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**COMMISSION DECISION**

**of 14.12.2017**

**setting up the Commission expert group on electronic identification and remote Know-Your-Customer processes**

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### setting up the Commission expert group on electronic identification and remote Know-Your-Customer processes

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Whereas:

- (1) In its Communication entitled 'Consumer Financial Services Action Plan: Better Products, More Choice'<sup>1</sup>, the Commission announced its intention, through a dedicated expert group, to explore how to facilitate the cross-border use of electronic identification (eID) and Know-Your-Customer (KYC) portability based on identification and authentication tools under Regulation EU No 910/2014 of the European Parliament and of the Council<sup>2</sup> on electronic identification and trust services for electronic transactions in the internal market ("eIDAS") to enable financial institutions to identify customers digitally. In line with the 'Consumer Financial Services Action Plan', the group should comprise regulators, supervisors, financial institutions and identity experts. To reinforce the consumer dimension of the issues to be explored, participation in the expert group will also include consumer organisations.
- (2) The use of electronic identity schemes, as set out in eIDAS, may facilitate the opening by customers based in one EU Member State of a bank account on-line in another Member State through a process known as "digital on-boarding", while meeting the strong requirements for customer identity proofing and verification for know-your-customer or customer due diligence purposes.
- (3) In its Communication on EU eGovernment Action Plan 2016-2020<sup>3</sup>, Commission has committed to explore the need to facilitate the use of remote identification and secure authentication in consumer financial services with a view to accelerating the cross-border and cross-sector use of eID, including mobile ID, and trust services (in particular e-signature, website authentication and online registered delivery service) in digitally enabled businesses such as banks.
- (4) Under Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing<sup>4</sup> (the "Directive"), there is no longer an assumption that situations where the customer has not been physically

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<sup>1</sup> COM(2017) 139 final

<sup>2</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC

<sup>3</sup> COM(2016) 179 final

<sup>4</sup> Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC ( Reference OJ L 141, 5.6.2015, p.73)

present for identification purposes *per se* imply a higher risk of money laundering or terrorist financing. The Directive bases the requirement to apply enhanced due diligence on a broader set of factors. It provides a non-exhaustive list of risk factors and types of evidence of potentially higher risk (for example, customer risk, geographical risk and product, service or delivery channel risk factors). That list also includes non-face-to-face business relationships or transactions, when conducted without certain safeguards.

- (5) The Directive is a minimum harmonisation directive and thus leaves scope for differing application across Member States. The decisions on how innovative digital tools for identifying customers can be used should be based on a risk-based approach and remain with the Member States, who also have to ensure that these tools are safe and secure, do not introduce new risks to consumers or the system and comply with Union data protection laws.
- (6) One of the objectives of the Directive is to properly identify and verify parties (whether natural or legal persons) to a transaction and/or a payment. Therefore, electronic identification and trust services (governed by eIDAS) are relevant when opening bank accounts or accessing funds and/or tracing electronic transactions. Currently, the eIDAS framework is one of the cornerstones of the Digital Single Market covering all elements of electronic identification and authentication.
- (7) Considering the links between those acts as well as the need to facilitate the uptake of digital tools to identify customers remotely across the Union, it is necessary to set up a dedicated expert group in the field of KYC and eID to further explore those issues.
- (8) The group should explore issues related to the use by financial services providers of e-ID schemes, whether or notified under eIDAS, and other innovative digital processes to comply with anti-money laundering rules. It should provide expertise to the Commission on the need for, and scope of, guidance to ensure that those tools are safe and secure, that they do not introduce new risks to public order, consumers or to the financial system, that they comply with Union data protection laws and that they are in line with the Union anti-money laundering Directive (EU) 2015/849.
- (9) The group should be composed of representatives from Member States including regulators, supervisors, and identity experts as well as representatives from financial institutions and consumer organisations.
- (10) Rules on disclosure of information by members of the group should be laid down.
- (11) Personal data should be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>5</sup>,

HAS DECIDED AS FOLLOWS:

#### *Article 1*

#### *Subject matter*

The Commission expert group on electronic identification and remote Know-Your-Customer processes, (“the group”), is set up.

