Repealed by Circular CSSF 25/879

Commission de Surveillance du Secteur Financier

In case of discrepancies between the French and the English text, the French text shall prevail.

Luxembourg, 23 January 2018

To all payment service providers and all intermediary payment service providers

CIRCULAR CSSF 18/680

Re: European Supervisory Authorities' Joint Guidelines on the measures payment service providers should take to detect missing or incomplete information on the payer or the payee

Ladies and Gentlemen,

The purpose of this circular is to draw your attention on the Joint Guidelines of the European Supervisory Authorities (ESMA/EBA/EIOPA) (hereafter, the "European Supervisory Authorities")[1] under Article 25 of Regulation (EU) 2015/847[2] on the measures payment service providers should take to detect missing or incomplete information on the payer or the payee, and the procedures they should put in place to manage a transfer of funds lacking the required information (the "Guidelines") and with which the CSSF intends to comply.

The Guidelines set out the opinion of the European Supervisory Authorities in this respect and notably apply to:

(a) payment service providers (PSPs) as defined in Article 3(5) of Regulation (EU) 2015/847 where they act as the PSP of the payee, and

[1] The Guidelines are annexed to this circular. They are also available at: https://esas-joint-committee.europa.eu/Publications/Guidelines/Joint%20Guidelines%20to%20prevent%20terrorist%20financing%20and%20money%20laundering%20in%20electronic%20fund%20transfers%20(JC-GL-2017-16).pdf

[2] 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): http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R0847

(b) intermediary payment service providers (IPSPs) as defined in Article 3(6) of Regulation (EU) 2015/847.

The PSPs and IPSPs referred to in points (a) and (b) above are thus requested to refer to the Guidelines for information on:

- the factors PSPs and 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 and
- the measures they should take to manage the risk of money laundering or terrorist financing ("ML/TF") where the required information on the payer and/or the payee is missing or incomplete.

In order to detect and manage these transfers of funds with missing or incomplete information, PSPs and IPSPs shall notably establish, and maintain through regular review, effective policies and procedures, that are proportionate to the nature, size and complexity of their business. These policies and procedures shall also be proportionate to the ML/TF risks to which the PSPs and PSPIs are exposed. Thus, they shall, for instance, set out clearly which transfers of funds have to be monitored in real time and which transfers of funds can be monitored on an ex-post basis.

Furthermore, PSPs and IPSPs shall take into account the "Guidelines of the European Supervisory Authorities on risk factors"[3] that the CSSF brought to the attention of the supervised undertakings and entities by way of Circular CSSF 17/661 of 24 July 2017, in particular where a country associated with high ML/TF risk has been identified.

Other requirements set down in these Guidelines and with which the PSPs and IPSPs should comply, are the documentation and record-keeping of all the follow-up actions, including the reasons behind the decisions taken, so that the PSPs and IPSPs are later capable of responding to possible requests by the competent authorities.

The Guidelines shall apply six months from their date of issue, which was on 16 January 2018.

The CSSF adopts the Guidelines by way of this circular.

3 http://www.eba.europa.eu/documents/10180/1890686/Final+Guidelines+on+Risk+Factors+%28JC+2017+37%29.pdf

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Jean-Pierre FABER	Françoise KAUTHEN	Claude SIMON
Director	Director	Director

Simone DELCOURT	Claude MARX
Director	Director General

Annex: Joint Guidelines of the three European Supervisory Authorities (ESMA/EBA/EIOPA) under Article 25 of Regulation (EU) 2015/847 on the measures payment service providers should take to detect missing or incomplete information on the payer or the payee, and the procedures they should put in place to manage a transfer of funds lacking the required information.

JC/GL/2017/16

22 September 2017

Final Guidelines

Joint Guidelines under Article 25 of Regulation (EU) 2015/847 on the measures payment service providers should take to detect missing or incomplete information on the payer or the payee, and the procedures they should put in place to manage a transfer of funds lacking the required information

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1. Executive summary

On 26 June 2015, Regulation (EU) 2015/847 on information accompanying transfers of funds (Regulation (EU) 2015/847) entered into force. This Regulation aims, inter alia, to bring European legislation in line with Recommendation 16 of the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, which the Financial Action Task Force (FATF), an international anti-money laundering standard setter, adopted in 2012.

Like the FATF's Recommendation 16, Regulation (EU) 2015/847 specifies which information on the payer and the payee payment service providers (PSPs) have to attach to fund transfers. It also requires PSPs to put in place effective procedures to detect transfers of funds that lack this information, and to determine whether to execute, reject or suspend such transfers of funds. The objective is to prevent the abuse of fund transfers for terrorist financing and other financial crime purposes, to detect such abuse should it occur, to support the implementation of restrictive measures and to allow relevant authorities to access the information promptly.

However, Regulation (EU) 2015/847 does not set out in detail what PSPs should do to comply. Article 25 of Regulation (EU) 2015/847 therefore requires the European Supervisory Authorities (ESAs) to issue guidelines to competent authorities and PSPs on the measures PSPs should take to comply with Regulation (EU) 2015/847 and in particular in relation to the implementation of Articles 7, 8, 11 and 12 of that Regulation.

Through these guidelines, the ESAs aim to promote the development of a common understanding, by PSPs and competent authorities across the EU, of what effective procedures to detect and manage transfers of funds that lack required information on the payer and the payee are, and how they should be applied. A common understanding is essential to ensure the consistent application of EU law; it is also conducive to a stronger European anti-money laundering and countering the financing of terrorism (AML/CFT) regime.

Public consultation

The ESAs publicly consulted on a version of these guidelines between 5 April and 5 June 2017. Respondents welcomed these guidelines and agreed that they clarified regulatory expectations. Some respondents were confused about the application of the risk-based approach to AML/CFT in the fund transfers context and several changes have been made to the structure of these guidelines in response to this feedback to foster a better understanding of the risk-based approach.

Next steps

The guidelines will apply from six months after the date on which they are issued.

2. Background and rationale

On 26 June 2015, Regulation (EU) 2015/847 on information accompanying transfers of funds entered into force. This Regulation aims to bring European legislation in line with Recommendation 16 of the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, which the Financial Action Task Force (FATF), an international anti-money laundering standard setter, adopted in 2012.

Like the FATF's Recommendation 16, Regulation (EU) 2015/847 aims to make the abuse of fund transfers for terrorist financing and other financial crime purposes more difficult and to enable relevant authorities to trace such transfers fully where this is necessary to prevent, detect or investigate money laundering or terrorist financing (ML/TF).

To this end, Regulation (EU) 2015/847:

- lays down rules on the information on the payer and the payee that must accompany a transfer of funds, in any currency, where at least one of the payment service providers (PSPs) in the payment chain is established in the Union;

- requires the PSP of the payee and the intermediary PSP (IPSP) to put in place effective procedures to detect transfers of funds that lack required information on the payer and the payee; and

- requires the PSP of the payee and the IPSP to put in place effective risk-based procedures to determine whether to execute, reject or suspend a transfer of funds that lacks required information on the payer or the payee, and which follow-up action to take.

