



Electronic Money Association

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Servizio Supervisione Mercati e Sistema dei Pagamenti,

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Rome

Submitted via email to smp@pec.bancaditalia.it

6 March 2018

Dear Sirs,

Re: EMA response to the consultation on the implementation of the Limited Network Exclusion (“LNE”) and Electronic Communication Network (“”) under the Second Payment Services Directive (“PSD2”) – ATTUAZIONE DELL’ART. 2, comma 4-BIS DEL D.LGS. N. 11/2010 IN MATERIA DI SERVIZI DI PAGAMENTO – PROVVEDIMENTO BANCA D’ITALIA

The EMA is the EU trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide that provide online payments, card-based products, electronic vouchers and mobile payment instruments. Most members operate across the EU, most frequently on a cross-border basis. A list of current EMA members is provided at the end of this document.

Please find below EMA’s position on implementation of the LNE under PSD2. Please feel free to contact us should you have any question or require further information.

I would be grateful for your consideration of our comments and proposals.

Yours faithfully

Dr Thaer Sabri

Chief Executive Officer

Electronic Money Association

I. Capitolo II; (Soggetti che prestano servizi basati su strumenti a spendibilità Limitata) Chapter II: Limited network exclusion (LNE) [Art. 2 comma 2 lettera m punti I e 2 del decreto legislativo 11/2010]

1. Maximum harmonisation between Member States of the reporting requirements related to the PSD2 exemptions will minimize the costs and administrative burdens associated with notification. The details listed in points a) to e) of section 2.1 (Prima notifica ai fini dell'iscrizione nell'albo degli Istituti di Pagamento), which are to be included in an issuer's first notification, are broadly consistent with those required by competent authorities in other Member States including Ireland and the UK. We are supportive of the reporting requirements listed at points a) to e).
2. However, the requirement to report the statistics set out in point f) will introduce a significant additional workload for any operator of a limited network. Further, the requirement to report this data on an annual basis adds further burden on the operator.

Directive (EU) 2015/2366 of the European Parliament and of the Council (“**PSD2**”) does not suggest that competent authorities should collect such statistical data, or that limited network issuers should report such statistical data to competent authorities. Article 37(2) of PSD2, which sets out the a limited network issuer's obligation to notify, simply requires that notifications contain “...a description of the services offered...” together with a specification of which limited network exclusion is to be relied upon.

3. The requirement that the notification be certified by an independent auditor will introduce a disproportionate additional burden on such providers, with little benefit to the Banca d'Italia. Article 37(2) PSD2 does not contain an annual audit requirement. The requirement for an annual audit opinion is referred to in Article 37(3) which relates to issuers of electronic communication services;
4. We hope therefore that you can reconsider the proportionality of both the additional data reporting and the audit requirements, and whether they are consistent with the requirements of PSD2. We would argue that they are excessive and constitute a disproportionate burden on operators of such schemes.
5. We welcome the approach taken on the proposed notification period running between 1 January and 31 December with a deadline of submission of 31 March. The operation of a static reporting period which runs concurrently with the calendar year, together with a static notification deadline, provide both certainty and consistency.

The EMA also supports the proposal that the first notification will be required in March 2019. This is in line with European Commission advice that notifications should commence after 12 months following the implementation of PSD2 to ensure that PSD2 is not implemented retrospectively.

6. A standard notification form would be welcome as it would ensure all relevant data is submitted by the service provider.

7. For cases where the total turnover for the previous year is higher than €1 million, Guidance setting out timelines for the Bank of Italy's response would be helpful. Similarly, provisions for an appeal procedure, timelines for transitioning to a regulated framework where possible and the process for winding up of product offerings that are not viable under the regulatory environment would also be helpful.

Guidance in relation to the situation where the volumes of a limited network issuer pass the notification threshold one year but do not pass the notification threshold the following year would also be welcome. A possible solution would be for the issuer to make a supplementary notification confirming that payment volumes no longer justify full notification (as proposed by the UK and Irish authorities). Alternatively, once notification is made once, there may be little value in additional notification, provided the product proposition has not materially changed - (as is the case in Germany).

8. As set out at paragraph 7 above, industry would benefit from the setting out of a period of time after notification when the product notified could be regarded as not having given rise to any objections. Service providers need certainty with regards to the time period within which they will receive the outcome of the decision of the relevant competent authority. There should therefore be a specified time period for the Bank of Italy to respond, after which the service provider can continue to offer the service under the LNE and assume the Bank of Italy has no objection to the service being excluded from PSD2. If this time period was set at two months, it could be consistent with other time frames set out in the legislation.
9. There is currently no definition of a 'direct commercial relationship'. Our view is that a 'direct relationships' would include arrangements where 'direct' contractual obligations could be created by way of agency, reseller and similar intermediaries acting on behalf of the issuer. Similarly, a professional issuer is also undefined, but should include all commercial providers of such services.

List of EMA members as of March 2018:

Advanced Payment Solutions Ltd	One Money Mail Ltd
Airbnb Inc	Optal
Allegro Group	Park Card Services Limited
American Express	Paybase Limited
Azimo Limited	Payoneer
Bitstamp	PayPal Europe Ltd
BlaBla Connect UK Ltd	PayPoint Plc
Blackhawk Network Ltd	Paysafe Group
Boku Inc	PPRO Financial Ltd
CashFlows	PrePay Solutions
Citadel Commerce UK Ltd	R. Raphael & Sons plc
Clearsettle	Remitly
Coinbase	SafeCharge UK Limited
Corner Banca SA	Securiclick Limited
Ebanx	Skrill Limited
eBay Europe Sarl	Starpay Global Ltd.
Euronet Worldwide Inc	Stripe
Facebook Payments International Ltd	Syspay Ltd
First Rate Exchange Services	Transact Payments Limited
Flex-e-card	Transact24 (UK) Ltd
Flywire	TransferWise Ltd
GoCardless Ltd	TrueLayer Limited
Google Payment Ltd	Uber
IDT Financial Services Limited	Valitor
Imagor SA	Vitesse PSP Ltd
Intuit Inc.	Viva Payments SA
Ixaris Systems Ltd	Wave Crest Holdings Ltd
Merpay Ltd.	Wirecard AG
MuchBetter	Wirex Limited
Nvayo Limited	Worldpay UK Limited