Dear Sirs,

Thank you for the opportunity to provide our feedback to the drafted *Guidelines on preventing the abuse of funds and certain crypto-assets transfers for money laundering and terrorist financing purposes under Regulation (EU) 2023/1113* (“Guidelines”). Below please find comments raised by the Polish banking sector (coordinated by the Polish Bank Association (ZBP)).

Please note that many of our comments below refer to **intermediated transactions**, especially ones sent via non-bank payment service providers (nbPSP). While aware of the coming update of the *Settlement Finality Directive* (SFD), we still expect non-bank players to use banking services to an extensive degree in the foreseeable future. Moreover, specifically here in Poland, we have been instructed by our regulator not to confuse parties settling an actual business transaction (i.e. payer and payee) with the regulated entities intermediating between them (PSPs, e.g. payment aggregators, acquirers etc.), in particular – not to show an nbPSP as the payer for transactions ordered by them (unless they settle a standard business transaction for which they don’t need a payment license, e.g. pay salaries to their own employees). The (S1) scenario of a third party being the payer, or (S2) there being no payer at all (exclusion) are different scenarios than (S3) that very nbPSP declared as the payer, i.e. in their non-regulated role. As this area has remained out of the scope of both the existing and the drafted Guidelines, would like to stress the need for clarifications, bearing in mind there are many doubts regarding the required compliance levels within this scope.

| No. | Guidelines: chapter | Guidelines: point | Guidelines: item | Comment: area discussed | Comment: details |
| --- | --- | --- | --- | --- | --- |
| 1 | (all) | (all) | e.g. Chapter 2 point 6 (and any other that follow) | IPSP vs PSP in general | *“(…) set out the factors that payment service providers (PSPs), intermediary payment service providers (IPSPs), crypto-asset service providers (CASPs), and intermediary crypto-asset service providers (ICASPs) should consider (…)*”; *“(…) specify what PSPs, CASPs, IPSPs and ICASPs should do (…)”* etc.:  Both the Guidelines and the Regulation itself (*“(transfer of funds (…) which are sent or received by a payment service provider or an intermediary payment service provider (…)”*) seem to list a PSP alongside an IPSP, as if those were two complementing entity types. However, in our view, a “PSP” depicts a broader concept of a regulated entity type, while a “payer’s PSP”, “IPSP” and “payee’s PSP” depict a certain role played by that PSP. Therefore in our view an IPSP should not be listed independently whenever entity types are enumerated and a broader concept of a PSP is also mentioned. Same seems to refer to CASP and ICASP. Was the intention of mentioning the IPSP paired with the PSP only to stress that a certain regulation does not only refer to the first and last PSP in a transfer chain, but to all of them? Please clarify.  See also our comment no 15 on the impact of unclear PSP definitions on CESOP reporting, and our comment no 16 on IBAN Check. |
| 2. | Exclusion from the scope of Regulation (EU) 2023/1113 and derogations | 2.2. Linked transfers in relation to the 1000 EUR threshold (Article 2(5)(c), Article 5(2),  Article 6(2) and Article 7(3) of Regulation (EU) 2023/1113) | 7 |  | Current wording requires to verify, whether the payment is executed to persons linked with the payee. As the transfers are processed in automatic way in dedicated clearing systems, where information about linked persons are not stored, such verification may impact processing time of all transactions. Additionally, when the person acting on behalf of company has in a bank also own personal relationship – such mechanism will mix transactions which are separate in nature (company and personal) and produce many false positive alerts. Such analysis may be handled in standard AML monitoring systems.  We propose change the wording in the following way:  *7. PSPs should treat transfers as linked that are:*  *a. carried out in a single operation or in several transactions; and*  *b. sent by the same payer to the same payee ~~or persons linked with them~~, within a short timeframe; or are sent from one payer to different payees or different payers to the same payee ~~or persons connected with them~~ within a short timeframe*. |