However, Regulation (EU) 2015/847 does not set out in detail what PSPs and IPSPs should do to comply. Article 25 of Regulation (EU) 2015/847 therefore requires the European Supervisory Authorities (ESAs) to issue guidelines to competent authorities and PSPs on the measures PSPs and IPSPs should take to comply with Regulation (EU) 2015/847 and in particular in relation to the implementation of Articles 7, 8, 11 and 12 of that Regulation.

These guidelines:

- help PSPs and IPSPs determine which transfers of funds are within the scope of Regulation (EU) 2015/847, and how to benefit from the exemptions in Article 2 of that Regulation;

- provide PSPs and IPSPs with tools to establish and implement effective procedures to detect transfers of funds that lack required information on the payer or the payee, and to follow up should this be necessary;

- set out the risk factors PSPs and IPSPs should consider when determining whether to execute, reject or suspend a transfer of funds which lacks required information on the payer or the payee, including when assessing whether or not the lack of information gives rise to suspicion of ML/TF; and

- help competent authorities assess whether or not the procedures PSPs and IPSPs have put in place to comply with Articles 7, 8, 11 and 12 of Regulation (EU) 2015/847 are adequate and effective.

These guidelines focus on measures to comply with Articles 7, 8, 11 and 12 of Regulation (EU) 2015/847, but similar considerations apply in relation to Articles 9 and 13 of Regulation (EU) 2015/847.

The guidelines build on the *Common understanding of the obligations imposed by European Regulation 1781/2006 on the information on the payer accompanying funds transfers to payment service providers of payees* the ESAs' predecessors, the Committee of European Banking Supervisors (CEBS), the Committee of European Securities Regulators (CESR) and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), adopted in October 2008.[1] However, their scope is wider and takes account of the new legal framework and international AML/CFT standards that have since emerged.

[1]CEBS 2008 156/ CEIOPS-3L3-12-08/ CESR/08-773 (2008): Common understanding of the obligations imposed by European Regulation 1781/2006 on the information on the payer accompanying funds transfers to payment service providers of payees (http://www.eba.europa.eu/-/the-three-level-3-committees-publish-today-their-common-understanding-in-relation-to-the-information-on-the-payer-of-accompanying-fund-transfers-to-pa).

3. Joint Guidelines under Article 25 of Regulation (EU) 2015/847 on the measures payment service providers should take to detect missing or incomplete information on the payer or the payee, and the procedures they should put in place to manage a transfer of funds lacking the required information

Status of these joint guidelines

This document contains joint guidelines issued pursuant to Articles 16 and 56, subparagraph 1, of 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; Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); and Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority): 'the ESAs' Regulations'. In accordance with Article 16(3) of the ESAs' Regulations, competent authorities and financial institutions must make every effort to comply with the guidelines.

Joint guidelines set out the ESAs' view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities to whom the joint guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where the joint guidelines are directed primarily at institutions.

Reporting requirements

In accordance with Article 16(3) of the ESAs' Regulations, competent authorities must notify the respective ESA whether they comply or intend to comply with these Joint Guidelines, or otherwise with reasons for non-compliance, by dd.mm.yyyy (two months after issuance). In the absence of any notification by this deadline, competent authorities will be considered by the respective ESA to be non-compliant. Notifications should be sent to [compliance@eba.europa.eu, compliance@eiopa.europa.eu and compliance@esma.europa.eu] with the reference 'JC/GL/201x/xx'. A template for notifications is available on the ESAs' websites. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities.

Notifications will be published on the ESAs' websites, in line with Article 16(3) of the ESAs' Regulations.

Title I — Subject matter, scope and definitions

Subject matter and scope

1. These guidelines are addressed to:

   a) payment service providers (PSPs) as defined in point (5) of Article 3 of Regulation (EU) 2015/847 where they act as the PSP of the payee, and intermediary payment service providers (IPSPs) as defined in point (6) of Article 3 of Regulation (EU) 2015/847; and

   b) competent authorities responsible for supervising PSPs and IPSPs for compliance with their obligations under Regulation (EU) 2015/847.

2. These guidelines:

   a) set out the factors PSPs and 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

   b) specify what PSPs and IPSPs should do to manage the risk of money laundering (ML) or terrorist financing (TF) where the required information on the payer and/or the payee is missing or incomplete.

3. Competent authorities should use these guidelines when assessing the adequacy of the procedures and measures adopted by PSPs and IPSPs to comply with Articles 7, 8, 11 and 12 of Regulation (EU) 2015/847.

4. PSPs, IPSPs and competent authorities should also use these guidelines to ensure compliance with Articles 9 and 13 of Regulation (EU) 2015/847.

5. The factors and measures described in these guidelines are not exhaustive. PSPs and IPSPs should consider other factors and measures as appropriate.

6. These guidelines do not apply to restrictive measures imposed by regulations based on Article 215 of the Treaty on the Functioning of the European Union, such as Regulations (EC) No 2580/2001, (EC) No 881/2002 and (EU) No 356/2010 ('the European sanctions regime').

Definitions

7. Unless otherwise specified, the terms used and defined in Directive (EU) 2015/849 and in Regulation (EU) 2015/847 have the same meaning in these guidelines. In addition, for the purposes of these guidelines, the following definitions apply:

a) 'competent authorities' means the authorities responsible for ensuring PSPs' and IPSPs' compliance with the requirements of Regulation (EU) 2015/847;

b) 'risk' means the impact and likelihood of ML/TF taking place;

c) '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;

d) '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 AML/CFT measures that are proportionate to those risks;

e) 'missing information' means information on the payer or the payee as required by Regulation (EU) 2015/847 that has not been provided;

f) 'incomplete information' means information on the payer or the payee as required by Regulation (EU) 2015/847 that has been provided only in part;

g) 'real-time monitoring' refers to monitoring performed:

   i) before the funds are credited to the payee's payment account with the PSP of the payee,

   ii) 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

   iii) where the PSP is an IPSP, before the IPSP transfers the funds on behalf of the PSP of the payer or of another IPSP;

h) 'ex-post monitoring' refers to monitoring performed:

   i) after the funds have been credited to the payee's payment account with the PSP of the payee,

   ii) 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

   iii) where the PSP is an IPSP, after the IPSP has transferred the funds on behalf of the PSP of the payer or of another IPSP.

Title II – Detecting missing information and managing transfers of funds with missing information

CHAPTER I: General considerations

Establishing obligations under Regulation (EU) 2015/847

8. A PSP should 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. This will determine what information has to accompany a transfer of funds and the steps the PSP or IPSP has to take to comply with Regulation (EU) 2015/847.

Direct debits

9. Where a transfer of funds is a direct debit as defined in point (9)(b) of Article 3 of Regulation (EU) 2015/847, the PSP of the payee should 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 point (2) and (4) of Article 4 and points (1) and (2) of Article 5 of Regulation (EU) 2015/847 are met.

Applying derogations and exemptions under Regulation (EU) 2015/847

10. PSPs and IPSPs must comply with Regulation (EU) 2015/847 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 Regulation (EU) 2015/847 sets out exemptions and derogations.

