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Dear Raluca

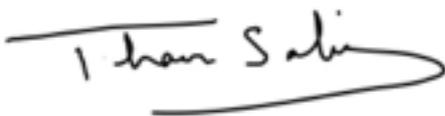
Re: ***EMA Response to the EC Consultation on a Proposal for a Regulation on information accompanying transfers of funds and certain crypto-assets (recast)***

The [Electronic Money Association](http://www.e-ma.org) is the trade body for electronic money issuers and innovative payment service providers. Our members include leading payments and e-commerce businesses providing online/mobile payments, card-based products, electronic vouchers, crypto asset exchanges, electronic marketplaces, merchant acquiring services and a range of other innovative payment services. Most EMA members operate across the European Union ("EU") and globally on a cross border basis. A list of current EMA members is provided at the end of this document.

We welcome the efforts of the European Commission to provide more consistency across the EU in the application of AML legislation; this will drive greater efficiencies in the operational of the AML/CTF framework, and reduce the opportunity for criminals to exploit the financial services system. However we have concerns that some elements of the Regulation are more likely to reduce efficiencies, and drive firms to allocate considerable resource towards activities that do not directly benefit the AML/CTF effort, moving the EU away from the risk-based approach, and more towards a tick-box approach to addressing AML/CTF risk.

We have set out our views below, and would be grateful for your consideration of our comments.

Yours sincerely



Thaer Sabri
Chief Executive Officer
Electronic Money Association

Comments on Proposal for a Regulation on information accompanying transfers of funds and certain crypto-assets (recast)

1. Recital 20

This recital refers to the 'beneficiary' of a crypto-asset transfer when the context suggests this should read 'originator.'

2. Recital 40

This recital refers to the option for member states to require a longer time period for retaining records, but this appears to have been removed in the amended Article 21.

3. Article 2(3)

The purchase of goods and services exemption for cards, e-money instruments, mobile phones and other digital or IT prepaid or postpaid devices with similar characteristics in Article 2(3) appears not to have been extended to crypto-assets (although crypto-assets are mentioned at the end of Article 2(3)). Given that crypto-assets share many characteristics with e-money instruments, mobile phones and other digital or IT prepaid or postpaid devices and are frequently used for the purchase of goods and services, we recommend extending the scope of this exemption to crypto-assets by inserting 'or transfers of cryptoassets' in the first sentence of Article 2(3).

4. Article 2(4)(a)

Similarly, it is unclear why the exemption for cash withdrawals from the payer's own payment account in Article 2(4)(a) should not also be applied to cryptoasset wallets. We therefore propose that the exemption for cash withdrawal from a person's own account be extended to cryptoassets.

5. The treatment of e-money tokens

The EMA is supportive of the treatment of e-money tokens as cryptoassets under Article 2(4), as this will allow these types of cryptoassets to benefit from the cryptoasset-specific provisions in the FTR.

6. The EUR 1,000 limit

The EMA welcomes the application of the EUR 1,000 limit under Articles 2(5), 15(2) and 16(3). Given the fluctuations in value of some cryptoassets and associated challenges in the compliance with requirements that involve thresholds, a higher threshold will reduce the number of transactions that fall within the scope of the requirements and are consequently exposed to these challenges.

7. Transactions involving an unhosted wallet

The definition of a 'transfer of crypto-assets' in Article 3(10) appears to exclude transfers from the scope of the FTR where either the originator or the beneficiary holds

an unhosted wallet. Article 2(4) also expressly exempts person-to-person transfers of crypto-assets from the scope of the Regulation. This would be fine if 'person-to-person transfer of crypto-assets' had been defined as a transfer that does not involve a VASP or other obliged entity on either the originator's side or the beneficiary's side. However, the definition of 'person-to-person transfer of crypto-assets' is not only unclear in this respect (it seems to refer to transfers that do not involve any VASP at all); it also defines such transfers as those between consumers, which is an entirely different issue. VASPs involved in a transfer to or from an unhosted wallet are not able to determine whether that wallet is used for business or other purposes, and the issue of consumer transfers therefore needs to be separated from that of transfers involving unhosted wallets. We recommend the following:

- a. Include a new definition of a 'peer-to-peer (P2P) transfer of crypto-assets' (as per FATF Guidance for a Risk-Based Approach for Virtual Assets and VASPs) as one that takes place without the involvement of a VASP or other obliged entity on either the originator's side or the beneficiary's side.
- b. Amend the definition of 'person-to-person transfer of crypto-assets' to refer only to transfers between consumers, for use in Article 2(3) (see our first point above).

8. Article 17(1)

This article contemplates the rejection of transfers with incomplete or missing information. It should be noted that for cryptoasset service providers, it is not possible to reject transactions. Therefore, this requirement should be amended to require cryptoasset service providers to return the transaction to the originator if the required information has not been provided.

9. Article 32

This article envisages that the date of entry into force is the 20th day following publication in the official journal, and this has been estimated to be at the end of 2024 at the earliest. We would like to stress the importance of a transition period that will allow industry to put in place the technical solutions needed to comply with the requirements of the regulation, technical solutions that are currently still under development. The cryptoasset industry has been actively researching and developing technological solutions to comply with funds transfer regulations in various country jurisdictions. However, given that progress made on this matter varies considerably between jurisdictions and different blockchains, a broad industry adoption of any solution, if and when available, can be expected to be gradual and may take a number of years.

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