

TRAVEL RULE

FOR CRYPTO ASSETS IN THE EU

Legal report of Regulation of the European Parliament and of the Council on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849.



ABOUT BACS

Using blockchain technology and cryptocurrencies means great savings for international companies. BACS is an association of private law and commerce, legally constituted and formed by members of the community empowering businesses and resolving internal conflicts. That is; a legal environment that respects, fosters and resolves crypto problems from within.

Through an association of members from the legal and technological environment, to whom we offer training in this new technology, networking, audits and quality seal. BACS operates as a Legal Oracle in legal businesses that employ blockchain and cryptocurrencies. We have the first specialized Arbitration Court, internationally recognized, and whose rulings are enforceable.

BACS' activity is critical because current law is not prepared to assume this new technology. Classical legal systems resolve conflicts between hierarchical and centralized organizations, but the new blockchain technology requires new legal institutions. Blockchain, like smart contracts and tokens, surpasses the current regulatory system.

BACS is formed by a crypto commercial and legal community that, respecting the private and autonomous law that arises in this new context, resolves private conflicts in a secure and transparent manner. In the crypto world, regulation is the community itself, so the community must create and respect its own law.



BACS Blockchain Arbitration
& Commerce Society

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A hand holding a European Union flag over a globe. The hand is wearing a grey suit sleeve and a white shirt cuff. The flag is blue with yellow stars. The globe is white with black outlines of continents. The word 'INTRODUCTION' is written in large, white, bold, sans-serif capital letters across the center of the image.

INTRODUCTION

The European Parliament and the Council of the European Union adopted the Regulation (EU) 2015/847 to ensure that the Financial Action Task Force (FATF) requirements on wire transfer service providers were applied uniformly throughout the Union.

The aim of regulating virtual assets and virtual asset service providers, have introduced changes in June 2019 in the FATF standards

with the purpose of facilitating the traceability of transfers of virtual assets.

It is therefore appropriate the traceability of transfers of funds and crypto-assets in the prevention, detection and investigation of money laundering and terrorist financing, as well as in the implementation of restrictive measures¹.

¹ in particular those imposed by Regulations (EC) No 2580/2001, (EC) No 881/2002 and (EU) No 356/2010

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WHO IS SUBJECT TO THE TRAVEL RULE?

Payers and payees, in any currency including virtual assets, when at least one of the providers involved in the transfer of funds or transfer of crypto-assets is established or has its registered office in the European Union.

Payment service provider and intermediary payment service providers are also subject to the travel rule.



03 EXCEPTIONS



The providers are exempted from the travel rule when the activity is exclusively for the provision of goods or services **where all of the following conditions are met:**

- a)** the payment service provider of the payee is subject to money laundering regulation (Directive (EU) 2015/849).
- b)** the payment service provider of the payee is able to trace back, through the payee, by means of a unique transaction identifier, the transfer of funds from the person who has an agreement with the payee for the provision of goods or services;
- c)** the amount of the transfer of funds does not exceed EUR 1000.

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WHAT INFORMATION WILL NEED TO BE PROVIDED?

The Regulation (EU) 2015/847 lays down rules on the information:

1. The payment service provider of the payer shall ensure that transfers of funds are accompanied by the following information on the payer:

- (a) the name of the payer;
- (b) the payer's payment account number; and
- (c) the payer's address, official personal document number, customer identification number or date and place of birth.

2. The payment service provider of the payer shall ensure that transfers of funds are accompanied by the following information on the payee:

- (a) the name of the payee; and
- (b) the payee's payment account number.



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TRANSFERS OF FUNDS EXCEEDING EUR 1000

The payment service provider shall implement effective procedures to detect whether the fields relating to the information on the payer and the payee have been filled in using characters or inputs admissible in accordance with the conventions of that system.

Before crediting the payee's payment account or making the funds available to the payee, the payment service provider of the payee shall verify the accuracy of the information on the payee.



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TRANSFERS OF FUNDS NOT EXCEEDING EUR 1000

And that do not appear to be linked to other transfers of funds which exceed EUR 1000, the payment service provider of the payee need not verify the accuracy of the information on the payee, unless the payment service provider of the payee:

- a) effects the pay-out of the funds in cash or in anonymous electronic money; or
- b) has reasonable grounds for suspecting money laundering or terrorist financing.

Obligations on the crypto-asset service provider of the originator, obligations on the crypto-asset service provider of the beneficiary and obligations on intermediary crypto-asset service providers.



