

## **REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on information accompanying transfers of funds and certain crypto-assets.**

### **ABI observations on the proposal:**

The Italian Banking Association (ABI) supports the objectives of the European Commission's Anti-Money Laundering and Countering the Financing of Terrorism Package which aims to strengthen the fight against financial crime in Europe.

ABI also welcomes the Commission's aim to achieve consistency of the EU legislative framework with international standards, notably with the latest amendments to the recommendations of the Financial Action Task Force (FATF), and particularly FATF Recommendation 15 on new technologies which pertains to the expansion of the scope of entities subject to AML/CFT requirements to include virtual asset service providers and the mitigation of risks deriving from their activities.

At the same time, ABI intends to highlight the concerns – in particular of technical nature - that have arisen regarding the application of the provisions contained in FATF Interpretative Note 16, which impose information requirements on the VASPs of the originator and beneficiary in a transaction involving crypto-assets. Difficulties may arise in applying all rules on wire transfers to crypto transfers due to some of the specificities inherent to crypto assets and precisely as a result of the way in which transfers are made.

In particular, we underline the difficulty in applying the information obligations for the VASP of the originator set out in Art. 14. In open and more decentralised systems, the originator's VASP is not aware whether the beneficiary's address indicated by the client corresponds to a wallet managed by another VASP or whether it is a personal wallet. In addition, the originator's VASP itself may not have sufficient information to check that the beneficiary's name – given by its customer – is effectively the owner of the wallet that will receive the funds.

Also, the distributed ledger supporting a particular crypto asset might not be technically adequate for storing information relating to the originator/beneficiary of the transfer pursuant to Art 14 (3), so that the present rules might require building parallel information systems. However, not every crypto-asset service provider or obliged party might be able or willing to invest into these systems, especially if only a limited number of clients is serviced or with only infrequent number of transfers. As a result, the further pursuit of this approach may push many obliged entities away from engaging with such activities or may generate the adverse effect whereby customers can prefer an entity outside the EU regulatory framework as a VASP.

Exchanging information as set out in Article 14(1) and (2) would lead to the sharing of personal information of the originator and beneficiary between the two VASPs involved in the transaction. The public nature of blockchain combined with the storage of personal information in it may also cause frictions with the GDPR framework.

Even if a messaging system outside the blockchain were to be created, which anyway is something we do not support, so that VASPs could exchange originator and beneficiary information under Articles 14-17, we would still face a twofold problem of information management with transfers involving wallets that are not provided by VASPs (making it impossible to exchange information) and the problem of unintentional exchange of unnecessary data.

Given the nature of some blockchain solutions (e.g., Bitcoin), this problem refers to the fact that from a wallet address it is possible to verify and trace back all transactions involving that wallet. Exchanging the customer's identity information with the transaction would mean not only exchanging information closely related to that transaction but unavoidably sharing all past (and future) movements of that wallet.

Having said that, ABI believes that VASPs obligations set out in the proposed revision of Regulation 2015/847 are not always applicable given the specificities of the crypto ecosystem. However, we believe that there is a need for AML/CFT controls to reduce related risks and prevent misused funds from flowing into the financial sector. In this sense, we believe that controls and monitoring can be carried out precisely at the point of contact with the traditional financial world, i.e. at the entry and exit of the crypto world.

As banks and PSPs play a major role in mitigating money laundering and terrorism financing in the financial sector, we believe these entities can leverage their resources (people expertise, processes, IT systems, customers knowledge) and continue to ensure AML/CTF controls also when it comes to transfer of crypto-asset involving a transition from the crypto world to the traditional world and vice-versa.

In addition to the above, ABI would like to express some concerns about the provisions added to Article 4, paragraph 1 letter d) and paragraph 2 letter c) related to the Legal Entity Identifier (LEI) code. Although the value of the LEI is recognized, the usage of this code remains low and a clear strategy/plan for wider adoption is not available. Having regard of such context and considering the huge impact that these requirements will have on the banking industry, ABI hopes that the Commission will avoid, at this stage, to take forward these amendments.

Lastly, ABI suggests also taking this opportunity to draw the attention on the need to revise Regulation (EU) 847/2015 in order to:

- clarify the obligations of the Payer's PSPs and the Payee's PSPs in relation to direct debits. In fact, it appears that the current FTR provisions (especially looking at the obligations of Articles 4 – 6, versus Articles 7 – 9) fit with credit transfers process only. For this reason, ABI recommends the Commission clearly adjusting and distinguishing the obligations for Payer's PSPs and for Payee's PSP also in the direct debit context. In particular, the extent and the structure of the information obligations (which are currently only for the Payer's PSP) versus the checking obligations for the Payee's PSP, should be reviewed;
- make clear that settled R-Transactions do not constitute a new transfer of funds within the meaning of Article 3 and hence that the requirements of the FTR should not apply to such R-Transactions transfers. In fact, R-Transactions are to be considered as exceptions pertaining to the original payment transaction for which FTR obligations have been already met. This proposal will avoid unnecessary frictions in the handling of R-Transactions and significant amendments of the rules of the schemes.