

Electronic Money Association

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Dear Sören,

17 March 2017

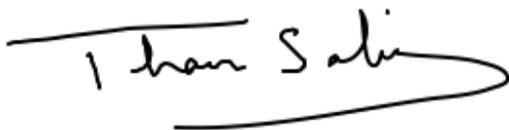
Re: The proposed national implementation of the 4th Anti-Money Laundering Directive ('4MLD') in Estonia

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.

We reviewed the draft legislation implementing 4MLD in Estonia. We note that you are not planning to implement the e-money-specific exemption in Art. 12 4MLD, but have provided for a requirement for a local point of contact under Art. 45(9) 4MLD. In this respect, we would like to make you aware of the reasons why we strongly recommend the implementation of Art. 12 and oppose the implementation of Art. 45(9). We hope you will be able to take our views into account in drafting the final legislation.

Please feel free to contact us should you have any questions in response to this letter or require further information.

Yours sincerely,



Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

The exemption from CDD for e-money issuers under Art. 12 4MLD

The e-money industry strongly recommends the implementation of this exemption of e-money products from the requirement for up-front CDD if they meet certain specified conditions.

Currently 93% of all e-money cards¹ and vouchers issued in the EEA benefit from simplified due diligence under the 3rd Money Laundering Directive; it is vital for the industry that this allowance should continue.

By setting certain low-value thresholds (currently EUR 250 per instrument/month, to be further lowered by the 5th Money Laundering Directive) below which CDD does not need to be conducted, Article 12 allows CDD to be postponed until the customer has used the product to an extent that justifies undertaking due diligence, both from the perspective of risk and the cost of undertaking CDD. Without these thresholds, the cost of undertaking CDD at the outset would be prohibitive given the narrow profit margins and often occasional use of e-money products.²

Furthermore, legitimate users of e-money have indicated an unwillingness to undergo verification of identity where low value transactions are involved, and for low value payment instruments generally.³ Cards are mostly sold in retail locations, and both users and distributor retailers are unwilling to undertake the CDD process (see above).

By removing CDD-related barriers to the take-up of e-money by consumers as well as retailers, the postponement of CDD aids the increased adoption of electronic payment methods and thereby the displacement of cash activity within the economy. This displacement is the clear intention of the FATF; apart from other benefits, e-money offers significant visibility of transactions compared to cash and consequently generates information that can be made available to law enforcement. The functionality limitations and value thresholds required under Article 12 achieve this aim of increased adoption within defined risk parameters that limit the attractiveness of the product to money laundering or terrorist financing. Transaction monitoring further mitigates risk, as it allows unusual activity that may indicate an increase in risk to be detected.

E-money products also play an important role in financial inclusion by providing access to online commerce to persons who are not able to gain such access through traditional payment products.⁴ Given the prevalence of cheaper products and services online, this is particularly

¹ Equalling 98m cards.

² The cost of verification is in the region of EUR 2 to EUR 8; making a EUR 100 prepaid card (or lower) non-viable as a payment product when compared to credit or debit cards. Merchants are typically charged 1-2% of transaction values for debit or credit card acceptance, and so are unlikely to be willing to accept charges that would need to be in excess of 5% in order to accommodate CDD related costs.

³ Our experience is that the take-up of products drops in excess of 50% where CDD information is requested.

⁴ The FATF has been critical of a one-fits-all approach to CDD requirements in its 2013 guidance *Anti-Money Laundering and Terrorist Financing and Financial Inclusion*, para. 34: 'While the 2003 FATF Recommendations were also intended to encourage countries to apply an RBA, and did impose certain RBA related obligations, a review of the results of countries' assessments carried out between 2005 and 2011 (among the FATF and the FSRBs community) shows that very few countries took full advantage of this flexibility. Rather, most countries have introduced a uniform approach with the same AML/CFT requirements applicable to all financial institutions, clients, products and services. This may have hampered financial inclusion efforts of financial providers. At the customer level, customers who conduct limited and small value (potentially lower risk)

significant for those whose financial exclusion goes hand in hand with limited means. We would therefore recommend the implementation of the EUR 500 threshold provided for in the second subparagraph of Article 12(1) 4MLD for payment instruments that can be used only in that Member State, as this would allow for the purchase of white goods, electronic items and holidays that exceed the EUR 250 threshold.

The requirement for a local point of contact under §16 (Art. 45(9) 4MLD)

We strongly oppose the implementation of this discretion. The cost for e-money issuers of establishing a local point of contact in each Member State in which they physically distribute products will be prohibitive, and will discourage iterative growth of the industry across Member States.

Distribution of e-money does not involve the offering of a regulated service; it neither involves issuing (an activity that takes place within the system of the issuer), nor the provisions of a payment service (this takes place when the e-money product is used to make a payment, and again takes place within the system of the issuer). Therefore, distributors have very little insight into the use of the e-money, as they can only see their own customers, and can only see the purchase of the value. They cannot see how the product is used, where, or how frequently, and can deduce very little about the customer. Rather, it is the issuer who has oversight of the use of the product, including the activity at distribution points and the usage of the product at end merchants.

For this reason it would be better to make use of a contact point within the issuer's business who has access to all internal systems and data. In this respect, the firm's compliance officer is usually best placed, as he or she is the most knowledgeable about the product and the relevant compliance requirements. The compliance officer could therefore provide a convenient point of engagement with the issuer without adding to cost unnecessarily.

List of EMA members as of March 2017

[Advanced Payment Solutions Ltd](#)
[Airbnb Inc](#)
[Allegro Group](#)
[American Express](#)
[Azimo Limited](#)
[Bitstamp](#)
[Blackhawk Network Ltd](#)
[Boku Inc](#)
[Citadel Commerce UK Ltd](#)
[Clydesdale Bank](#)
[Coinbase](#)
[Corner Banca SA](#)
[eBay Europe Sarl](#)
[Euronet Worldwide Inc](#)
[Facebook Payments International Ltd](#)
[FaceKart](#)
[First Rate Exchange Services](#)
[Flex-e-card](#)
[Flywire](#)
[GoCardless Ltd](#)
[Google Payment Ltd](#)
[iCheque Network Limited](#)
[IDT Financial Services Limited](#)
[Imagor SA](#)
[Ixaris Systems Ltd](#)
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[MarqMillions](#)
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[PayPal Europe Ltd](#)
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