

Electronic Money Association

Crescent House

5 The Crescent

Surbiton, Surrey

KT6 4BN

United Kingdom

Telephone: +44 (0) 20 8399 2066

www.e-ma.org

Ministerie van Financiën
Korte Voorhout 7
Postbus 20201
2500 EE Den Haag

15 January 2019

Dear Sir/Madam,

Re: EMA comments on Dutch Law Implementing the Fifth Anti-money Laundering Directive (5MLD)

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.

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Thaer Sabri', with a long horizontal line extending from the end of the signature.

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA Comments

I. The definition of virtual currency

Article 1(A) sets out the new definition of virtual currency. We note that this definition is shorter than the corresponding definition in Article 1(2)(d) 5MLD, with the phrase "... not necessarily attached to a legally established currency and does not possess a legal status of currency or money" having been deleted.

It is important to retain the latter part of this phrase in particular ("does not possess a legal status of currency or money") in order to avoid electronic money being caught in the scope of the definition. Electronic money is fiat currency and thus possesses the legal status of currency or money. It is not intended to fall under the definition of virtual currency (see Recital 10 5MLD), as it is subject to a separate regulatory regime more comprehensive than that which virtual currencies will be subject to by virtue of 5MLD.

We would furthermore like to encourage you to use this opportunity in order to set out more precisely which products are intended to fall within the definition of virtual currency. For example, loyalty schemes and other corporate incentive products, such as air miles, should not be included in the definition, as they do not share the functionality or risk associated with virtual currencies. Neither should in-game currencies that can only be used in a specific game environment (see Recital 10 5MLD). More generally, it would be useful to specify whether the definition is intended to include asset and utility tokens in addition to payment tokens, or whether these are excluded.

2. CDD requirements for custodian wallet providers and virtual currency exchanges

Section 2.1.3 of the explanatory memorandum specifies backward (sender) and onward (recipient) identification requirements for custodian wallet providers and virtual currency exchanges that carry out virtual currency transactions on behalf of their customers. We would like to raise two points in relation to these requirements:

- 1) The extent of CDD and monitoring undertaken by custodian wallet providers and virtual currency exchanges should be risk-based in accordance with the risk-based approach adopted by the directive. Not all virtual currency transactions are high-risk, and to set onerous requirements regardless of the actual risk posed by the relevant transactions constitutes a disproportionate response to the task of regulating emerging payment products whose successful development is sensitive to regulatory burdens.
- 2) There is no precedent in the directive or other EU legislation or guidance for requiring firms to verify the identity of parties with which they have no business relationship. Custodian wallet providers ought only to be responsible for verifying the identity of their customers, not of the customers of other service providers who may be receiving virtual currency transfers. This has been the principle underlying the requirements for wire transfers, and virtual currency transfers should not be disadvantaged in this respect.

We therefore suggest that the specific requirements set out in the explanatory memorandum are rephrased in line with the risk-based approach and that verification requirements are restricted to the customers of custodian wallet providers and virtual currency exchanges.

List of EMA members as of January 2019

Airbnb Inc	Ozan
Allegro Group	Park Card Services Limited
American Express	Paybase Limited
Azimo Limited	Paydoo Payments UAB
Bitstamp	Payoneer
BlaBla Connect UK Ltd	PayPal Europe Ltd
Blackhawk Network Ltd	PayPoint Plc
Boku Inc	Paysafe Group
CashFlows	PPRO Financial Ltd
Circle	PrePay Solutions
Citadel Commerce UK Ltd	QIX Ltd
Coinbase	Remitly
Corner Banca SA	SafeCharge UK Limited
Curve	Securiclick Limited
eBay Sarl	Skrill Limited
ePayments Systems Limited	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	TransferMate Global Payments
GoCardless Ltd	TransferWise Ltd
Google Payment Ltd	TrueLayer Limited
IDT Financial Services Limited	Trustly Group AB
Imagor SA	Uber BV
Intuit Inc.	Valitor
Ixaris Systems Ltd	Vitesse PSP Ltd
Merpay Ltd.	Viva Payments SA
MuchBetter	Wave Crest Holdings Ltd
myPOS Europe Limited	Wirecard AG
Nvayo Limited	Wirex Limited
One Money Mail Ltd	Worldpay UK Limited
Optal	XCH4NGE LTD