11. To apply these exemptions and derogations, PSPs and IPSPs should have in place systems and controls to ensure the conditions for these exemptions and derogations are met. PSPs and IPSPs that are unable to establish that the conditions for these exemptions are met should comply with Regulation (EU) 2015/847 in respect of all transfers of funds.

Article 5 of Regulation (EU) 2015/847

12. In order to apply the derogation in Article 5 of Regulation (EU) 2015/847:

    a) PSPs of the payee should be able to determine that the PSP of the payer is based in the Union or an EEA Member State; and

    b) IPSPs should be able to determine that the PSP of the payer and the PSP of the payee are based in the Union or an EEA Member State.

13. PSPs and IPSPs should treat countries as third countries if they are part of the Single Euro Payments Area (SEPA) but are not also Member States of the Union or EEA. Where a Member State has concluded a bilateral agreement with a third country or territory

outside the Union in accordance with Article 24 of Regulation (EU) 2015/847, PSPs and IPSPs in that Member State may treat transfers of funds from or to that third country or territory as domestic transfers of funds.

Article 2(3) of Regulation (EU) 2015/847

14. When applying the exemption in point (3) of Article 2 of Regulation (EU) 2015/847, PSPs and IPSPs should ensure that the transfer of funds is accompanied by the number of the card, instrument or digital device, for example the Primary Account Number (PAN), and that that number is provided in a way that allows the transfer to be traced back to the payer.

15. 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 will be able to apply this exemption only if they are able to determine that the transfer of funds is not a person-to person transfer of funds, but constitutes a payment for goods or services instead.

Articles 5, 6 and 7 of Regulation (EU) 2015/847

16. In order to apply rules in Articles 5, 6 and 7 of Regulation (EU) 2015/847 related to transfers of funds that do not exceed EUR 1 000, PSPs and IPSPs should have in place policies and procedures to detect transfers of funds that appear to be linked. PSPs and IPSPs should 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 timeframe, which should be set by the PSP in a way that is commensurate with the ML/TF risk to which their business is exposed.

17. PSPs and IPSPs should determine whether other scenarios might also give rise to linked transactions, and if so, reflect these in their policies and procedures.

Proportionality and business-wide risk assessments

18. PSPs and IPSPs should establish and maintain effective policies and procedures to comply with Regulation (EU) 2015/847. These policies and procedures should 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.

19. When assessing the ML/TF risk to which they are exposed, PSPs and IPSPs should refer to the ESAs' 'Joint Guidelines under Articles 17 and 18(4) of Directive (EU) 2015/849 on simplified and enhanced customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions' (the Risk Factors Guidelines).[2]

Policies and procedures

20. PSPs and IPSPs should ensure that their policies and procedures:

a) set out clearly:

i) which criteria they use to determine whether or not their services and payment instruments fall under the scope of Regulation (EU) 2015/847,

ii) which of their services and payment instruments fall within the scope of Regulation (EU) 2015/847 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 members of staff where they detect that information required by Regulation (EU) 2015/847 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 point (12) of Article 3 of Directive (EU) 2015/849;

c) are available to all relevant members of staff, including persons responsible for processing transfers of funds; PSPs and IPSPs should ensure that all relevant staff

[2] https://esas-joint-committee.europa.eu/Pages/Guidelines/Joint-Guidelines-on-Risk-Factors.aspx

members are appropriately trained in the application of these policies and procedures; and

d) are reviewed regularly, improved where necessary and kept up to date. PSPs may draw on existing policies and procedures to meet their obligations under Regulation (EU) 2015/847 where possible.

CHAPTER II: Obligations on IPSPs and PSPs of the payee

Admissible characters or inputs checks
(Article 7(1) and Article 11(1) of Regulation (EU) 2015/847)

21. PSPs and IPSPs should monitor transfers of funds to detect whether or not 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.[3] These checks should be carried out in real time.

22. PSPs and IPSPs may assume that they comply with point (1) of Article 7 and point (1) of Article 11 of Regulation (EU) 2015/847 respectively if they are satisfied, and 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 mean that it:

    a) contains all the fields necessary to obtain the information required by Regulation (EU) 2015/847. For example, PSPs and IPSPs may treat the International Bank Account Number (IBAN) or, where the transfer of funds is made using a payment card, the number of that card (for example the PAN) as the payment account number on condition that the number used permits the fund transfer to be traced to the payer or the payee;

    b) automatically prevents the sending or receiving of transfers of funds where inadmissible characters or inputs are detected; and

    c) flags rejected transfers of funds for manual review and processing.

23. Where a PSP's or IPSP's messaging, or payment and settlement system does not meet all the criteria stipulated in point 22 of these guidelines, the PSP or IPSP should put in place controls to mitigate the shortcomings.

Missing information checks
(Article 7(2) and Article 11(2) of Regulation (EU) 2015/847)

Effective procedures

24. PSPs and IPSPs must implement effective procedures to detect if the required information on the payer or the payee is missing.[4]

25. To be effective, these procedures should

    a) enable the PSP or IPSP to spot meaningless information;

[3] Articles 7(1) and 11 (1) of Regulation (EU) 2015/847.

[4] Articles 7(2) and 11(2) of Regulation (EU) 2015/847.

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

26. PSPs and IPSPs should treat meaningless information as though it was missing information. Examples of meaningless information include strings of random characters (e.g. 'xxxxx', or 'ABCDEFG') or designations that clearly make no sense (e.g. 'An Other', or 'My Customer'), even if this information has been provided using characters or inputs in accordance with the conventions of the messaging or payment and settlement system.

27. Where PSPs or IPSPs use a list of commonly found meaningless terms, they should periodically review this list to ensure it remains relevant. In those cases, there is no expectation that PSPs or IPSPs manually review transactions to detect meaningless information.

Real-time and ex-post monitoring

28. PSPs and IPSPs should refer to the risk factors specified in point 18 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. As part of this, PSPs and IPSPs should determine which high-risk factors, or combination of high-risk factors, will always trigger real-time monitoring, and which will trigger a targeted ex-post review (see also point 30). In cases of specific concern, transfers of funds should always be monitored in real time.

29. In addition to real-time and targeted ex-post monitoring in point 28, PSP and IPSP should regularly perform ex-post reviews on a random sample taken from all processed transfers of funds.

High-risk indicators

30. PSPs' and IPSPs' systems should be configured in a way that triggers alerts should a high-risk indicator be detected. 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 should 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 identified as high risk by the European Commission in accordance with Article 9 of Directive (EU) 2015/849. When identifying countries associated with high ML/TF risk, PSPs and IPSPs should have regard to the ESAs' Risk Factors Guidelines;

c) a negative AML/CFT 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 (see points 47-55), 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 8 and Article 12 of Regulation (EU) 2015/847)

31. PSPs and IPSPs should 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.

32. In order to determine whether to reject, suspend or execute a transfer of funds in compliance with Articles 8 and 12 of Regulation (EU) 2015/847, PSPs and IPSPs should consider the ML/TF risk associated with that transfer of funds before deciding on the appropriate course of action. 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/TF (see point 30).