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<sup>5</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

## Article 2

### **Tasks**

The group's tasks shall be<sup>6</sup>:

- (a) to provide expertise, in the form of opinions, recommendations or reports, to the Commission as it explores issues relating to electronic identification and remote Know-Your-Customer processes based on eIDAS for the purposes of digital on-boarding. In so doing, the group should pay particular attention to need to ensure that these tools are safe and secure, do not introduce new risks to consumers or the system and comply with Union data protection laws;
- (b) where appropriate, to assist the Commission in the preparation of guidelines in the field of digital on-boarding, in compliance with the Know-Your-Customer and Customer Due Diligence requirements as set out in the Directive and leveraging the eIDAS legal framework and solutions;
- (c) to liaise with the expert group on Money Laundering and Terrorist Financing<sup>7</sup>, the eIDAS Cooperation Network<sup>8</sup> and the Joint Committee of the European Supervisory Authorities<sup>9</sup>, while exploring the use of eID schemes or portable Know-Your-Customer processes based on eIDAS in the financial sector;
- (d) to facilitate the emergence of interoperable and legally recognised portable remote Know-Your-Customer processes across the Union, in particular through regular exchanges of good practices identified at national level and the assessment of interoperable digital solutions developed under the Connecting Europe Facility Programme;
- (e) to establish cooperation between the Commission and Member States and relevant stakeholders on questions relating to the implementation of Union legislation, programmes and policies in the field of digital on-boarding and electronic identification in the financial sector to facilitate the emergence of interoperable and legally recognised portable Know-Your-Customer processes across the Member States, in particular through regular exchanges of good practices.

## Article 3

### **Consultation**

The Commission may consult the group on any matter relating to electronic identification and remote Know-Your-Customer portabilities based on eIDAS in the field of financial services.

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<sup>6</sup> The following list may be adapted as required

<sup>7</sup> The Expert group on Money Laundering and Terrorist Financing is set up as an Informal/Permanent group (February 2013). The members of this group are representatives of high administrative level responsible for anti-money laundering in national administrations of the EU Member States and EEA countries. It is for the competent ministries and/or national authorities to decide on who will represent them and its tasks include assisting the Commission in the preparation of policy initiatives. Expert Group E02914, see: <http://ec.europa.eu/transparency/regexpert/index.cfm>

<sup>8</sup> As set up by Article 12 of Regulation (EU) No 910/2014 (eIDAS), and Commission implementing decision (EU) 2015/296 establishing procedural arrangements for cooperation between Member States on electronic identification

<sup>9</sup> <https://esas-joint-committee.europa.eu/>

#### *Article 4*

##### ***Membership***

1. The group shall be composed of up to 36 members.
2. The members of the group shall be the Member States' authorities or other public entities competent in the area of electronic identification, anti-money laundering and financial supervision, as well as financial institutions and consumer organisations. In particular, the members shall include:
  - (a) up to seven Member States' competent authorities which are members of the eIDAS Cooperation Network as established by Regulation (EU) No 910/2014 and Commission Implementing Decision (EU) 2015/296;
  - (b) up to seven Member States' competent authorities or other public entities which are members of the Expert Group on Money Laundering and Terrorist Financing (E02914);
  - (c) up to seven Member States' competent authorities or other public entities which are members of the Joint Committee of the European Supervisory Authorities;
  - (d) up to fifteen financial institutions and consumer organisations.
3. Members shall nominate their representatives and shall be responsible for ensuring that their representatives provide a high level of expertise as regards the tasks referred to in Article 2.
4. Members who are no longer capable of contributing effectively to the expert group's deliberations, who, in the opinion of the Commission department concerned, do not comply with the conditions set out in Article 339 of the Treaty on the Functioning of the European Union or who resign, shall no longer be invited to participate in any meetings of the group and may be replaced for the remainder of their term of office.

#### *Article 5*

##### ***Selection process***

1. Each body referred to in Article 4(2) (a), (b) and (c) shall decide, within four weeks from the publication of this Decision, on the selection process with a view to determining which Member States' authorities and other public entities will be members of the group.
2. The selection of the financial institutions and consumer organisations shall be carried out via a public call for applications, to be published on the Register of Commission expert groups and other similar entities ('the Register of expert groups'). In addition, the call for applications may be published through other means, including on dedicated websites. The call for applications shall clearly outline the selection criteria, including the required expertise and the interests represented in relation to the work to be performed. The minimum deadline for applications shall be four weeks.
3. Registration in the Transparency Register is required in order for financial institutions and consumer organisations to be appointed.
4. The members of the group shall be appointed by the Directors General for Justice and Consumers (DG JUST), for Communications Networks, Content and Technology (DG CNECT) and for Financial Stability, Financial Services and Capital

Markets Union (DG FISMA) from specialists with competence in the areas referred to in Article 2 and Article 3(1) and who have responded to the call for applications.

5. Members shall be appointed for the duration of application of this Decision.
6. The competent Commission services from the afore-mentioned three Directorates-General (hereafter "the competent Commission services") shall establish a reserve list of suitable candidates which responded to the call for applications that may be used to appoint members' replacements. The competent Commission services shall ask applicants for their consent before including their names on the reserve list.

