies and procedures to detect transfers of funds that appear to be linked.

(2) PSPs and IPSPs shall treat transfers of funds as linked if these fund transfers are being sent:

- a) from the same payment account to the same payment account, or, where the transfer is not made to or from a payment account, from the same payer to the same payee; and
- b) within a reasonable, short time frame, which shall be set by the PSP in a way that is commensurate with the ML/TF risk to which their business is exposed.

- (3) PSPs and IPSPs shall determine whether criteria other than those referred to in paragraph (2) of this Article might also give rise to linked transactions, and if so, reflect these in their policies and procedures.

Proportionality and business-wide risk assessments

Article 13

- (1) PSPs and IPSPs shall establish and maintain effective policies and procedures to comply with the Regulation.
- (2) Policies and procedures referred to in the preceding paragraph of this Article shall be proportionate to the nature, size and complexity of the PSP's or IPSP's business, and commensurate with the ML/TF risk to which the PSP or IPSP is exposed as a result of:
- a) the type of customers it services;
 - b) the nature of the products and services it provides;
 - c) the jurisdictions it services;
 - d) the delivery channels it uses;
 - e) the number of PSPs and IPSPs regularly failing to provide required information on the payer and the payee;
 - f) the complexity of the payment chains in which it intervenes as a result of its business model; and
 - g) the volume and value of transactions it processes.

Article 14

When assessing the ML/TF risk to which they are exposed, PSPs and IPSPs shall refer to the regulation governing the assessment of the ML/TF risk and the manner in which measures of simplified and enhanced customer due diligence are implemented.

Policies and procedures

Article 15

PSPs and IPSPs shall ensure that their policies and procedures referred to in Article 13 of this Decision:

- a) prescribe:
 - i) which criteria they apply to determine whether or not their services and payment instruments fall under the scope of the Regulation;
 - ii) which of their services and payment instruments fall within the scope of the Regulation and which do not;

- iii) which transfers of funds have to be monitored in real time and which transfers of funds can be monitored on an ex-post basis, and why;
 - iv) the obligations of employees where they detect that information required by the Regulation is missing and the processes they should follow; and
 - v) which information relating to transfers of funds has to be recorded, how this information should be recorded, and where.
- b) are approved by the PSP's or IPSP's senior management, as defined in Article 4, point (47) of the AMLTF Law;
 - c) are available to all relevant employees; PSPs and IPSPs shall ensure that all relevant employees, including persons responsible for processing transfers of funds, are appropriately trained in the application of these policies and procedures;
 - d) are reviewed regularly, improved where necessary and kept up to date by applying existing policies and procedures.

Admissible characters or inputs checks

Article 16

PSPs and IPSPs shall monitor, in real time, transfers of funds to detect whether the characters or inputs used to provide information on the payer and the payee comply with the conventions of the messaging or payment and settlement system that was used to process the transfer of funds.

Article 17

PSPs and IPSPs may assume that they meet the requirements set out in Article 7, paragraph (1) and Article 11, paragraph (1) of the Regulation respectively if they can demonstrate to their competent authority that they understand the messaging or payment and settlement system's validation rules and that the conventions of that system ensure that it:

- a) contains all the fields necessary to obtain the information required by the Regulation;
- b) controls and prevents the sending of transfers of funds where inadmissible characters or inputs are detected; and
- c) flags rejected transfers of funds for manual review and processing.

Article 18

Where a PSP's or IPSP's messaging or payment and settlement system does not meet all the criteria referred to in Article 17 of this Decision, the PSP or IPSP shall put in place controls to mitigate the shortcomings.

Missing information checks

Article 19

PSPs and IPSPs shall implement effective procedures to detect if the required information on the payer or the payee is missing.

Article 20

To be effective, the procedures referred to in Article 19 of this Decision shall:

- a) enable the PSP or IPSP to spot meaningless information;
- b) employ a combination of real-time monitoring and ex-post monitoring; and
- c) alert the PSP or IPSP to high-risk indicators.

Meaningless information

Article 21

- (1) PSPs and IPSPs shall treat meaningless information as though it was missing information.
- (2) Meaningless information referred to in paragraph (1) of this Article shall include, for example, strings of random characters or designations that clearly make no sense, even if this information has been provided using characters or inputs in accordance with the conventions of the messaging or payment and settlement system.

Article 22

PSPs or IPSPs shall periodically review their lists of commonly found meaningless terms in order to ensure that they remain relevant; it is not expected of PSPs or IPSPs to manually review transactions to detect meaningless information.

