



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

Andreea Dobra
Strategy and Competition Division
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

Sent by email to: cp18-21@fca.org.uk

1 November 2018

Dear Ms Dobra,

Re: Response to FCA Consultation Paper CP 18/21 on General standards and communication rules for the payment services and e-money sectors

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 respond to the Financial Conduct Authority's consultation. I should be grateful if you would consider our comments and proposals, which are set out in the Annex to this letter.

Yours sincerely,

Dr Thaeer Sabri
Chief Executive Officer
Electronic Money Association

Annex

Q1. Do you agree that there is no need for an implementation period for any rules we introduce, following publication of our Policy Statement?

Whilst some Principles of Businesses – such as 1 & 2 - can be applied without need for an implementation period, other Principles require a significant implementation period to be applied within firms. Firms need time to train their directors, senior managers and staff about the new obligations for both their businesses and the individuals within the businesses in the context of their specific roles, and to develop and introduce new policies and procedures to ensure implementation. For the new communications rules, firms will need to conduct a gap analysis of all marketing communications and apply changes. The resources required for these activities will not have been built into forward planning for implementation by 31 January 2019, when the FCA propose to publish the final Policy Statement.

In addition, EMIs and PIs are currently dealing with a large number of significant legislative and regulatory changes including:

- Changes emanating from new requirements under PSD2, such as new complaints and fraud data reporting requirements from July 2018 and January 2019, the introduction of strong customer authentication from September 2019, and building common and secure TPP access to payment accounts for testing purposes by March 2019.
- Uncertainty in relation to EU licensing and passporting rights after Brexit, requiring contingency plans to enable them to continue their EU business after March 2019, involving for example the separation of non-UK customers from FCA supervision to another jurisdiction.

We recommend an 18-month implementation period before the new rules come into effect, followed by a further 6-month grace period during which the new rules apply but the FCA enforces them in a lenient manner, with a focus on constructive engagement to bring businesses in breach of the rules back into compliance except, of course, in the case of egregious abuses of the rules. This should give PIs, EMIs and RAISPs enough time to identify the changes that are needed to be made to their business practises, and to allocate the necessary resources to implement those changes.

Q2: Do you have any comments with regards to the equality and diversity implications of our consultation, in particular to certain groups and/or communities?

We have no comment.

Q3: Do you agree with our proposal to apply the FCA Principles for Businesses to the activity of provision of payment services and issuance of e-money (where not already a regulated activity) and connected activities?

Our members agree in principle with the application of PRIN to PIs and EMIs.

We do however query the proportionality of extending all of the Principles to EMIs, PIs and RAISPs, and are concerned that the potential for duplication and/or conflict with existing payment services and consumer protection legislation has not been fully analysed. The PSRs 2017 and EMRs 2011 were designed to create a differentiated regime for PIs and EMIs compared to banks. Unlike banks, PIs and EMIs generally do not offer credit, do not lend customer funds and are subject to safeguarding requirements. The risks they present to customers are therefore lower, and the requirements in PSD2 and EMD2 have been set accordingly. In particular, it is not clear that Principle 5 and Principle 9 have relevance to PIs and EMIs generally. This therefore has the potential to create confusion regarding which standards should be met.

From a practical perspective, we would welcome guidance as to how the Principles for Business should be interpreted for PIs, EMIs and RAISPs. Apart from the additional rules proposed under BCOBs, the Principles are not supported by further guidance contained elsewhere in the FCA Handbook as they are for FSMA payment service providers (e.g. in SYSC, SUP or CASS).

Q4: Do you agree with our proposal to extend the application of all the Principles as a collective set of standards to PIs, EMIs and RAISPs?

Our members agree in principle. However, from a practical perspective, our members would welcome guidance in PRIN that confirms that the FCA would apply *the Principles of Business* in a way that is appropriate and proportionate, taking into account the size of the relevant PI, EMI or RAISP, and the resources available to it, as well as the inherent differences between payment services and e-money businesses.

As mentioned under Q3, we query the proportionality of extending all of the Principles to EMIs, PIs and RAISPs, and are concerned that the potential for duplication and/or conflict with existing payment services and consumer protection legislation has not been fully considered. The Guidance in PRIN 3.1.8(G) waives the application of the Principles where there is a conflict with PSD2 and EMD2 but provides limited explanation of how these conflicts could arise. More specific guidance and examples on this topic would be helpful.

Q5: Do you have any comments on our proposals to apply the communications rules indicated in this CP to credit institutions, PIs, EMIs and RAISPs when providing payment services or issuing e-money?

Our members agree in principle. However, from a practical perspective, our members would welcome guidance in BCOBS that confirms that the FCA would apply *the fair, clear and not*

misleading rule in a way that is appropriate and proportionate taking into account the size of the relevant PI, EMI or RAISP and the resources available to it. In most cases payment services and e-money products are low-risk products where customers are not putting capital at risk or obtaining credit, so certain requirements would be disproportionate, such as risk warnings or notices on promotional communications, or for a PI or EMI to take product suitability into account in its marketing procedures (as there is no advisory relationship with customers).

Our members would also welcome guidance as to how this would interact with the PSD2 requirement that communications are “sufficient, comprehensible and necessary”. This would address confusion regarding which standard to apply.

The rules also need to take into account the media that may be used for advertising, as EMIs and PIs frequently use social media advertising. The 2015 FCA Guidelines on Social Media and Customer Communications (SG 15/4) should be reviewed and updated with reference to the BCOBs rules that apply to EMIs and PIs.

Our members would not support the application of the Financial Promotion rules to EMIs and PIs.

Q6: Do you agree with our proposals to introduce new guidance for communications for currency exchange transfer services to credit institutions, PIs, EMIs and RAISPs when providing payment services or issuing e-money involving a currency conversion, to prevent misleading communications?

Our members agree in principle.

Q7: Do you agree with our proposed approach to prevent firms from issuing communications that use exchange rates that are not achievable?

Our members agree in principle.

Q8: Do you agree with our proposed approach to ensuring that any comparisons of costs are fair and meaningful?

Our members agree in principle.

Q9: Do you agree with the scope of our proposals to exclude other currency exchange transfer services that are not carried out as part of a payment or e-money service (such as ‘bureaux de change’ activities)?

Our members are of the view that consumers using the exchange transfer services of a bureau de change (or similar business that is outside the scope of the current proposals) should not be placed at a disadvantage compared to consumers using the exchange transfer services of a PI, EMI or RAISP. Therefore, the scope of the proposals should include businesses such as a bureaux de change.

Q10: Do you have any comments on our cost benefit analysis?

No comment.

List of EMA members as of October 2018:

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