| 3 | 4. Preventing the abuse of funds (…) | 2. Exclusion from the scope (…) | (none) | Exclusion: commercial agent | The Guidelines do not refer to exclusions listed in Article 2(2) of the Regulation, i.e. PSD2-related exclusions.  As per point (b), neither PSD2 nor the Regulation refers to “*payment transactions from the payer to the payee through a commercial agent authorised via an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of only the payer or only the payee*”. We are aware this regulation is likely to be changed within the PSD3 package. However, it is still not clear what information should accompany such transactions. As this transaction type is excluded, does this mean no data should accompany transfer chain, and the transfer itself should state that this is an “anonymous” transaction, just like banks send “anonymous” MT202 between them, for non-client related transactions?  Example: Bank ABC holds an account for Agent XYZ. Agent XYZ intermediates in the sale of goods/services between Mysterious Buyer and Secret Seller. When Mysterious Buyer sends funds to Agent XYZ’s bank account, the Buyer’s bank will probably treat it as a non-excluded transfer, with Agent XYZ being the declared payee (this is yet another ML/TF challenge, i.e. flattened information on payee when basing on data solely declared by the payer). Then, Agent XYZ will distribute funds to Secret Seller (probably in bulk, from many buyers at once). How should that payout be ordered by the Agent? Is Agent XYZ the payer (S3)? Is (no-one) the payer (S2)? Is Agent XYZ obliged to send those payouts one by one and list every single Mysterious Buyer’s account (S1)? As this transaction is excluded, should it be seen like an “equivalent to MT202” (intra-FI with no payer/payee data) rather than “equivalent to MT103/MT202COV”? If so, this is an extended use of “anonymous” (MT202) payments into non-regulated entities (commercial agent)? If Agent XYZ just orders a simple bank transfer, like every non-regulated bank client (and, as a rule, non-regulated entities should not order payments on someone’s behalf), then that very Agent is displayed as the payer. Is that correct or is that misleading? How should that exclusion work? Is that not a way to legalize / hide data on certain transactions just by putting an agent in between, as the whole transfer chain is then excluded from providing payer’s and payee data? |
| 4 | 4. Preventing the abuse of funds (…) | 2. Exclusion from the scope (…) | (none) | Exclusion: payment systems | The Guidelines do not refer to exclusions listed in Article 2(2) of the Regulation, i.e. PSD2-related exclusions.  As per point (h), neither PSD2 nor the Regulation refers to “*payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses and/or central banks and other participants of the system, and payment service providers, without prejudice to Article 35*”.  We understand the concept when it comes to payment systems. For example, when an ACH is cleared by the central bank via RTGS, this clearing (settlement of the payment system) is excluded from the Regulation. In other words, the central bank does not need to verify details of the transactions carried out in a payment system if they only settle the underlying funding. Same refers to payment systems built not on a central bank settlement, but other types of settlement – via commercial banks. In Poland, for instance, banks participating in the BLIK payment system clear via ACH, which then in turn obviously clears via RTGS. This means that if Bank ABC holds an account for Acquirer DEF, and Acquirer DEF receives a bulk transfer from BLIK every day, Bank ABC (not a BLIK participant) does not need to know the underlying data, because this is covered by exception (h) for the payment system.  However, this exclusion is not clear for similar structures not constituting a payment system, but rather a payment scheme, e.g. card settlements.  Example: John Smith from Bank ABC makes a card payment to a Merchant UVW with their final account with Bank XYZ. Acquiring services are offered by Acquirer JKL, who has a bank account with Bank MNO. Every day, Bank MNO sees incoming bulk flow from card operators, and then disbursement flows to Merchant UVW and others (in bulk, from many payers, net – including all payment methods, refunds etc.). What is the expectation of Acquirer JKL regarding those flows (incoming and outgoing), what is the expectation of Bank MNO, and how should that be done technically? |