Real-time and ex-post monitoring

Article 23

- (1) PSPs and IPSPs shall refer to factors referred to in Articles 13 and 14 of this Decision to ensure that their approach to monitoring, including the level and frequency of ex-post and real-time monitoring, is commensurate with the ML/TF risk to which they are exposed.
- (2) As part of this, PSPs and IPSPs shall determine which high-risk factors, or combination of high-risk factors, shall always trigger real-time monitoring, and which will trigger a targeted ex-post review. In cases of specific concern, transfers of funds shall always be monitored in real time.

Article 24

In addition to real-time and targeted ex-post monitoring referred to in Article 23 of this Decision, PSPs and IPSPs shall regularly perform ex-post reviews on a random sample taken from all processed transfers of funds.

High-risk indicators

Article 25

- (1) PSPs' and IPSPs' systems shall be configured in a way that triggers alerts should a high-risk indicator be detected.
- (2) High-risk indicators may include, but are not limited to:
 - a) transfers of funds that exceed a specific value threshold. When deciding on the threshold, PSPs and IPSPs shall at least consider the average value of transactions they routinely process and what constitutes an unusually large transaction, taking into account their particular business model;
 - b) transfers of funds where the PSP of the payer or the PSP of the payee is based in a country associated with high ML/TF risk, including, but not limited to, countries specified in the delegated act referred to in article 49, paragraph (4) of the AMLTF Law, identified as high risk by the European Commission. When identifying countries associated with high ML/TF risk, PSPs and IPSPs should have regard to the regulation governing the ML/TF risk assessment procedure and the manner in which the simplified and enhanced customer due diligence measures are implemented;
 - c) a negative AMLTF compliance record of the IPSP or the PSP of the payer, whoever is the prior PSP in the payment chain;

- d) transfers of funds from a PSP or IPSP identified as repeatedly failing to provide required information on the payer without good reason or from a PSP or IPSP that has previously been known to fail to provide required information on the payer or the payee on a number of occasions without good reason, even if it did not repeatedly fail to do so;
- e) transfers of funds where the name of the payer or the payee is missing.

Managing transfers of funds with missing information or inadmissible characters or inputs

Article 26

PSPs and IPSPs shall put in place effective risk-based procedures to determine whether to execute, reject or suspend a transfer of funds where real-time monitoring reveals that the required information on the payer or the payee is missing or provided using inadmissible characters or inputs.

Article 27

- (1) In order to determine whether to reject, suspend or execute a transfer of funds in compliance with Articles 8 and 12 of the Regulation, PSPs and IPSPs shall consider the ML/TF risk associated with that transfer of funds before deciding on the appropriate course of action.
- (2) PSPs and IPSPs should consider in particular whether or not:
 - a) the type of information missing gives rise to ML/TF concerns; and
 - b) one or more high-risk indicators have been identified that may suggest that the transaction presents a high ML/TF risk or gives rise to suspicion of ML.
- (3) Where PSPs or IPSPs have taken a decision to monitor transfers of funds ex-post in accordance with Article 23 of this Decision, they shall comply with the provisions of Articles 35 through 38 of this Decision.

The PSP or IPSP rejects the transfer

Article 28

Where a PSP or an IPSP decides to reject a transfer of funds, it does not have to ask for the missing information but should share the reason for the rejection with the prior PSP in the payment chain.

The PSP or IPSP suspends the transfer

Article 29

Where a PSP or an IPSP decides to suspend the transfer of funds, it should notify the prior PSP in the payment chain that the transfer of funds has been suspended and ask the prior PSP in the payment chain to supply the information on the payer or the payee that is missing, or to provide that information using admissible characters or inputs.

Article 30

- (1) When asking for missing information, the PSP or IPSP shall set the prior PSP in the payment chain a reasonable deadline by which the information should be provided.
- (2) The reasonable deadline referred to in paragraph (1) of this Article shall not exceed three working days for transfers of funds taking place between Member States, and five working days for transfers of funds received from third countries. Longer deadlines may be necessary where payment chains are more complex.

Article 31

- (1) PSPs or IPSPs should consider sending a reminder to the prior PSP in the payment chain should the requested information not be forthcoming.
- (2) As part of this, a PSP or IPSP may decide to advise the prior PSP in the payment chain that, if the required information is not received before an additional deadline, the prior PSP in the payment chain may be subject to internal high-risk monitoring in accordance with Article 25 of this Decision and treated as repeatedly failing in accordance with Article 8, paragraph (2) of the Regulation.

