



**Electronic Money
Association**

Crescent House
5 The Crescent
Surbiton
Surrey
KT6 4BN

United Kingdom

Telephone: +44 (0) 20 8399 2066

Facsimile: +44 (0) 870 762 5063

www.e-ma.org

Justin Millar
The SARs Review
Home Office
6 th Floor Peel
2 Marsham Street
London SW1P 4DF

2 April, 2015

Dear Justin,

The EMA welcomes the opportunity to respond to the UK Government's Call for Information as part of a review of the suspicious activity reports (SARs) regime.

We welcome the review of this regime.

Response to Consultation

Context:

Q1. How would you describe the understanding that your organisation has of the SARs regime?

A. EMA members have a good understanding of the SARs regime. They undertake appropriate staff AML/CTF training, set up processes and procedures to monitor and identify unusual activity and ensure good escalation processes are in place. Unusual activity that is regarded as suspicious is then reported.

Q2. How many of your staff are engaged in work to identify suspicious transactions and submit SARs?

A. EMA members' resources vary, but all are required to apply an appropriate level of resourcing to address the risks posed.

Q3. How many SARs did your organisation submit last year?

A. We do not have a cumulative number of SARs represented by our members in 2014.

How can money laundering and the financing of terrorism be better identified?

Q4. What are the current difficulties that you face in identifying and tackling money laundering and terrorist financing? Please describe the specific challenges that you face.

A. EMA members deploy a range of systems to detect, identify and prevent incidents of money laundering. There is greater dependence on law enforcement intelligence when terrorist financing is concerned, as this is not necessarily sourced from proceeds of crime, or the destination may not be known to relate to terrorism.

There is generally an absence of feedback from FIUs and from law enforcement, with regard to the content or quality of SARs submitted. There is also an absence of CTF related typologies making it difficult to isolate any potentially relevant transactions. This means that there is little or no opportunity to improve the efficiency or sophistication of the systems, nor to train and make staff aware of actual incidents.

One issue that has been raised relates to the length of time afforded to consent requests. The 7-day period during which transactions cannot proceed can serve to alert organised criminals to the fact that a suspicion has been raised. Furthermore, the freezing of the transaction during this period can also give rise to complaints and potential legal action. These risks could be mitigated by:

- a) Reducing the period of time within which a consent response is provided by the NCA; and/or
- b) The introduction of a *de minimus* value of transaction that requires consent.

EMA members have also reported a lack of international cooperation between law enforcement agencies, which has given rise to difficulties for firms seeking to follow up on criminal incidents.

Q5. What changes should be considered to the SARs regime as a whole to improve the ability of the UK to tackle these crimes?

A. In the absence of feedback on the effectiveness of the regime, it is difficult to provide detailed and meaningful comments. Feedback from incidents that involve international cooperation would also be desirable; particularly given the predominant cross border nature of our members' businesses.

From the point of view of payment service providers, a more nuanced reporting obligation would be preferable. Rather than reporting every incident of successful fraud for example, it would be more meaningful to allow firms some flexibility to ignore single incidents that are not part of a wider concerted criminal attack, and to focus on more significant incidents and those where a connection can be established.

Alternatively, a simplified reporting process for transactions that are below a given threshold could be established, enabling firms to direct their resources to areas of greater risk.

Q6. Looking ahead, what do you see as the future challenges for the SARs regime?

As payments are increasingly conducted online it is important that there is better information sharing cross-border. It would be useful to understand how the NCA will be sharing information with its counterparts in the EU and globally.

Information sharing is required in a multilateral manner: between FIUs, within law enforcement organisation in individual member states, and between FIUs and the private sector. Similarly, there is a need to enable information sharing within the private sector, as criminals do not discriminate between target organisations, and often use lessons learnt from attacks on one firm to develop their techniques when dealing with others.

Q7. What action could we take now to meet those challenges?

Better and formalised engagement between FIUs and industry is overdue. The current processes such as those involving MLAC are not intended for operational engagement and do not deliver day-to-day cooperation.

The implementation of a detailed feedback loop on cases where a suspicion has been investigated and pursued by the NCA or other law enforcement agency would help. Currently reporting institutions may be informed on whether or not a SAR has resulted in a conviction, with no additional detail. This can be improved to help identify criminals, their culprits and to reinforce typologies and monitoring processes. Feedback would also facilitate better training of staff.

Information sharing is also a need, and this is addressed in the following section.

Improving information sharing:

Q8. What needs to change to improve information sharing?

A. There are two aspects to the sharing of data.

(i) FIU - Industry sharing: there has been a complete absence of information sharing; despite attempts by our organisation to seek such mechanisms over a period of 13 years.