| 5 | 4. Preventing the abuse of funds (…) | 2. Exclusion from the scope (…) + 3.2. Multi-intermediation (…) | (none) + 18 | Exclusion: inter-/intra-PSP transactions | The Guidelines do not clearly refer to exclusions listed in Article 2(2) of the Regulation, i.e. PSD2-related exclusions – aside from the note in point 18, referring to “*liquidity movement or settlement on the PSP and IPSP’s own account*” – this may need further clarification.  As per point (m), neither PSD2 nor the Regulation refers to “*payment transactions carried out between payment service providers, their agents or branches for their own account*”.  How should the phrase “for their own account” be understood? The challenge is that, essentially, all flows aimed at executing a payment – even the most classic ones, e.g. via correspondent banking – include moving funds between PSPs. When can that exclusion be used? This is essentially a question of defining the modern (nbPSP / ecommerce/fintech) world similarly to what already functions between traditional bank players, i.e. differentiating between use cases “equivalent to MT202” (intra-FI with no payer/payee data) and “equivalent to MT103/MT202COV” (ordering a specific transaction/moving funds related to a specific transaction: payer and payee data required). How to define that subtle distinction between “we are moving the funds to our other account for liquidity purposes” vs. “we are moving the funds to our other account because we need to finalize those 100 outgoing payments to merchants”?  Example 1: Acquirer JKL has collected funds from payers in their account with Bank MNO, and then intends to move their liquidity to another account they hold, with Bank PQR, because that’s where they will be making their payouts to merchants from. Should this transfer be seen as part of the original transactions (of so, what is the expectation of Acquirer JKL and the two banks)? Or maybe it is subject to exclusion as per point (m)?  Example 2: Payment Services Bureau has an account with Bank ABC. The Bureau has collected funds from payers, in cash, and at the end of day they intend to deposit the cash with Bank ABC and order outgoing payments to the beneficiaries (money remittance – payments for electricity bills, phone bills, etc.). How should this cash deposit be understood – does it fall under the (m) exclusion, or are those single cash deposits related to every single payer and payee, which Bank ABC should book one by one? And for the outgoing part, what does Bank ABC need to know about the payers and how should such transfers be ordered? |
| 6 | 4. Preventing the abuse of funds (…) | 2.1. Determining whether a card (…) | 4 | Using an instrument for goods/services only | We understand the guidelines refer only to direct participants of a certain system/scheme. It is not clear, however, what is expected of the indirectly participating PSPs, i.e. entities earlier before that flow, or later after that flow, or below that flow (settlement/nested flows). Those are participants outside of the payment system/scheme infrastructure, so it is virtually impossible for them to make sure that “the number of that card, instrument or device accompanies all transfers flowing from the transaction”.  Example: The Global Acquirer company is a PSP, has global presence. In order to offer also local payment methods, Global Acquirer has concluded an agreement with Local Acquirer. Local Acquirer offers various local payment methods, within various payment systems and payment schemes (even in cash). Local Acquirer has an account with Local Bank (this is where funds from card operators etc. flow in, and funds to Global Acquirer flow out). Global Acquirer has an account with Global Bank (this is where funds from Local Acquirer flow in and funds to some other account of Global Acquirer in another country flow out, and also some flows to local merchants for total collections on all markets flow out too). What is expected from Local Bank and from Global Bank, bearing in mind they do not participate in the underlying payment systems or schemes? Who are the parties (payer/payee), if any (then which exclusion applies), to the following transfers:   1. from: payment system/scheme operator with their bank, to: Local Acquirer’s account with Local Bank (daily bulk net payments); 2. from: Local Acquirer’s account with Local Bank, to: Global Acquirer’s account with Global Bank (daily bulk net payments); 3. Global Acquirer’s account with Global Bank locally to some other account of Global Acquirer somewhere in the world (daily or as needed; for the purpose of cash concentration and/or making payouts in some other countries); 4. Global Acquirer’s account with Global Bank to merchant’s bank account (daily/regular bulk net payments, from multiple payment instruments, potentially from other markets too)?   Please elaborate on what it means specifically to Global Bank, and Local Bank, and the payer’s bank, and the final merchant’s bank, to ensure that “the number of that card, instrument or device accompanies all transfers flowing from the transaction”. See also comment 3 on payment systems vs payment schemes. |