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TRANSFERS OF FUNDS NOT EXCEEDING EUR 1000

The crypto-asset service provider, shall ensure that transfers of crypto-assets are accompanied by the following information about the originator and the beneficiary: a) the name of both parts; b) the originator's and beneficiary's distributed ledger address, in cases where a transfer of crypto-assets is registered on a network using DLT or similar technology, and the crypto-asset account number of the originator, where such an account exists and is used to process the transaction; c) the originator's and beneficiary's crypto-asset account number.

in the case of a transfer of an amount exceeding EUR 1000 to a self-hosted address, the crypto-asset service provider shall take adequate measures to assess whether that address is owned by the subject indicated in the transaction. Before transferring crypto-assets, the crypto-asset service provider shall verify the accuracy of the information on the basis of documents, data or information obtained from a reliable and independent source.

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SANCTIONS AND MONITORING

Member States shall lay down the rules on administrative sanctions and measures applicable to breaches of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented.

Member States shall ensure that their administrative sanctions and measures are in place at least in the event of the following breaches of this Regulation:

- a) repeated or systematic failure by a payment service provider to accompany the transfer of funds with the required information on the payer or the payee,
- b) repeated, systematic or serious failure by a payment service provider or crypto-asset service provider to retain records;
- c) failure by a payment service provider to implement effective risk-based procedures,
- d) serious failure by an intermediary payment service provider or by an intermediary crypto-asset service provider.



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DEROGATIONS



The Commission may authorise any Member State to conclude an agreement with a third country or with a territory outside the territorial scope of the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU) as referred to in Article 355 TFEU (the ‘country or territory concerned’) in order to allow transfers of funds between that country or territory and the Member State concerned to be treated as transfers of funds within that Member State.

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OTHER PROVISIONS

EBA shall issue guidelines.

EBA shall issue guidelines addressed to the competent authorities and to the crypto-asset service providers on measures to be taken. The guidelines issued by EBA shall contain technical aspects of the application of this Regulation; and the guidelines shall be addressed to competent authorities, on the characteristics of a risk-based approach to supervision of crypto-asset service providers and the steps to be taken when conducting such supervision.



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ENTRY INTO FORCE

Both the MiCA and TFR Regulations were **approved on April 20, 2023**. The Travel Rule for crypto-asset service providers in Europe will come **into effect on December 30, 2024**.



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DEFI AND TRAVEL

At the moment, a crypto-to-crypto exchange on a decentralized protocol is not subject to AML/KYC control, in accordance with the EU's anti-money laundering regulations.

Under the new regime of the travel rule, protocols will have to start implementing controls for transactions exceeding 1000 euros.

The travel rule is a regulation that mandates the implementation of AML/KYC controls for certain financial transactions. Under the new regime, it requires decentralized protocols, to collect and share customer information for transactions that exceed a certain threshold. Under this rule, protocols will need to start implementing controls when transactions surpass 1000 euros. This means that DEXs would have to adapt and comply with AML/KYC requirements, which could potentially impact the decentralized nature of these platforms.



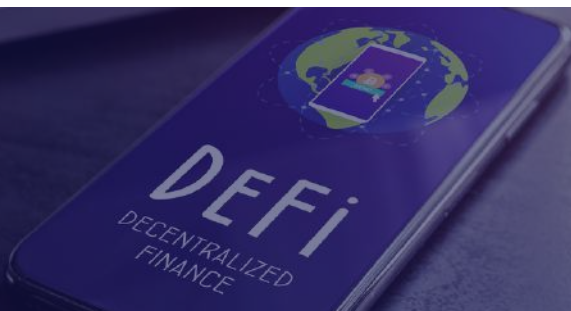
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DEFI AND TRAVEL

If this is the case, we found a legal contradiction between centralized exchanges and decentralized exchanges, for which on one hand, centralized exchanges, controls are in place because there is a central entity facilitating the exchanges.

But however, on the other hand, regarding decentralized ones, if every exchange made by an individual for an amount exceeding 1000 euros has to be subjected to AML/KYC controls, it raises concerns about the potential impact on individual privacy and questions the direction of our society in terms of financial freedom and decentralization. Which makes us question, where is our society heading?

Bearing that in mind, the main interrogation is if DeFis protocols are going to change its base. Such concern is exemplified for instance with the case of Balancer Labs (Portugal), BambooDeFi (Spain), Aave (Switzerland), among others which are now likely to change their main base and move out of the EU as a consequence of the new travel rule.






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