    Where PSPs or IPSPs have taken a risk-sensitive decision, in line with point 28 of these guidelines, to monitor transfers of funds ex post, they should follow the guidance in points 40-43.

    The PSP or IPSP rejects the transfer

33. 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

34. 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.

35. When asking for missing information, the PSP or IPSP should set the prior PSP in the payment chain a reasonable deadline by which the information should be provided. This deadline should not normally exceed three working days for transfers of funds taking

place within the EEA, and five working days for transfers of funds received from outside the EEA. Longer deadlines may be necessary where payment chains are more complex.

36. PSPs or IPSPs should consider sending a reminder to the prior PSP in the payment chain should the requested information not be forthcoming. 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 (see point 30) and treated as repeatedly failing, as set out in point (2) of Article 8 of Regulation (EU) 2015/847.

37. Where the requested information is not provided by the set deadline, the PSP or IPSP should, 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 AML/CFT compliance purposes.

38. PSPs and IPSPs should 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 Union, for example where, as a result of actions taken under Article 8 of Regulation (EU) 2015/847, the PSP or IPSP has been unable to comply with relevant obligations in Articles 83 and 84 of Directive (EU) 2015/2366 as incorporated into the applicable national legal framework.

The PSP or IPSP executes the transfer

39. Where a PSP or IPSP executes the transfer of funds, or detects ex post that required information was missing or provided using inadmissible characters, it should 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 after the transfer has been executed.

40. 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, should document the reason for executing that transfer.

41. When asking for missing information, the PSP or IPSP should proceed in line with point 36 of these guidelines.

42. Where the requested information is not forthcoming within the timeframe set by the PSP or IPSP, the PSP or IPSP should, in line with its risk-based policies and procedures, consider the future treatment of the prior PSP in the payment chain for AML/CFT compliance purposes.

43. The PSP or IPSP should 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 9 and Article 13 of Regulation (EU) 2015/847)

44. PSPs and IPSPs should assess whether or not a transfer of funds is suspicious, taking into account any criteria set out in Union law, national legislation and their own, internal AML/CFT policies and procedures.

45. PSPs and IPSPs should note that missing or inadmissible information may not, by itself, give rise to suspicion of ML/TF. When considering whether or not a transfer of funds raises suspicion, the PSP or IPSP should take a holistic view of all ML/TF risk factors associated with the transfer of funds, including those listed in point 30, 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.

46. PSPs and IPSPs should be able to demonstrate that they comply with directly applicable Union law and national legislation in the area of AML/CFT. In some cases, national legislation may require them to take additional action, for example the reporting of unusual transactions that may not give rise to suspicion of ML/TF.

Repeatedly failing PSPs or IPSP and steps to be taken (Article 8(2) and Article 12 (2) of Regulation (EU) 2015/847)

When is a PSP or IPSP considered to be 'repeatedly failing' to provide required information?

47. PSPs and IPSPs should 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.

48. To this end, PSPs and IPSPs should 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'.

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

50. 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 timeframe; and

    b) the percentage of follow-up requests that were left unanswered or were not adequately answered by a certain deadline.

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

    a) the level of cooperation of the requested PSP or IPSP relating to previous requests for missing information; and

    b) the type of information missing (see, for example, point 30 e).

Notifying the authorities

52. Once a PSP or IPSP has identified another PSP or IPSP as repeatedly failing to provide required information, a notification to the authorities specified in the second subparagraph of Article 8(2) of Regulation (EU) 2015/847 should include, in line with the Annex to these guidelines:

    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.

53. The obligation in the second subparagraph of point (2) of Article 8 of Regulation (EU) 2015/847 applies without prejudice to the obligation to report suspicious transactions pursuant to Article 33 of Directive (EU) 2015/849.

54. PSPs and IPSPs should notify relevant authorities 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.

55. These authorities will then notify the EBA.

Steps to be taken

56. The steps the PSP of the payee or the IPSP should take where another PSP or IPSP repeatedly fails to provide information required by Regulation (EU) 2015/847 should be risk-based and may include one or a combination of the following (though other steps are possible):

a) issuing a warning to the prior PSP in the payment chain to inform the PSP or IPSP of the steps that will be applied should the PSP continues to fail to provide the information required by Regulation (EU) 2015/847;

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;

d) restricting or terminating the business relationship with the failing PSP.

57. 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 should 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 19 of Directive (EU) 2015/849.

CHAPTER III: Additional obligations for the IPSP

58. IPSPs should satisfy themselves that their systems and controls enable them to comply with their duty to ensure that all information on the payer and the payee that accompanies a transfer of funds is retained with that transfer. As part of this, IPSPs should satisfy themselves of their system's ability to convert information into a different format without error or omission.

59. IPSPs should use only payment or messaging systems that permit the onward transfer of all information on the payer or the payee, irrespective of whether or not this information is required by Regulation (EU) 2015/847.[5] Where this is not possible, for example because a domestic payment system restricts the data that can be entered into that system, IPSPs should put in place alternative mechanisms to pass on relevant information to the PSP of the payee. Such alternative mechanisms should be used only during a short transition period while domestic systems are being adjusted to comply with Regulation (EU) 2015/847 and these guidelines.

[5] Article 10 of Regulation (EU) 2015/847.

CHAPTER IV: Additional obligations for the PSP of the payee

Incomplete information

60. PSPs of the payee should follow the guidance in Chapter II of these guidelines also in relation to information that is incomplete.

Verification of information on the payee

61. When verifying the accuracy of information on the payee pursuant to points (3) and (4) of Article 7 of Regulation (EU) 2015/847, PSPs should consider whether or not their relationship with the payee amounts to a business relationship as defined in point (13) of Article 3 of Directive (EU) 2015/849 and apply customer due diligence measures in line with point (1) of Article 13 of Directive (EU) 2015/849 should that be the case.

62. PSPs may consider that they have complied with the verification requirements in Article 7 of Regulation (EU) 2015/847 where they have previously verified the payee's identity in line with the national law transposing point (1)(a) of Article 13 and, where applicable, point (1)(b) of Article 13 of Directive (EU) 2015/849 or to an equivalent standard, should the payee's identity have been verified before the legislation transposing Directive (EU) 2015/849 entered into force.

Record-keeping

63. In line with Article 16 of Regulation (EU) 2015/847, PSPs must retain records of information on the payer and the payee that they receive in line with Articles 4 to 7 of that Regulation.

64. However, 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 should comply with the record-keeping requirements in Article 40 of Directive (EU) 2015/849.

Title III — Final provisions and implementation

65. Competent authorities and PSPs should comply with these guidelines six months from their date of issue.

Annex — Notification template

Notification pursuant to point (2) of Article 8 of Regulation (EU) 2015/847*	
Name of reporting PSP/IPSP	
Address of reporting PSP/IPSP	
Date	
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.	

*For further information and guidance, please refer to the European Supervisory Authorities' 'Joint guidelines under Article 25 of Regulation (EU) 2015/847 on the measures payment service providers should take to detect missing or incomplete information on the payer or the payee, and the procedures they should put in place to manage a transfer of funds lacking the required information'.