| 7 | 4. Preventing the abuse of funds (…) | 2.2. Linked transfers (…) | 6-9 | Calculating the 1000 EUR threshold | We understand the guidelines refer only to direct participants of a certain system/scheme. It is not clear, however, what is expected of the indirectly participating PSPs, i.e. entities earlier before that flow, or later after that flow, or below that flow (settlement/nested flows). Those are participants outside of the payment system/scheme infrastructure, so it is virtually impossible for them to make sure that the threshold has not been exceeded, given e.g. potential different instruments used to split a bigger transaction into smaller parts. (example as in comment 5). |
| 8 | 4. Preventing the abuse of funds (…) | 2.2. Linked transfers (…) | (none) | Restrictions regarding payee’s account type | As per Article 2(5), an exclusion can be applied if a transfer is made to a ”*payee’s payment account permitting payment exclusively for the provision of goods or services*”. This requirement is not clear in many cases.  When it comes to literal meaning, we understand that this exclusion can only be applied if the only credits to a payment account can be in relation to providing goods/services (i.e. there are no limitations on the debiting side).  In many cases – mostly for transactions initiated by the payer’s PSP – the data on the payee is only declared. There are multiple structures in place nowadays, where e.g. a virtual IBAN is used as a local equivalent (alias/token) to some other account held by another PSP. Also, in many cases it is not clear (and definitely not clear for PSPs who are not in a bilateral agreement, i.e. vast majority of cases) where actually a given transaction stops. If an acquirer holds a non-bank payment account for the merchant, then the payee’s account number would be that non-bank account number (see also: comment 8 for a related challenge) and that very PSP is the only party in the transfer chain to declare the crediting policy for that non-bank payment account. However, if the acquirer only intermediates a transaction which only ends at the merchant’s bank account with Bank ABC (and not sooner) – then how are all the PSPs in the chain expected to know what Bank ABC’s policy towards crediting a certain account is? On top of that, is seems virtually impossible to differentiate between those two scenarios, as transactions do not carry out such rich data on the nature of the payee’s account. However, it would not be reasonable either to assume that this exclusion is virtually impossible to apply. How should this exclusion be therefore applied from the perspective of a bank: a) holding the payer’s account and issuing a payment instrument for the payer, b) holding the merchant’s account and collecting funds sent (usually in bulk) by a PSP to that account, c) holding an account for a PSP (intermediating a transaction, both on incoming and/or outgoing side)? |
| 9 | 4. Preventing the abuse of funds (…) | 3.2. Multi-intermediation (…) | 16-17 | Cross-border transfer, meaning of IBANs (part 1) | Please note that the presence of nbPSP, as well as various business models aimed at optimizing payment processes and costs, resulted in a state where it is no longer obvious whether a certain transaction is cross-border or not (assuming the criterium is the country where a given PSP is registered).  An example of that would be a local collection model: a PSP collecting funds from local market participants in a different country may wish to open a local account with a local bank in order to offer local IBANs. This way, what seems like a local transfer is actually a cross-border one: when that PSP sees incoming credit in their bank account, they will treat it as settlement / instruction to credit their client. Moreover, this payment is manually made by the payer, often consumer (plain fund transfer to a local IBAN), and it would not be reasonable to require that consumer to understand those intricacies of ML/TF regulations, to be aware that they are actually making a cross-border transfer and as such they need to mark it accordingly.  Another example would be a long intermediated chain, where Bank ABC holds an account for a local company (e.g. a local flower shop), that flower shop receives daily credits from their acquirer, and so it happened that one of the clients visiting that flower shop one day, and paying by card, was a British citizen with a card issued to their British bank account. What is expected of that Bank ABC in relation to that local flow from the local acquirer…?  