Article 32

Where the requested information is not provided by the set deadline, the PSP or IPSP shall, in line with its risk-based policies and procedures:

- a) decide whether to reject or execute the transfer;
- b) consider whether or not the prior PSP in the payment chain's failure to supply the required information gives rise to suspicion; and
- c) consider the future treatment of the prior PSP in the payment chain for AMLTF compliance purposes.

Article 33

PSPs and IPSPs shall document and record all of these actions and the reason for their actions or inaction, so that they are later capable of responding to possible requests by the competent authorities for information about compliance with legally binding acts of the European Union.

The PSP or IPSP executes the transfer

Article 34

Where a PSP or IPSP executes the transfer of funds, or detects ex post that required information was missing or provided using inadmissible characters or inputs, it shall ask the prior PSP in the payment chain to provide the missing information on the payer or the payee, or to provide that information using admissible characters or inputs.

Article 35

A PSP or IPSP that becomes aware that required information is missing while carrying out real-time monitoring, but decides to execute the transfer of funds having considered all relevant risks, shall document the reason for executing that transfer.

Article 36

When asking for missing information, the PSP or IPSP shall proceed in line with Article 31 of this Decision.

Article 37

Where the requested information is not forthcoming within the time frame set by the PSP or IPSP, the PSP or IPSP shall, in line with its risk-based policies and procedures, consider the future treatment of the prior PSP in the payment chain for AMLTF compliance purposes.

Article 38

The PSP or IPSP shall document and record all of these actions and the reason for their actions or inaction, so that they are later capable of responding to possible requests of the authorities.

Identifying and reporting suspicious transactions

Article 39

PSPs and IPSPs shall assess whether or not a transfer of funds is suspicious, taking into account any criteria set out in European Union law, the AMLTF Law and the subordinate legislation adopted under that law and their own, internal AMLTF policies and procedures.

Article 40

- (1) Missing or inadmissible information may not, by itself, give rise to suspicion of ML/TF.
- (2) When considering whether or not a transfer of funds raises suspicion, the PSP or IPSP shall take a holistic view of all ML/TF risk factors associated with the transfer of funds, including those listed in Article 25 of this Decision, to the extent that these are known, and pay particular attention to transfers of funds that are likely to present a higher risk of ML/TF.

Article 41

PSPs and IPSPs should be able to demonstrate that they comply with directly applicable European Union law and the AMLTF Law and the subordinate legislation adopted under that law.

Repeatedly failing PSPs or IPSP and steps to be taken

Article 42

PSPs and IPSPs shall put in place policies and procedures to identify PSPs and IPSPs that repeatedly fail to provide the required information on the payer or the payee.

Article 43

PSPs and IPSPs shall keep a record of all transfers of funds with missing information to be able to determine which PSP or IPSP should be classified as repeatedly failing.

Article 44

A PSP or IPSP may decide to treat a PSP or IPSP as repeatedly failing for various reasons, but shall consider a combination of quantitative and qualitative criteria to inform that decision.

Article 45

Quantitative criteria for assessing whether or not a PSP or IPSP is repeatedly failing include:

- a) the percentage of transfers with missing information sent by a specific PSP or IPSP within a certain time frame; and
- b) the percentage of follow-up requests that were left unanswered or were not adequately answered by a certain deadline.

Article 46

Qualitative criteria for assessing whether or not a PSP or IPSP is repeatedly failing include:

- a) the level of cooperation of the PSP or IPSP relating to previous requests for missing information; and
- b) the type of information missing (e.g. transfers of funds where the name of the payer or the payee is missing).

Notification to the Croatian National Bank

Article 47

Once a PSP or IPSP has identified another PSP or IPSP as repeatedly failing to provide required information, they shall notify the Croatian National Bank thereof. In accordance with the Annex to this Decision, the notification to the Croatian National Bank shall include:

- a) the name of the PSP or IPSP identified as repeatedly failing to provide the required information;
- b) the country in which the PSP or IPSP is authorised;
- c) the nature of the breach, including:
 - i) the frequency of transfers of funds with missing information;
 - ii) the period of time during which the breaches were identified; and
 - iii) any reasons the PSP or IPSP may have given to justify their repeated failure to provide the required information;
- d) details of the steps the reporting PSP or IPSP has taken.