4. Accompanying documents

4.1. Impact assessment

1. Article 25 of Regulation (EU) 2015/847 requires the European Supervisory Authorities (ESAs) to issue guidelines to competent authorities and payment service providers (PSPs) on 'the measures to be taken in accordance with this Regulation, in particular as regards the implementation of Articles 7, 8, 11 and 12'.

2. This document provides an overview of the issues identified, the options considered and the potential impact of these options on PSPs and national competent authorities.

A. Problem identification

3. Tracking financial flows can be an important tool in the prevention, detection and investigation of terrorist financing and other financial crimes.[6] Regulation (EU) 2015/847 therefore sets out which information on the payer and the payee must accompany a transfer of funds. It also requires PSPs to put in place effective systems and controls to detect transfers of funds that lack required information, and risk-based policies and procedures to determine whether to execute, reject or suspend a transfer of funds that lacks the required information. However, Regulation (EU) 2015/847 does not set out in detail what PSPs must do to comply. There is, therefore, a possibility that PSPs and competent authorities interpret and apply these Regulations inconsistently, leaving the Union's financial market exposed to the risk of money laundering and terrorist financing (ML/TF).

B. Policy objectives

4. Through these guidelines, the ESAs aim to promote the development of a common understanding, by PSPs and competent authorities across the EU, of effective procedures to detect and manage transfers of funds that lack the information on the payer or the payee required by Regulation (EU) 2015/847. A common understanding is essential to ensure the consistent interpretation and application of Union law and will be conducive to a stronger European anti-money laundering and countering the financing of terrorism (AML/CFT) regime.

5. As part of this, the joint guidelines should not only set clear regulatory expectations, but at the same time leave sufficient room for PSPs to define their approach in a way that is

[6] European Commission (2016): Action plan to strengthen the fight against terrorist financing, February 2016.

proportionate to the nature and size of their business and commensurate with the ML/TF risk to which they are exposed.

C. Baseline scenario

6. In October 2008, the ESAs' predecessors published a *Common understanding of the obligations imposed by European Regulation 1781/2006 on the information on the payer accompanying fund transfers to payment service providers of payees*. This common understanding determines how PSPs and competent authorities interpret their obligations under Regulation (EC) 1781/2006, which preceded Regulation (EU) 2015/847. While many of the common understanding's conclusions remain important, the scope and underlying legal basis have changed to reflect revised international standards and best practice. Furthermore, the common understanding did not compel financial institutions and competent authorities to 'comply or explain'.[7]

7. In the baseline scenario, the implementation of Regulation (EU) 2015/847 takes effect without accompanying ESA guidelines, but with a non-binding common understanding that addresses some, but not all, aspects of Regulation (EU) 2015/847.

D. Options considered

8. In drafting these guidelines, the ESAs considered the views of AML/CFT competent authorities and informal feedback from private sector stakeholders. Different options on the scope of the mandate and the approach of the guidelines have been identified, and their costs and benefits assessed for their ability to achieve the ESAs' policy objectives.

1. Scope of the mandate

9. The ESAs' mandate in Article 25 of Regulation (EU) 2015/847 requires the ESAs to issue guidelines on the implementation of Articles 7, 8, 11 and 12 of Regulation (EU) 2015/847, but does not limit the guidelines to these articles.

- **Option 1.1**: The ESAs could extend the scope of the mandate to draft guidelines on all aspects of Regulation (EU) 2015/847. This would include guidelines for PSPs of the payer.

- **Option 1.2**: The ESAs could focus on the articles listed in the mandate, but touch upon related issues in other articles where this is necessary to ensure the consistent application of the Regulation's obligations.

- **Option 1.3**: The ESAs could write guidelines exclusively on the articles listed in their mandate.

[7] Article 16(3) of Regulation (EU) No 1093/2010.

2. Approach

10. The ESAs' mandate in Article 25 of Regulation (EU) 2015/847 requires the joint guidelines to be targeted and proportionate, but it does not prescribe the approach the ESAs should take. While Regulation (EU) 2015/847 forms part of the Union's wider AML/CFT framework, which is risk-based, the Regulation contains a number of provisions that are prescriptive and leave PSPs and competent authorities little room for manoeuvre.

- **Option 2.1:** The guidelines could be detailed and prescriptive with a view to achieving maximum harmonisation of PSPs' approaches to complying with Regulation (EU) 2015/847.

- **Option 2.2:** The guidelines could provide enough detail to enable PSPs to identify areas of high risk and focus their efforts to comply with Regulation (EU) 2015/847 on those areas, but leave it to PSPs to decide how best to comply.

- **Option 2.3:** The guidelines could prescribe what PSPs should do in certain situations, whilst allowing PSPs some flexibility to accommodate different risk scenarios.

E. Cost-benefit analysis and preferred options

11. The implementation of the different options would create both benefits and costs for PSPs and competent authorities. All options the ESAs have considered create one-off costs for PSPs to review and adapt existing systems and controls, and ongoing costs for PSPs and competent authorities to train staff in the application and assessment of these systems and controls. These costs derive mainly from changes to the Union's legal framework. However, the joint guidelines allow PSPs to build on systems established under the common understanding, which can limit the costs for some PSPs that already apply the principles set out in the common understanding and for the supervision of these systems by competent authorities.

1. Scope

12. Against this background, the main advantage of Option 1.1 would be that comprehensive guidelines on all aspects of Regulation (EU) 2015/847 would increase regulatory certainty and create a more harmonised European approach to providing information with transfers of funds. Although arguably more costly than other options, Option 1.1 could be conducive to a more effective European fund transfer regime going forward, as national differences would be kept to a minimum. The main disadvantage associated with Option 1.1 is that it would leave little room for adjustment, and give rise to the risk that the systems and controls provided for in the guidelines are disproportionate for at least some PSPs.

13. The main advantage of Option 1.2 would be that greater regulatory certainty would be achieved in key areas where this is necessary to achieve a consistent and effective pan-European approach. Examples of areas that would benefit from additional guidelines include the identification and reporting of suspicious transaction reports, and the requirement for intermediaries to retain all information with the transfer of funds. The disadvantage of Option 1.2 is that, under this option, PSPs could incur greater one-off costs for reviewing and updating their systems and controls in the light of new expectations than under the baseline scenario or Option 1.3.

14. The main advantage of Option 1.3 is that guidelines that focus exclusively on the articles listed in Article 25 of Regulation (EU)2015/847 are conducive to achieving consistency where the legislature feels this is necessary, without creating additional compliance costs. Furthermore, some of the issues where Option 1.2 might introduce greater consistency could be addressed at least in part through other guidelines, for example under Articles 17 and 18(4) of Directive (EU) 2015/849. Option 1.3 is therefore likely to be more targeted than Options 1.1 and 1.2. However, certain provisions in Regulation (EU) 2015/847 are not sufficiently clear and are not addressed in other supranational guidelines, and could therefore be interpreted differently by competent authorities and PSPs in different Member States.