There also seems to be an assumption that an IBAN, and/or BIC, indicates a country. This does not seem true anymore, either. As the payment market was disrupted by new types of players, structures and services, we are now far from the traditional world of “single-layer” transfers, SWIFT-based, fully transparent thanks to BIC codes, often supported by IBANs. We now have payment accounts, also non-bank ones, with unique identifiers defined by PSD2 as “a combination of letters, numbers or symbols specified to the payment service user by the payment service provider and to be provided by the payment service user to identify unambiguously another payment service user and/or the payment account of that other payment service user for a payment transaction” – not: globally unique set of characters that clearly states which PSP from which country holds it. There is no global regulator who distributes account numbers on a global scale. This results in multiple challenges: if a PSP intermediates an on-behalf-of transaction and the payer’s account is ”14”, how to treat it? That said PSP can be the first PSP in the chain (i.e. “14” means an payment account held directly by that PSP’s client, another PSP), or the second, third etc. This context is not transmitted in the transfer chain. We believe this aspect needs deeper discussions, and e.g. potentially classifying PSPs’ third party accounts in some other way that “usual” (“direct”) accounts of payers/payees.  See also: comment no. 11. |
| 10 | 4. Preventing the abuse of funds (…) | 3.2. Multi-intermediation (…) + 4. Information to be transmitted | 17 + 20 | PSP’s relation with the payer | “*For the purpose of the transfer of information, when the PSP or IPSP handling a transfer does not have a direct relationship with the payer, that PSP or IPSP should ensure that the next PSP in the transfer chain receive the information on the payer and payee.*” Using yet again the terms “PSP” and “IPSP” seems to be confusing, so is only referring to the lack of relationship with the payer as a prerequisite for forwarding the data (i.e. making sure that the information on the payer and payee is not lost throughout the payment chain is a general requirement, not specific to some PSP not having a direct relationship with the payer). Can you please clarify what was the intention behind this wording? Should it rather be not shifting the responsibility stated in Article 4 from the payer’s PSP to IPSP, but rather correctly defining the roles (payer’s PSP vs IPSP) in a scenario when more than one PSP has a direct relationship with the payer? This also impacts guideline no 20: if the information should not be altered, then by whom? (e.g. what if two PSPs have a relationship with the payer and payer’s name slightly differs, e.g. by an initial of the second name?) |
| 11 | 4. Preventing the abuse of funds (…) | 3.3. Batch transfers (…) | 19 | Additional information to batch transfers | We would strongly ask you to reconsider adding such a guideline. There is a risk of this guideline resulting in creating additional, often bilateral, layers of exchanging information, thus depriving the core payment systems and schemes of conveying critical data.  In payment systems there is already room for providing information on the payer and payee. Sending batch transfers often results from cost optimization of the sending party. We do not understand the reason behind keeping batch transactions instead of single ones, and then allowing additional, independent systems to transmit those details. Also, who is understood as “the intermediary” when e.g. a non-bank PSP sends bulk transfers from their bank account with Bank A, on behalf of payers whose details are kept in a side-system, to merchants in multiple banks (Bank B to Bank Z, i.e. any theoretically possible bank worldwide)?  We assume this provision was intended for bulk transfers between PSPs that cooperate, usually on the basis of a bilateral agreement. However, please note that there are multiple structures when there are other parties involved, and there are many business models, well established on the market, that base on bulk flows. How is that requirement intended to impact those models, if at all?  Example 1: PSP1 sends a bulk transfer to PSP2. Both PSP1 and PSP2 use a third-party solution where they can transmit underlying details. What does this mean for PSP 1’s bank, and for PSP 2’s bank? What if those banks do not wish to use that third party system (complicated implementation, impacting sensitive payment and anti-ML/TF processes)? Would that be considered a proportionate, objective and non-discriminatory practice to deny payment services to those PSPs?  Example 2: Bank ABC holds an account for a local company (e.g. a local flower shop), that flower shop receives daily credits from their acquirer. What is expected of Bank ABC?  