(ii) Inter-industry sharing: concerns over data protection and at times, commercial concerns have limited sharing within industry to qualitative experiences that have enabled the development of typologies, but could not give rise to real time prevention or deterrence of fraud or AML.

Q9. Should there be changes to the way that information is shared both within the regulated sector, and between the regulated sector, regulators and law enforcement agencies?

A. As above, existing information sharing is very limited, despite periodic discussion and efforts to change this over a long period of time.

Information collated by organisations such as CIFAS, whose members make up the highest proportion of SARs reporters could be more widely applied to assist in addressing AML/CTF risks. Alternatively, an appropriate and more open independent information sharing network could be set up.

An annual or periodic meeting with the NCA looking specifically at SAR submissions, where firms can discuss trends/quality of SARs submitted might also be a useful forum to improve the effectiveness of the framework.

Q10. What benefits would you see accruing from such changes?

A. Information sharing with FIUs and law enforcement will increase understanding within firms and help improve AML and CTF monitoring and identification of risks. Information sharing within industry would assist in combatting criminal attacks and in reducing their impact.

Q11. What risks do you see from any changes to the way that information is shared?

There are a number of risks relating to privacy, business confidentiality and of commercial concerns, as well as legal action by the customer. These are not necessarily outweighed by the benefits of information sharing however, and should be addressed in a balanced manner.

It would be helpful for firms to have access to guidelines on information sharing both with law enforcement and private sector bodies for the purpose of preventing and detecting crime and any associated data protection risks.

Q12. Do you see the need for changes to allow sharing of information between private sector bodies?

Tipping off provisions and data protection provisions can act to restrict the willingness of firms to share data; some safe harbour provisions may assist in overcoming such concerns.

Q13. Do you believe that the balance between the tipping off provisions and the need to share information between public and private sector bodies is right?

A. Tipping off concerns do prevent the sharing of information with other organisations, and frequently with law enforcement bodies that are not the local FIU. This is because once the information is shared, the firm has no control over how the information is used, shared further or disseminated by law enforcement. A limited right to share such information could be introduced, within narrow guidelines. If shared in this manner and tipping off does occur, this should not give rise to criminal sanction against the firm.

It may also be useful to enable firms to share SAR related information amongst each other, enabling better joint deterrence and prevention of crime.

An annual meeting with the NCA specifically looking at SAR submissions where firms can discuss trends/quality of SARs submitted might also be a useful forum to improve the effectiveness of the framework.

Q14. What outputs would you like to see being provided to you?

A. The absence of current feedback means that providers are unable to set out detailed data requirements. Once feedback is forthcoming, it is anticipated that a more informed engagement can take place, and specific information that would enhance AML processes could be set out.

Possible initial data could relate to SAR numbers, types, values, firm sector, and geographies of the original crime, and the manner in which the SARs were useful.

Q15. What information that is held by the law enforcement agencies and regulators would be of use to the regulated sector?

A. As above, EMA members would appreciate receiving feedback on the quality of SARs they submit, to ensure they provide better SARs in future, and to input into training programmes. They would also like to see details on numbers, types, values, firm sector, and geographies of the original crime, as this will enable them to more easily pinpoint and address the risks.

Q16. What benefits could you see from receiving information from the reporting system?

A. Information from the reporting system would allow firms to benchmark the internal alerts they receive from their transaction monitoring systems, and could enable them to identify risks or threats that have impacted others or other sectors. Information on the geographical origin would allow a firm to adapt its risk-based approach accordingly.

Q17. Are the alerts useful to you?

A. Yes, but these are infrequent. Greater and more regular alerts would be helpful.

Q18. What are the challenges you face in sharing information internationally relating to suspicious transactions? What impact does this have? How could it be improved?

EMA members highlighted several different but related challenges to successfully reporting SARs internationally:

- Firms offering services on a cross border basis face at times dual reporting obligations due to the regulatory obligations in place in different countries.
- Added to this is the inconsistency of what information FIUs require for reporting, and how (e.g. different formats, languages and based on varying criteria). This makes sharing

information internationally very difficult.

- The language barrier and associated cost of resourcing when dealing with international SAR reporting is a challenge. Members strongly oppose any trend for multiple reporting obligations.
- There are many inconsistencies in how financial crime is defined, and many investigations by firms preparing a SAR are hindered by home or host police forces refusing to recognise that the crime has taken place on their territory and so insufficient information is gathered on the business or individual being reported.
- Poor communication between FIUs in different countries. Law enforcement agencies in different member states have reported that they do not always receive intelligence from the UK NCA on SARs that relate to their jurisdiction. Firms often have to deal with direct approaches from foreign law enforcement agencies as the process of collaboration and contact via the UK FIU is reportedly long and complex.