15. Option 1.2 is the retained option. The benefits associated with greater regulatory certainty and consistency of approach that can be expected from guidelines on issues beyond those described in Articles 7, 8, 11 and 12 of Regulation (EU) 2015/847, are expected to outweigh the additional compliance burden for PSPs. When implementing the additional requirements, PSPs can use the same measures as are necessary to comply with the requirements in Article 7, 8, 11 and 12. Option 1.2 reduces the risk of creating regulatory arbitrage and reduces compliance costs for PSPs that operate across borders and whose approach may otherwise be deemed inadequate by another competent authority. It also assures a more harmonised European approach for providing payer information on transfers of funds, which is tailored to the areas of highest need, and a more effective fight against terrorist financing in particular.

2. Approach

16. The main advantage of Option 2.1 is that detailed and prescriptive guidelines would reduce uncertainty and create maximum harmonisation of practices. Some industry representatives suggested that this might be desirable. However, initial set-up costs are likely to be high, as PSPs would have to adjust their systems to match the new requirements, and ongoing compliance costs might increase for PSPs whose size or business models might be better suited to alternative systems and controls. For competent authorities, Option 2.1 would facilitate the assessment of PSPs' systems and controls to comply with Regulation (EU) 2015/847, as prescriptive guidelines could reduce the need for specialist supervisors trained to exercise informed judgement.

17. The advantage of Option 2.2 is that it would allow PSPs to identify and focus on those areas where the risk of ML/TF associated with transfers of funds is highest. This approach would allow PSPs to adopt the approach that is best suited to their particular nature and size — for example, some PSPs that are not credit institutions have suggested that one size does not fit all. However, Option 2.2 would not achieve the same degree of regulatory certainty as Option 2.1 and could create costs by distorting competition, as PSPs and competent authorities in different Member States could interpret the same provisions differently. PSPs in Member States that do not have a tradition of the risk-based approach to AML/CFT might also incur additional costs to employ or train staff competent to assess and manage ML/TF risk. For competent authorities, Option 2.2 would create the highest costs, as the assessment of diverse approaches to comply with Regulation (EU) 2015/847 can be complex and requires supervisors to have access to experts able to exert sound judgement on the adequacy of PSPs' systems and controls.

18. The advantage of Option 2.3 is that it sets clear expectations in cases where this is necessary and proportionate, for example in relation to checking if information contained in a transfer of funds is missing or obviously meaningless, while at the same time allowing PSPs to make risk-based decisions on the most appropriate and effective way to comply with Regulation (EU) 2015/847 where the size and nature of PSPs' business might justify different approaches. For PSPs, Option 2.3 might create some one-off costs to adjust their systems and controls and costs to employ or train staff in the application of the risk-based approach, where this approach is new. For competent authorities, the same considerations apply as in Option 2.2, whereas the costs are mitigated in the cases in which PSPs are restricted to a prescriptive approach.

19. Option 2.3 is the retained option. It combines the benefits of non-standardised approaches for PSPs and of a prescriptive approach for competent authorities. PSPs will benefit from being able to tailor their risk identification and management systems and controls to their own risk profile. For competent authorities, the benefits of this approach are that it will help supervisors set clear expectations of the factors PSPs should consider when detecting and managing missing payer information on financial transfers, while at the same time mitigating costs by building on existing regulatory guidance to PSPs and supervisory manuals. Option 2.3 supports the ESAs' objective to draft proportionate and effective guidelines on identifying transfers of funds with missing or incomplete information and taking appropriate follow-up action because they are conducive to a common approach in those areas where consistency and regulatory certainty is needed, while at the same time allowing PSPs some flexibility in the way they design and implement the systems and controls to comply with Regulation (EU) 2015/847.

20. Overall, the benefits from these guidelines are expected to outweigh potential costs and these guidelines are expected to contribute to making the fight against terrorist financing and money laundering more effective.

4.2 Questions for consultation

Q1: Do you agree with the general considerations in Chapter I? In particular, do you agree that these are necessary to ensure an effective, risk-based and proportionate approach to complying with Regulation (EU) 2015/847?

If you do not agree, clearly set out your rationale and provide supporting evidence where available. Please also set out what you consider to be the common principles that apply to both the PSP of the payee and the intermediary PSP, and why.

Q2: Do you agree that the expectations on intermediary PSPs and PSPs of the payee in Chapter II are proportionate and necessary to both comply with Regulation (EU) 2015/847 and ensure a level playing field?

In particular, do you agree with:

- The steps PSPs should take to detect and manage transfers of funds with missing information of inadmissible characters or inputs?
- The steps PSPs should take to detect and manage PSPs that are repeatedly failing to provide the required information?

If you do not agree, clearly set out your rationale and provide supporting evidence where available. Please also set out what you believe PSPs should do instead, and why.

Q3: Do you agree with the provisions for intermediary PSPs in Chapter III?

If you do not agree, clearly set out your rationale and provide supporting evidence where available. Please also set out how you think intermediary PSPs can meet their obligations in Article 10 of Regulation (EU) 2015/847 instead.

Q4: Do you agree with the provisions for PSPs of the payee in Chapter IV?

If you do not agree, clearly set out your rationale and provide supporting evidence where available. Please also set out how you think PSPs of the payee can meet their obligations instead.

4.3 Feedback on the public consultation

21. The ESAs publicly consulted on the draft proposal.

22. The consultation period began on 5 April 2017 and ended on 5 June 2017. A total of 26 responses were received from private sector representatives or associations, of which 20 were published on the EBA website. The ESAs also received four submissions after the consultation had closed.

23. This paper summarises the key points and other comments received during the public consultation, the ESAs' response and the action taken to address these comments.

24. Where several respondents made similar comments or the same respondent repeated its comments in the responses to different questions, these comments, and the ESAs' analysis, are included in the section of this paper where the ESAs considered them most appropriate.

25. Several changes to the draft joint guidelines have been made as a result of the responses received.

Summary of key issues and the ESAs' response

26. Most respondents welcomed these guidelines and considered them necessary to ensure the consistent application of provisions in Regulation (EU) 2015/847, which was a prerequisite for the smooth and efficient functioning of payment systems.

27. Where respondents raised concerns, these usually touched upon the following four issues:

- the risk-based approach;
- linked transactions;
- the proportionality of real-time transaction monitoring; and
- the implementation timeline.

28. The ESAs thank respondents for the constructive comments and suggestions they received. They have carefully reviewed all responses and revised the guidelines where appropriate.

The risk-based approach

29. A number of respondents had difficulty understanding how the risk-based approach applied in the context of Regulation (EU) 2015/847. They said it was unreasonable to expect PSPs to understand ML/TF risk or to adjust their procedures in the light of different levels of ML/TF risk, and some argued that the risk-based approach, while central to Directive (EU) 2015/840, did not apply to PSPs carrying out transfers of funds.

30. Regulation (EU) 2015/847 explicitly refers to the risk-based approach in a number of places. Furthermore, PSPs as defined by Regulation (EU) 2015/847 are also obliged entities as defined by Directive (EU) 2015/849. This means that they have to put in place, and maintain, effective risk-based AML/CFT policies and procedures that apply across their business. There is no suggestion, in Directive (EU) 2015/849 or Regulation (EU) 2015/847, that transfers of funds are exempt from the AML/CFT policies and procedures requirement in Directive (EU) 2015/849.