Example 3: There are multiple payers using the services of PSP1 (payer’s PSP). PSP1 sends funds, using their account with Bank ABC, to PSP2 to their bank account with Bank DEF. Then, PSP2 sends funds, also in bulk, using their account with another bank, Bank GHI, to PSP3 to their bank account with Bank JKL. As the provisions of item 19 seem only to refer to an action taken by the “payer’s PSP”, “to an intermediary”, then what is the expectation from all the PSPs (PSP1, PSP2, PSP3, Bank ABC, Bank DEF, Bank GHI, Bank JKL) in this part of the transfer chain?  To sum up: it is important to note that the implementation of this solution will result in the need of ensuring the API connectivity with many entities that will, at the same time, order large numbers of transactions using various information coding standards. Moreover, the implementation of the described solution will require the creation of an additional interbank API channel (or wider: an inter-PSP API channel) for transmitting information regarding the content of the batch transfers. |
| 12 | 4. Preventing the abuse of funds (…) | 4.1 Providing the payment account number (…) | 21 | Meaning of IBANs (part 2) | Continuing the discussion from comment 8, let us also comment on the proposed wording that “*PSPs may treat the International Bank Account Number (IBAN) if available (…) as the payment account number, on condition that the number used permits the fund transfer to be traced to the payer or the payee”*.  As stated earlier, the modern world of payment solutions is very complex – this is what gives the European consumers and companies such great possibilities to embed financial services so seamlessly into their lives. But on the other hand, it also means that certain simple assumptions, e.g. related to ML/TF, that were true in the old days (when it was just banks, and banks were making payments one by one, via SWIFT network) are no longer valid; they should embrace the whole complexity of the world nowadays. The matter of IBAN perfectly depicts this complexity. When a PSP is instructed to make a payment to a certain IBAN, usually this is all they know. It is not transparent to earlier PSPs in the chain whether this very IBAN indicates the final, single payment account (and whether this account is held by the PSP associated with that IBAN), or maybe there is some other information (e.g. some string of characters in the payment title) to indicate the final payee’s account number (if there is one at all 🡪 see e.g. money remittance). This is all declared information, on the declared payee. Virtual IBANs (VBANs) are also often used here, and again – they rather indicate who the funds are meant for, rather then being, *per se*, the number of that payee’s account.  We therefore suggest deleting the “*on condition that the number used permits the fund transfer to be traced to the payer or the payee*” part, and open discussions as to how to understand the IBAN in this complex world.  We would also like to point out that even if a transactions started in cash and ends in cash, yet some of the transfers in-between are obviously made on an account-to-account basis, then there are always strings of characters involved, but not necessarily stating whether this was “payer’s account number 1234” or “payer’s transaction was given the ID 1234” (see e.g. MT103 and tag 50, first line).  See also our comment no 16 on IBAN Check. |
| 13 | 4. Preventing the abuse of funds (…) | 4.2. Providing the name of the payer (..)  4.3 Providing the address (…) | 22 and 27 |  | Section 4.2.point no 22 and Section 4.3 point 27 require to provide with transfer details names and addresses of all account holders. Such approach may be misleading for receiving institution. Receiving institution will not have an information who initiated transfer, which may affect process of transaction analysis.  We propose the following wording:  *22. The payer’s PSP or originator’s CASP should provide the following:*  *a. For natural persons, the full official name of the customer as documented on an official and government-issued document (such as an identity card or passport), or if this is unavailable for a legitimate reason, documentation in accordance with the “EBA Guidelines on policies and controls for the effective management of money laundering and terrorist financing (ML/TF) risks when providing access to financial services”13 . Where technical limitations exist, as referred to in paragraph 13, that do not permit the transmission of the full official name, the payer’s PSP and originator’s CASP should, at minimum, include the first official given name and last official surname, as per the official document.*  *b. For legal persons, the name under which the legal person is registered. Where technical limitations exist, as referred to in paragraph 13, that do not permit the transmission of the full registered legal name, the payer’s PSP and originator’s CASP should transmit the trading name. Trading names used should unequivocally be traced back to the legal person and match any such names recorded in official registries.