Overall, there are many discrepancies between SAR regimes across the world. This means that SAR reporting internationally is often not done as quickly or effectively as it should be. A more consistent approach to SARs and reporting would be desirable, including as outlined previously, a threshold limit.

Improvements could include a central repository or FIU for SARs, a unified approach to SAR thresholds and/or a consistent cross-jurisdictional approach to reporting. Another suggestion was for the NCA to develop a standard online system through which international law enforcement agencies would have to submit requests for information from the UK regulated sector, so that all requests come via the same source, would be subject to NCA approval, and would be in the same format.

Q19. What other groups would benefit from access to SARs? What would the benefits be of that access?

Other governmental agencies, EU wide organisations, and other financial services providers could benefit from access to SARs.

The new gaming regulation in the UK allows access for the UK gaming regulator to SAR Unique Reference Numbers (URNs) that are reported, and gives the industry an indication of the volumes and consent requests being made. This should be adopted for the payments sector as it would improve FCA understanding of the risk of financial crime to the sector and our handling of it.

Improving the efficiency of reporting

Q20. What do you see as the key difficulties in reporting suspicious activity?

A. One of the main difficulties is the system that firms are required to access in order to submit their SARs. It is not user friendly and the reporting tools are slow. Pages are slow to update and save, web sessions have a tendency to “time out” before the allocated 20 minutes. EMA members also report that the website sometimes crashes, or refreshes, and deletes data entered without warning. This would benefit from being upgraded to simplify and automate the reporting process.

Q21. What improvements would you like to see to the reporting regime? Are there infrastructure or technical changes that you would like to see?

A. The 'SAR Online' system is very slow and difficult to use. As mentioned above, creating a more user friendly, speedy, reliable and streamlined reporting system would be beneficial as it would make the process more accessible to firms. EMA members would also welcome greater granularity on the classification of SARs and the creation of e-money specific tags, as the fields in the current form are targeted at banking / mainstream financial services and are not particularly relevant to EMIs.

Additional guidance on the level of detail and the type of information that is helpful would also be welcome.

In the case of reporting SARs that may for example relate to fraud rings, which may involve as many as 10 or more associated subjects, it would save considerable time to be able to use a CSV type reporting format, rather than have to report each SAR individually.

In addition, whilst the system allows users to add transaction details for the main subject, it is currently not possible to add transaction details for an associated subject, which is inconvenient and limits the scope of information that can be provided to the NCA.

Q22. Is the right sort of information being collected? Should the form on which SARs are made be more structured, and if so, what fields would be helpful?

More granular classification with provision for e-money specific SARs would be welcome. As set out above, the fields in the current form are targeted at banking / mainstream financial services and are not relevant to EMIs.

Also, the "Reason for Association" field in the "Associated Subject" tab is visible to the reporter and to the police force to whom it may be sent, but does not appear to be visible to NCA agents. This prompts unnecessary calls from NCA agents and should therefore be addressed. The fields available on the SARs reporting tool should be visible to all users.

It is also unclear when the "Money Laundering in Action" code should be used. It may be being under/overused depending on the user's interpretation of what requires immediate Law Enforcement Attention. Perhaps a high/medium/low category should be used to indicate priority. The NCA/law enforcement could then scale them up or down on receipt.

Q23. Are you able to submit reports in the way that you want? Would you like to be able to submit consent SARs on multiple or linked cases? Should there be joint reporting of SARs?

The SAR online system does not appear to be an adequate tool for the submission of SARs for many EMA members.

Being able to submit consent SARs on multiple or linked cases would improve usability for firms. The current inability to do so causes a significant duplication of workload for firms when reporting suspicious activity and devalues the intelligence in the SARs. This should include consent reporting, and therefore allow for a report dealing with multiple cases, comprising both SAR and consent cases, made under one report and for which one URN is potentially assigned.

Improving the consent regime

Q24. Are consent decisions made quickly enough? Is the information provided in consent SARs sufficient to allow a decision to be made?

A. Yes, in general the speed for consent decisions to be made is sufficiently fast. However, difficulties have been encountered by firms in obtaining advice from the consent desk. Some firms also report typically receiving decisions within 3-4 working days. This delay often causes complaints from customers and is a difficult situation for firms to manage due to the risk of 'tipping off'.

The NCA recently took the decision to tighten the rules on their acceptance of consent SARs and announced that they would no longer be willing to provide a decision on consent requests unless the reporting institution specifies the exact proposed destination of the transaction requiring consent. For example with e-wallet products, this could mean specifying exactly which bank account the funds will be sent to (full account number and sort code). This is problematic as e-wallets (especially those with P2P functionality) can be created and used without the need to attach a bank account – funds can be withdrawn to a credit card or simply be allowed to sit in the account. The NCA should consider revising their policy on this matter to ensure that the requirements cater for the different types of products and services offered by regulated firms.