31. This means not only that PSPs have to take appropriate steps to identify and assess the ML/TF risks to which they are exposed, but also that they have to design and implement effective, risk-based AML/CFT policies and procedures to comply with AML/CFT obligations, including those set out in Regulation (EU) 2015/847. The ESAs have published joint guidelines that may help PSPs identify relevant risk factors and assess how these affect the level of ML/TF risk.[8]

Linked transactions

32. Several respondents believed the guidelines required them to be able to link transfers of funds over a six-month period to benefit from the exemptions in Articles 5, 7 and 11 of Regulation (EU) 2015/847. They said this was disproportionate.

33. The guidelines do not require PSPs to link transfers of funds over a six-month period. Instead, they make it clear that, to benefit from these exemptions in Articles 5, 7 and 11 of Regulation (EU) 2015/847, PSPs should have systems and controls in place to detect if transfers of funds may be linked, and should define linked transfers of funds as transfers with the same origin and destination, over a specific period of time. That period has to be set by the PSP in line with its ML/TF risk assessment. Six months was given by way of example and may be appropriate in some cases, but will not be appropriate in all cases. The example has been deleted to avoid confusion.

The proportionality of real-time monitoring

34. Several respondents thought it was unreasonable to expect PSPs to monitor high-risk transfers of funds in real time. They told the ESAs that the effort required to monitor

[8] https://esas-joint-committee.europa.eu/Pages/Guidelines/Joint-Guidelines-on-Risk-Factors.aspx

transfers of funds in real time was disproportionate, and some were of the view that Regulation (EU) 2015/847 did not require this.

35. Regulation (EU) 2015/847 is clear that real-time monitoring may be necessary in some cases, as this gives PSPs the option of suspending or rejecting the transfer of funds. It is down to PSPs to decide, on a risk-sensitive basis, which transfers of funds, or types of transfers of funds, should be monitored in real time. Excluding the possibility of real-time monitoring even in high-risk cases because it is inconvenient is therefore not an option.

36. Accordingly, the guidelines make it clear that PSPs should determine, based on their business-wide ML/TF risk assessment, which high-risk factors or combination of high-risk factors will always trigger real-time monitoring, and which will not. They do not create an expectation that PSPs monitor all transactions in real time.

37. This approach has not changed since Regulation (EC) No 1781/2006 and is reflected in the *Common understanding of the obligations imposed by European Regulation 1781/2006 on the information on the payer accompanying fund transfers to payment service providers of payees*, which the ESAs' predecessors published in October 2008.

The implementation timeline

38. Several respondents asked the ESAs to delay the implementation of these guidelines to help PSPs and payment or messaging systems providers to make the adjustments necessary to comply with Regulation (EU) 2015/847. Most suggested that a six-month implementation period would be sufficient.

39. These guidelines do not fundamentally change the approach PSPs have to take to comply with Regulation (EU) 2015/847, but the ESAs agree that some PSPs may have to make changes as a result of these guidelines. The implementation date has been set at six months from the date when the guidelines have been translated into all official languages of the EU. Translations will be published after the final guidelines have been published in English.

Summary of responses to the consultation and the ESAs' analysis

Comments	Summary of responses received	ESA analysis	Amendments to the proposals
General comments			
Direct debits	Several respondents asked for guidance on direct debits, if direct debits are included within the scope of Regulation (EU) 2015/847.	Direct debits are transfers of funds as defined in Article 3(9) of Regulation (EU) 2015/847.	Guidance on PSPs' obligations in relation to direct debits has been added to Chapter I of Title II.
PANs	A number of respondents asked if a PAN could be used instead of a payment account number or a unique transaction identifier.	Regulation (EU) 2015/847 requires transfers of funds to be accompanied by either the payment account number or a unique transaction identifier. It does not specify a particular format, but is clear that PSPs must be able to trace the transaction back to the payer, or to the payee. PANs are not unique transaction identifiers, since they are not unique to the transaction. They do, however, allow the transfer to be traced to the payer and meet the Regulation's definition of 'payment account'. This means that PANs meet the relevant information requirement.	Chapter II has been updated with a reference to PANs.
ML/TF risk awareness	One respondent was of the view that identifying transactions that may be suspicious in the fund transfers context should be the preserve of compliance departments. To suggest otherwise was disproportionate.	Article 46 (1) of Directive (EU) 2015/849 provides that obliged entities, including PSPs, must train their staff so that their staff are able to recognise operations that may be related to ML/TF, and that they know how to proceed in such cases.	No change.
Virtual currencies	One respondent asked if virtual currencies were included in the scope of Regulation (EU) 2015/847.	Regulation (EU) 2015/847 defines the term 'funds' by reference to point (15) of Article 4 of Directive 2007/64/EC. Virtual currencies do not fall	No change.

Comments	Summary of responses received	ESA analysis	Amendments to the proposals
		under that definition.	
Title I: Subject matter, scope and definitions			
Definitions	Some respondents did not agree with the definitions of 'sending' and 'receiving' payment service providers. They were concerned that these terms inadvertently excluded some payment service providers from the scope of these guidelines.	These definitions were introduced to make the guidelines more accessible. The intention was not to exclude certain payment service providers.	These definitions have been deleted.
	Several respondents disagreed with the definition of 'meaningless information'. They said this suggested that natural persons had to review individual transactions, which was not feasible.	Guidance from international standard setters, including the Financial Action Task Force and the Basel Committee on Banking Supervision, recognises the concept of 'meaningless information' in the fund transfers context. There is no expectation that natural persons manually review all transactions to detect meaningless information, but it is important that systems be configured to detect patterns that could be indicative of attempts to circumvent the system's rules, such as strings of random characters.	This definition has been deleted but the concept has been maintained and included in Chapter II of these guidelines to ensure consistency with international standards.
	Some respondents suggested that the examples provided to illustrate what 'incomplete information' might be were unhelpful, as they could be the norm in some countries.	Regulation (EU) 2015/847 requires the payment service provider of the payee to detect information on the payer or the payee that is either missing or incomplete. The examples were provided to support payment service providers' understanding of what incomplete information might be; there is no expectation that payment service providers must use those examples where they do not	The examples have been deleted.