*  *c. For transfers from a joint account, address or wallet,* ***~~the names of all holders of the account~~****~~, address or wallet. Where technical limitations exist, as referred to in paragraph 13, that do not permit the transmission of all names of all parties to the transfer, the payer’s PSP and originator’s CASP should transmit~~ the name of the holder of the account, address or wallet who is initiating the that is not possible, the primary account, address or wallet holder*  27. For transfers from a joint account, address or wallet, the information of **~~all holders of the account~~**~~, address or wallet. Where the transmission of the respective information of all the parties cannot take place due to technical limitations, as referred to in paragraph 13, the payer’s PSP and originator’s CASP should transmit the information of~~ the holder of the account, address or wallet initiating the transfer; or, alternatively, of the primary account, address or wallet holder. |
| 14 | 4. Preventing the abuse of funds (…) | 4.3 Providing the address (…) | 23-27 but mostly 26 | Scope of payer’s data required | The wording of Article 4(1) point (c) was altered versus the previous regulation (EU 2015/847), and unfortunately, in our view, the guidelines do not provide clarity of what scope of data is required and what was the intention behind this change. We would expect the confirmation that the scope of data remains unchanged (with the exception of a clear obligation to provide the country + possibly linking both types of ID by using the word “and”).  As is:   * the payer's address, official personal document number, customer identification number or date and place of birth;   As will be:   * the payer’s address including the name of the country, official personal document number and customer identification number, or, alternatively, the payer’s date and place of birth.   In other words, as is:   |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | | ADDRESS | , | DOC\_ID | , | CUST\_ID | or | BIRTH |   In other words, as will be:   |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | | ADDRESS | , | DOC\_ID | and | CUST\_ID | or, alternatively | BIRTH |   We are not sure how to read replacing the second comma with “and”, and adding the word “alternatively”.  As per the current wording, just one element is enough (either ADDRESS, or DOC\_ID, or CUST\_ID, or BIRTH). In certain cases (here: corporate payer) some data do not make sense (personal document ID, date and place of birth) so usually just the address was used.  Is the intention to change it to three elements (either ADDRESS, or [DOC\_ID combined with CUST\_ID], or BIRTH)? Thus, for corporate clients, leaving just one option (ADDRESS)?  In the Regulation we do not see any requirement on assessing the quality of data from the perspective of the “unambiguous identification”. We believe this may open doors to discussions that may not ever be constructively solved. The simplest example is that we never know if our client, John Smith, living at 4 Flower Avenue, New York, US, does not have a son also named John. We therefore suggest to stick to the literal wording and require either address, or both of the IDs (?), or date and place of birth.  Additionally, under the Travel Rule Guidelines, the we also kindly ask you to clearly define what the customer's identification number may constitute - for example, whether it is a PESEL number (Polish Universal Electronic System for Registration of the Population) that objectively individualizes each customer or a given bank’s proprietary client ID, i.e. the identification number assigned to the client by the bank?  Furthermore, in point 24 of Guideline 4.3. the order of information constituting the address is indicated. Due to non-uniform territorial divisions of countries and the possibility of discrepancies in interpretation, we kindly ask you to keep this in mind that it may not always be feasible to provide e.g. “state and province and municipality” if this point was to be understood literally. Please take this factor of local specifics of various countries into account, specifically when translating this point of Guidelines into other languages, e.g. Polish. |