Article 48

The obligation of notifying the Croatian National Bank referred to in Article 47 of this Decision applies without prejudice to the obligation to report suspicious transactions pursuant to Article 56 of the AMLTF Law.

Article 49

PSPs and IPSPs shall notify the Croatian National Bank upon identifying a repeatedly failing PSP or IPSP without undue delay, and no later than three months after identifying the repeatedly failing PSP or IPSP. The Croatian National Bank shall notify the European Banking Authority (hereinafter referred to as: 'EBA') thereof.

Article 50

The steps the PSP of the payee or the IPSP shall take where another PSP or IPSP repeatedly fails to provide information required by the Regulation shall be risk-based and may include one or a combination of the following (though other measures are possible):

- a) issuing a warning to the prior PSP in the payment chain to inform the PSP or IPSP of the measures that will be taken should the prior PSP continue to fail to provide the information required by the Regulation;
- b) considering how the repeated failure by the prior PSP in the payment chain to provide information and that PSP's attitude to responding to such requests affects the ML/TF risk associated with that PSP, and, where appropriate, carrying out real-time monitoring of all transactions received from that PSP;
- c) issuing a further warning to the prior PSP in the payment chain that it will reject any future transfers of funds; and
- d) restricting or terminating the business relationship with the failing PSP.

Article 51

Before taking the decision to terminate a business relationship, in particular where the prior PSP in the payment chain is a respondent bank from a third country, the PSP or IPSP shall consider whether or not it can manage the risk in other ways, including through the application of enhanced due diligence measures in line with Article 45 of the AMLTF Law.

III. ADDITIONAL OBLIGATIONS FOR THE IPSP

Article 52

- (1) Systems and controls of the IPSPs should enable all information on the payer and the payee that accompanies a transfer of funds to be retained with that transfer and transferred to the next PSP in the payment chain.
- (2) IPSPs shall ensure that they are able to convert information on the payer and the payee into a different format without error or omission.

Article 53

- (1) IPSPs shall use only payment or messaging systems that permit the onward transfer of all information on the payer or the payee, irrespective of whether this information is required by the Regulation or not.
- (2) Where the use of systems as referred to in paragraph (1) of this Article is not possible, IPSPs shall act in accordance with the obligation set out in paragraph (1) of this Article upon the expiry of a transition period during which national systems are being adjusted to comply with the Regulation and this Decision, with the option of using alternative mechanisms.

IV. ADDITIONAL OBLIGATIONS FOR THE PSP OF THE PAYEE

Incomplete information

Article 54

PSPs of the payee shall act in line with the provisions of Chapter II of this Decision also in relation to information that is incomplete.

Verification of information on the payee

Article 55

When verifying the accuracy of information on the payee pursuant to Article 7, paragraphs (3) and (4) of the Regulation, PSPs shall consider whether or not their relationship with the payee amounts to a business relationship as defined in Article 4, item (31) of the AMLTF Law and apply customer due diligence measures in line with Article 15 of the AMLTF Law should that be the case.

Article 56

PSPs may consider that they have complied with the verification requirements referred to in Article 7 of the Regulation where they have previously verified the payee's identity in line with Article 15 of the AMLTF Law.

Record-keeping Article 57

In line with Article 16 of the Regulation, PSPs must retain records of information on the payer and the payee that they receive in line with Articles 4 to 7 of the Regulation.

Article 58

Where the PSP has entered into a business relationship with the payee and the transfer of funds takes place in the context of that business relationship, PSPs shall comply with the record-keeping requirements referred to in Article 80 of the AMLTF Law.

V. FINAL PROVISIONS

Article 59

This Decision shall be published in the Official Gazette and shall enter into force on the eighth day after the day of its publication in the Official Gazette.

No. 198-020/06-18/BV
Zagreb, 26 June 2018

Boris Vujčić
Governor of the Croatian National Bank

ANNEX – Template for notification to the Croatian National Bank

NOTIFICATION PURSUANT TO ARTICLE 47 OF THE DECISION	
Name of reporting PSP/IPSP	
Address of reporting PSP/IPSP	
Name of repeatedly failing PSP/IPSP	
Name of country in which the repeatedly failing PSP/IPSP is authorised	
Short description of the nature of the breach and reasons given by the repeatedly failing PSP/IPSP, if any, to justify that breach	
Short summary of the steps the reporting PSP/IPSP has taken to obtain missing information.	
Name and function of the person submitting the notification (phone and e-mail)	
Place and date	
Signature of the person submitting the notification	