Comments	Summary of responses received	ESA analysis	Amendments to the proposals
		consider them appropriate.	
	Some respondents asked for an explanation in the guidelines of the meaning of 'services' under Article 2(3)(a) of Regulation (EU) 2015/847, or a definition of 'person-to-person transfer of funds'. Some also wanted a list of transfers that are outside the scope of Regulation (EU) 2015/847.	Article 2 of Regulation (EU) 2015/847 already lists services and types of transfers of funds that are outside the scope of this Regulation. This list includes, for example, transfers of funds to public authorities as payment for taxes. 'Person-to-person transfer of funds' is defined in Article 3(12) of Regulation (EU) 2015/847.	The section 'benefiting from exemptions' has been amended to draw a clearer distinction between person-to-person transfers of funds and transfers of funds made in payment for goods and services.
Title II: Detecting missing information and managing transfers of funds with missing information **Chapter I: General considerations**			
Applying derogations and exemptions	Two respondents asked how PSPs should distinguish person-to-person transfers of funds from transfers of funds that constitute a payment for goods and services.	The exemption in Article 2(3) of Regulation (EU) 2015/847 applies only to the extent that PSPs can establish that the conditions for this exemption are met. Where PSPs cannot distinguish between payments for goods or services and person-to-person transfers, they cannot make use of that exemption.	The section 'Applying derogations and exemptions' has been updated to clarify regulatory expectations.
SEPA versus EEA countries	Some respondents asked that the guidelines clarify whether or not all SEPA countries were to be treated as EEA countries for the purpose of these guidelines.	Countries that are part of the SEPA but are not also Member States of the Union or EEA should be treated as third countries.	Chapter I has been updated to make this clear.
Linked transfers	Respondents agreed with the description of 'linked transfers' in Chapter I of the consultation paper, but some said that establishing potential links over a six-month period risked a significant impact on transaction-processing times.	The consultation paper does not suggest that payment service providers must detect linked transfers of funds over a six-month period. It is for payment service providers to determine what a reasonable 'short' timeframe is, given their	The reference to linked transfers has been clarified, and examples have been removed.

Comments	Summary of responses received	ESA analysis	Amendments to the proposals
		business model and the level of ML/TF risk to which their business is exposed.	
Chapter II: Obligations on IPSPs and PSPs of the payee			
Proportionality	One respondent considered that the obligations on intermediary PSPs in Chapter II were excessive.	The provisions in this chapter apply to intermediary PSPs as they do to PSPs of the payee and do not exceed the legal requirements in Regulation (EU) 2015/847.	No change.
Real-time monitoring	A number of respondents said it was disproportionate to expect PSPs to monitor transfers of funds in real time. Contrariwise, some respondents agreed that real-time monitoring was important but asked that the guidelines be clearer that real-time monitoring was expected only on a risk-sensitive basis.	The Regulation is clear that real-time monitoring may be necessary in some cases, as this gives PSPs the option of suspending or rejecting the transfer of funds. It is down to PSPs to decide, on a risk-sensitive basis, which transfers of funds, or types of transfers of funds, should be monitored in real time. There is no expectation that all transfers of funds be monitored in real time.	Relevant provisions in the guidelines have been amended to clarify expectations.
Sample testing	A number of respondents were confused by the terms 'random' and 'targeted sampling'.	The guidelines provide that targeted sampling means samples being selected in line with specific criteria, whereas the composition of the sample is left to chance for random sampling purposes. The guidelines have been rephrased to make that clear.	Chapter II has been updated to clarify regulatory expectations.

Comments	Summary of responses received	ESA analysis	Amendments to the proposals
High-risk indicators	Some respondents said that it may not be possible to establish if the payer or the payee is based in a country associated with high ML/TF risk, as the payer's or payee's address was not necessarily included in the transfer of funds.	PSPs may be unable to establish the payer's address, yet links to high-risk jurisdictions remain an important risk indicator and should be considered by PSPs as part of a holistic assessment of ML/TF risk.	The guidelines have been adjusted to clarify that the risk associated with the location of the PSP, rather than the risk associated with the location of the payer or payee, should be considered.
Managing transfers of funds with missing information	A number of respondents suggested that giving prior PSPs in the payment chains three working days (for intra-EEA transfers) or five working days (for transfers of funds from outside the EEA) to provide missing information was too little, in particular where payment chains were complex.	It is reasonable to expect prior PSPs in the payment chains to provide missing information within a short timeframe. However, in some cases, it may be necessary to extend that timeframe, and the guidelines have been amended to make that clear.	Relevant paragraphs have been amended to clarify that the timeframes are indicative only.
	One respondent pointed out that, in complex payment chains, it would be difficult to ask the prior PSP in the payment chain for information.	This suggestion has been accommodated.	The guidelines have been clarified to highlight that information requests should normally be sent to the prior PSP in the payment chain.
Notifying authorities	A number of respondents asked that the timeframe for notifying repeatedly failing PSPs to relevant authorities be extended. Extending the reporting timeframe to three months would be in line with current practice in some Member States.	The requirement to notify competent authorities of repeatedly failing PSPs serves to enable the competent authority to liaise with its foreign counterparts where appropriate and to satisfy itself that the PSP or IPSP adequately manages the ML/TF risks associated with the repeatedly failing PSP. While it may not be necessary to notify repeatedly failing PSPs immediately, it would not be appropriate to delay this notification	The guidelines have been amended to extend the notification timeframe to a maximum of three months.

Comments	Summary of responses received	ESA analysis	Amendments to the proposals
		unnecessarily or for longer than three months.	
	Some respondents thought that the information to be included in the notification to relevant authorities was excessive.	Much of the information requested is required by Regulation (EU) 2015/847. The remainder will already be in the PSP's possession and will help competent authorities and the European Banking Authority determine whether this is an isolated case, or whether there is a need for international or coordinated action.	Some respondents thought that the information to be included in the notification to relevant authorities was excessive.
Repeatedly failing PSPs	Most respondents agreed with the criteria for identifying a repeatedly failing PSP, but some respondents asked for more specific indicators, for example 10 incomplete transfers of funds, to further harmonise PSP practices.	These guidelines provide examples of quantitative and qualitative criteria that PSPs should consider when categorising another PSP as 'repeatedly failing'. Setting very specific quantitative criteria would risk being disproportionate; for example, 10 incomplete transactions could be very few.	Relevant provisions have been tightened to clarify regulatory expectations.
Chapter III: Additional obligations for the IPSP			
Payment and messaging systems	A number of respondents noted that some domestic payment systems might restrict the data which can be entered into their systems, preventing the PSP from receiving all information together with a transfer. This requires the use of alternative mechanisms to gather the required information.	Article 10 of Regulation (EU) 2015/847 requires intermediary PSPs to ensure that all the information received on the payer or the payee is retained with the transfer. Where domestic systems do not allow this, PSPs should move to other systems. However, the ESAs acknowledge that updating domestic systems to comply with Regulation (EU) 2015/847 may take some time. During that time, PSPs may put in place alternative mechanisms to	Chapter III has been updated to allow a short transition period, during which alternative means of sending information to the PSP of the payee can be accepted.

Comments	Summary of responses received	ESA analysis	Amendments to the proposals
		pass on relevant information to the PSP of the payee.	
Chapter IV: Additional obligations for the PSP of the payee			
Record-keeping	One respondent was concerned that the record-keeping requirements in Directive (EU) 2015/849 were different from those in Regulation (EU) 2015/847. This could cause problems where the payee was already the PSP's customer.	For transfers of funds made as part of an existing business relationship, the record-keeping requirements in Directive (EU) 2015/849 prevail. This is because the Directive does not distinguish between different types of transfers.	Chapter IV has been updated to include guidance on record-keeping.
Annexes 1, 2 and 3			
Tables	Several respondents found the tables confusing.	These annexes were introduced to make the guidelines more accessible.	These annexes have been deleted.