#### *Article 6*

##### ***Chair***

The group shall be chaired by a representative of the competent Commission services.

#### *Article 7*

##### ***Operation***

1. The group shall act at the request of competent Commission services, in compliance with the horizontal rules<sup>10</sup>.
2. Meetings of the group shall, in principle, be held on Commission premises.
3. The competent Commission services shall provide the secretariat of the group.
4. In agreement with the competent Commission services, the group may, by simple majority of its members, decide that deliberations shall be public.
5. Minutes on the discussion on each point on the agenda and on the opinions delivered by the group shall be meaningful and complete. Minutes shall be drafted by the secretariat under the responsibility of the Chair.
6. The group shall adopt its opinions, recommendations or reports by consensus. In the event, of a vote, the outcome of the vote shall be decided by simple majority of the members. Members that voted against or abstained shall have the right to have a document summarising the reasons for their position annexed to the opinions, recommendations or reports.

#### *Article 8*

##### ***Sub-groups***

1. The competent Commission services may set up sub-groups for the purpose of examining specific questions on the basis of terms of reference defined by the competent Commission services. Sub-groups shall operate in compliance with the horizontal rules and shall report to the group. They shall be dissolved as soon as their mandate is fulfilled.
2. The members of sub-groups which are not members of the group shall be selected via a public call for applications, in compliance with Article 5 and the horizontal rules<sup>11</sup>, with the exception of Member States' authorities and other public entities.

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<sup>10</sup> C(2016) 3301, Article 13.1.

<sup>11</sup> See Articles 10 and 14.2 of the horizontal rules.

## *Article 9*

### ***Invited experts***

The competent Commission services may invite experts with specific expertise with respect to a subject matter on the agenda to take part in the work of the group or sub-groups on an ad hoc basis.

## *Article 10*

### ***Observers***

1. Individuals, organisations and public entities may be granted an observer status, in compliance with the horizontal rules, by direct invitation.
2. Organisations and public entities appointed as observers shall nominate their representatives.
3. Observers and their representatives may be permitted by the Chair to take part in the discussions of the group and provide expertise. However, they shall not have voting rights and shall not participate in the formulation of opinions, recommendations or reports of the group.

## *Article 11*

### ***Rules of procedure***

On a proposal by and in agreement with the competent Commission services, the group shall adopt its rules of procedure by simple majority of its members, on the basis of the standard rules of procedure for expert groups, in compliance with the horizontal rules<sup>12</sup>.

## *Article 12*

### ***Professional secrecy and handling of classified information***

The members of the group and their representatives, as well as invited experts and observers, are subject to the obligation of professional secrecy, which by virtue of the Treaties and the rules implementing them applies to all members of the institutions and their staff, as well as to the Commission's rules on security regarding the protection of Union classified information, laid down in Commission Decisions (EU, Euratom) 2015/443<sup>13</sup> and 2015/444<sup>14</sup>. Should they fail to respect these obligations, the Commission may take all appropriate measures.

## *Article 13*

### ***Transparency***

1. The group and its sub-groups shall be registered in the Register of expert groups.
2. As concerns the group and sub-group composition, the following data shall be published on the Register of expert groups:
  - (a) the name of Member States' authorities;

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<sup>12</sup> See Article 17 of the horizontal rules.

<sup>13</sup> Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

<sup>14</sup> Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

- (b) the name of other public entities.
  - (c) the name of member organisations; the interest represented shall be disclosed;
  - (d) the name of observers, where applicable;
3. All relevant documents, including the agendas, the minutes and the participants' submissions, shall be made available either on the Register of expert groups or *via* a link from the Register to a dedicated website, where this information can be found. Access to dedicated websites shall not be subject to user registration or any other restriction. In particular, the agenda and other relevant background documents shall be published in due time ahead of the meeting, followed by timely publication of minutes. Exceptions to publication shall only be foreseen where it is deemed that disclosure of a document would undermine the protection of a public or private interest as defined in Article 4 of Regulation (EC) No 1049/2001.

#### *Article 14*

##### ***Meeting expenses***

1. Participants in the activities of the group and sub-groups shall not be remunerated for the services they offer.
2. Travel expenses incurred by participants in the activities of the group may be reimbursed by the Commission. Reimbursement shall be made in accordance with the provisions in force within the Commission and within the limits of the available appropriations allocated to the Commission departments under the annual procedure for the allocation of resources.

#### *Article 15*

##### ***Applicability***

This Decision shall apply until 31 December 2019.

Done at Brussels, 14.12.2017

*For the Commission*  
*Mariya Gabriel*  
*Member of the Commission*