| 15 | 4. Preventing the abuse of funds (…) | 4.4. Providing an equivalent Identifier to the LEI (…) | 28 | LEI: absence of field in clearing, equivalent | The scope of required information on the payer includes *“subject to the existence of the necessary field in the relevant payments message format, and where provided by the payer to its payment service provider, the current LEI of the payer or, in its absence, any available equivalent official identifier”*. As the Guidelines require that this equivalent is (e) “*accompanied by a description of the type of identifier used in the messaging system*”, we understand that as long as the messaging system does not have a dedicated field for LEI, or its equivalent, it is not required to provide the LEI, nor its equivalent.  What are PSPs expected to do with intermediated transactions, if the initial part (i.e. messages at earlier stages of the transfer chain) was sent by a system using dedicated fields, hence transmitting LEI, and at some point there is no possibility to transmit the LEI e.g. locally? If point 11 from the Guidelines were to apply, such a transfer would need to be rejected, and we assume this was not the intention. We therefore assume that the condition “*subject to the existence of the necessary field in the relevant payments message format*” prevails and it is correct to finalize such a transaction without transmitting the LEI. |
| 16 | 4. Preventing the abuse of funds (…) | 4.4. Providing an equivalent Identifier to the LEI (…) | 28 | LEI equivalent: automatic issuing | As per the Guidelines, the LEI equivalent should “*(…) automatically [be] issued upon entity formation by a public authority in the jurisdiction in which the legal entity is based (…)”* – is it correct to assume that any other identifiers, which are not automatically issued, but can be assigned later (e.g. tax ID) are not considered as the LEI equivalent? |
| 17 | 9. Obligations on the payer’s PSP, payee’s PSP and IPSPs where a transfer is a direct debit | - | 75 | Transfer of funds – direct debit mandate | We would strongly ask you to reconsider adding such a guideline. There does not seem to be a legal obligation resulting from the Regulation in this area. Moreover, there is a risk of this guideline resulting in changing the well-established processes, e.g. in local Direct Debit schemes.  In our view, the requirement to send the required information by the PSP of the payee to the PSP of the payer at the time when the direct debit mandate is established or modified may require far-reaching changes in current practice, including changes in transaction systems. We also do not see the specific legal basis for transmitting information at that point of time. The Regulation refers to transfer of funds (i.e. “any transaction at least partially carried out by electronic means on behalf of a payer through a payment service provider, with a view to making funds available to a payee through a payment service provider”). The requirement defined in Article 4 and others refers to ensuring that the said transfers of funds “are accompanied” by certain information. Setting up a Direct Debit mandate does not result yet in a transfer of funds – such a transfer may even never take place. We therefore believe that such a requirement would exceed the provisions of the said Regulation and we suggest keeping the flow of information linked to transactions (transfers of funds) only. |
| 18 | (none) | (none) | (none) | CESOP reporting | We would like to stress the need for consistent understanding of roles in the transfer chain (payer, payer’s PSP, IPSP, payee’s PSP, payee). Certain regulations, such as CESOP[[1]](#footnote-1), refer to the concept of PSPs. We would like to again highlight the need for a clear conceptual system in this scope, consistent across all regulations. For instance, CESOP reporting seems not to refer to the concept of IPSP, but does not seem to limit reporting obligations strictly to the payer’s PSP or payee’s PSP. For example, Article 243b(3) states that “*The requirement laid down in paragraph 1 shall not apply to payment services provided by the payment service providers of the payer as regards any payment where at least one of the payment service providers of the payee is located in a Member State (…)*”. It is not clear what is meant by that plural form. |
| 19 | (none) | (none) | (none) | IBAN Check | We would like to stress the need for a consistent approach to intermediated transactions, especially for nested flows, when one PSP is a client of another PSP and uses their payment services as a client (BaaS). There are plans (both for Instant Payments, and PSD3/PSR standard credit transfers) to introduce the verification of payee (so-called IBAN Check). It is important to design this service correctly, in view of the fact that the holder of a certain IBAN-defined bank account may not be the final payee/original payer. Yet again let us stress the need for consistent understanding of roles in the transfer chain (payer, payer’s PSP, IPSP, payee’s PSP, payee). |

1. <https://taxation-customs.ec.europa.eu/taxation-1/central-electronic-system-payment-information-cesop_en> [↑](#footnote-ref-1)