



**Electronic Money Association**

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**Policy**

**Financial Conduct Authority**

25 The North Colonnade

London

E14 5HS

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Dear Sirs,

**Re: EMA response to the FCA consultation on authorisation, registration and reporting forms under the revised Payment Services Directive (PSD2).**

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, providing 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.

The EMA welcomes the opportunity to provide comments to the FCA on implementation of PSD2.

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

Yours sincerely,

Dr Thaer Sabri

Chief Executive Officer

Electronic Money Association

**Q1: Do you agree with our proposal that PSPs follow the relevant EBA Guidelines to notify us of major operational or security incidents? If not, please explain why not and suggest an alternative approach.**

A: We are broadly comfortable with the Guidelines, but continue to have concerns regarding:

- The timing of submission of notification reports – the first report on a critical incident being required 4 hours after detection, which is not sufficient to allow for proper investigations and management of the incident. If a time limit is required then 1 day may be more appropriate.
- Similarly, subsequent interim reports are required within 3 working days; this should only be required where there is a material change. An upper limit of 5 working days may be more appropriate if one is required.
- The Guidelines do not identify any mechanism to distribute information regarding incidents to other PSPs who may then be subject to a similar attack. Provision for a proactive approach along such lines would be welcome.
- The static thresholds for incident reporting continue to be low, such as the 50,000 accounts impacted, or EUR 5m aggregate value of transactions impacted, are excessively low, and may result in excessive reporting by firms.
- The manner in which the reports will be submitted to the FCA needs to be clarified; most of which will include highly sensitive information. The requirement will be for a secure interface and for the reception of such information to be enabled on a 24 hour and 7 day basis. Control over access to such information will of course need to be distinguished from other regulatory record keeping information, and be restricted in its processing and handling.

**Q2: Do you agree with our proposed changes to reporting and the Approach Document to reflect that the items that can make up own funds are now dictated by the CRR? If not, please explain why not and suggest amendments.**

A: The own funds definition in PSD2 refers to Regulation (EU) 575/2013, and we are unsure of how the FCA can depart from this approach. Had this been an option, then we would argue for allowing for greater flexibility in the calculation of own funds, particularly as EMLs and PIs do not engage in lending activities using customer funds.

**Q3: Do you agree with the proposed record-keeping rule on account information services and payment initiation services volumes? If not, please explain why not and suggest an alternative approach.**

A: We support the proposal to provide for record keeping requirements for credit institutions in relation to AIS and PIS provision.

**Q4: Do you agree with our proposed approach to re-authorisation, including the re-authorisation form? If not, please explain why not and suggest an alternative approach.**

A. Our areas of concern focus mainly on section 7 of the form, and in particular the additional information requested by reference to the EBA Guidelines.

7.1 There is a requirement to provide copies of all contracts including those with card or payment schemes. This appears disproportionate, and it is not clear what benefit would accrue. There is also a moral hazard in the authorisation process

7.2 Similarly, the requirement for an analysis of the competitive position of the firm is unlikely to provide a meaningful contribution to the reauthorisation process, and will at best provide a snapshot of the position at a particular time.

7.3 Requirements that are onerous, disproportionate and of limited practical value include:

- A forecast of staff members for 3 years – at best this will involve educated guesswork.
- The detailed description of each department of the firm with those heading up each function
- Copies of outsourcing agreements and contracts with agents
- The details of national or international payment systems to which the applicant has access. This is particularly puzzling, particularly where firms have local bank accounts in multiple jurisdictions; with consequent access to all systems in all such countries. This could number hundreds. What is the value in this? Perhaps an alternative would be to disclose payment systems of which the applicant is a direct or indirect member.

7.6 There is a reference to compliance with the AML/CTF obligation of another member state, where agents or branches are located in such member states. This is at odds with AML legislation and Treaty text that (unless provided for explicitly), only require host member state compliance where an entity is ‘established’ in the host member state. The distinction between ‘located’ and ‘established’ is significant and should be maintained.

7.7 The degree of detail sought in relation to controllers is likely to pose a significant challenge to many firms that have qualifying holdings with venture capital firms or similar arrangements that involve groups of investors. It is for example unclear why a curriculum vitae would be required for person to who direct the controller, or why a three year account of financial history at group level would be required, given the type of business being authorised. There is no advice given to

customers, there is no deposit taking, no lending from deposits, and all funds are subject to safeguarding obligations.

Similarly, information on the controllers' intention, strategic development plans, and influence are more likely to be relevant for a publicly held business than a privately held payment service providers. Perhaps such questions may be appropriate in a small subset of applicants, and such applicants can be prompted for such information. The likely answers that will be provided by most applicants will offer little of value.

Finally, whilst it is important to ensure that the sources of funding are legitimate, questions dealing with the terms of loan agreements, maturities, security interests and guarantees etc. are excessively disproportionate and some rationale for this would be helpful.

Taken as a whole, a considerable burden is being placed on investors, with little rationale, and there is real concern that some investors will not provide the additional information sought. This will create significant problems for authorised firms, who may find themselves in extreme cases of having to either find new investors or cease trading.

A pragmatic approach to these requirements will be needed, particularly for businesses owned by VCs and similar investors.

**Q5: Do you agree with the proposed approach to registration, including the registration form and revised Approach Document text? If not, please explain why not and suggest amendments.**

A. We have no comments in relation to the registration forms.

**Q6: Do you agree with our approach to re-registration, including the proposed re-registration form and revised Approach Document text? If not, please explain why not and suggest amendments.**

A. We have no comments in relation to the re-registration forms.

**Q7: Do you agree with our proposed variation of permission forms for PIs and EMIs? If not, please explain why not and suggest amendments.**

A. We have no comments in relation to variation of permission forms.



## List of EMA members as of August 2017:

24Money  
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  
Intuit Inc.  
Ixaris Systems Ltd  
Kalixa Pay Ltd  
MarqMillions  
Merpay Ltd.  
MuchBetter  
One Money Mail Ltd  
Optal  
Park Card Services Limited  
Paybase Limited  
Payoneer  
PayPal Europe Ltd  
PayPoint Plc  
Paysafe Group  
PPRO Financial Ltd  
PrePay Solutions  
R. Raphael & Sons plc  
Remitly  
SafeCharge UK Limited  
Securiclick Limited  
SEQR  
Skrill Limited  
Stripe  
Syspay Ltd  
Transact Payments Limited  
Transact24 (UK) Ltd  
TransferWise Ltd  
Up  
Valitor  
Wave Crest Holdings Ltd  
Wirecard AG  
Wirex Limited  
Worldpay UK Limited