Q25. Do you believe that the consent decisions are consistent?

A. EMA members report differing experiences with the consistency of consent decisions. Whilst some believe the decisions to be generally consistent, others have expressed opposing views. The decisions appear to be subject to the differing judgements of various case officers.

Q26. If consent is refused, is the moratorium period long enough, or is it too long?

In general, the moratorium period is acceptable, however when dealing with cases that involve law enforcement agencies from outside of the UK, the moratorium period is not long enough to finalise the necessary legal arrangements. This is a significant risk as it is widely known that money launderers often attempt to move or collect funds to other jurisdictions in order to make it difficult for law enforcement to trace the proceeds of crime.

The new Serious Crime Act, which takes effect in June 2015, will provide a legal exemption from civil liability for money laundering disclosures that will help firms to operate within the current moratorium period.

Q27. If you have had to deal with delays in processing a transaction as the result of a consent SAR, could you provide real case examples where it is known that a transaction/deal has collapsed as a result of that delay.

Our members will provide such examples in individual responses.

International best practice

Q28. Are there examples of best practice in other countries that the UK should consider? Are there different models for Financial Intelligence Units that the UK could learn from?

There are provisions for firms to share SAR related information in the USA. This appears to be a valuable means for firms to address threats that have been identified by one firm, or attacks that have been made on some firms but not others. This is worth exploring to discover the effectiveness in practice.

Q29. Do you believe that international cooperation in relation to SARs could be improved, and if so, how?

Yes. There is a need for EU FIUs to be able to share SARs easily and for this to take place promptly. Law enforcement agencies in different countries reportedly do not always receive intelligence from the NCA on SARs that relate to their jurisdiction. Firms often have to deal with direct approaches from foreign law enforcement agencies, as they state that the process of collaboration and contact via the UK authorities is long and complex. These inefficiencies are driving other EU member states to introduce local regulation for UK firms passporting into these member states.

As a result, firms offering services on a cross border basis increasingly face dual reporting obligations; and for doing so in different formats, languages and based on varying definitions of reportable money laundering.

This gives rise to significant cost and acts as a deterrent to market growth and the offering of services into new jurisdictions.

This position has recently been formalised by a CJEU decision which found that Spanish regulators were acting correctly when they extended reporting obligations to a Gibraltar based credit institution passporting into Spain, because the Gibraltar FIU did not share information with the Spanish FIU (CJEU, judgment C-212/11, Jyske Bank Gibraltar Ltd). It predicated this extension of regulatory reach on the absence of data sharing.

Timely and efficient SAR information sharing is therefore key to ensuring an appropriate regulatory framework is maintained.

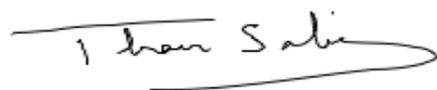
FIUs globally, but especially within the EU, should collaborate and share information more effectively to ensure that the reporting requirements they place on firms are consistent and reasonable. Processes should be introduced to ensure that SARs that relate to suspects outside of the UK are more effectively passed by the NCA to the relevant FIU.

Q30. How can information exchange be improved between Financial Intelligence Units and law enforcement and other Government agencies in other countries?

FIUs globally, but especially within the EU, should collaborate and share information more effectively to ensure that the reporting requirements they place on firms do not need to be duplicated. Processes that improve such information sharing would be highly desirable.

I would be grateful for your consideration of these comments.

Yours sincerely,



Dr Thaer Sabri

Chief Executive

Electronic Money Association

The Electronic Money Association (EMA) is the trade body representing electronic money issuers and payment service providers. A list of EMA members is given overleaf.

List of EMA members as of April 2015:

Advanced Payment Solutions Ltd	Airbnb Inc
American Express	Blackhawk Network Ltd
Boku Inc	Citadel Commerce UK Ltd
ClickandBuy International Ltd	Corner Banca SA
Ekuntia EDE, S.L.	Euronet Worldwide Inc
Facebook Payments International Ltd	Google Payment Ltd
iCheque Network Limited	IDT Financial Services Limited
Ixaris Systems Ltd	Kalixa Pay Ltd
National Australia Group	One Money Mail Ltd
Optimal Payments	Orwell Union Partners LLP
Park Card Services Limited	PayPal Europe Ltd
PayPoint Plc	PayU
Paywizard	PPRO Financial Ltd
Prepaid Services Company Ltd	PrePay Technologies Ltd
PSI-Pay Ltd	R. Raphael & Sons plc
Securiclick Limited	Skrill Limited
Stripe	Syspay Ltd
Transact Payments Limited	Ukash
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