



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

Jesmond Gatt
Chief Officer of the Banking Operations
Department
Central Bank of Malta
Castille Place
Valletta VLT1060
Malta

Sent by email:

Jesmond.Gatt@centralbankMalta.org,

Kirsten.Ellul@centralBankMalta.org

16 December, 2019

Dear Jesmond

Re: Implementation of Article 36 of the Second Payment Services Directive (“PSD2”) in Malta

The Electronic Money Association is the trade body for electronic money issuers and innovative payment service providers. Our members include leading payments and e-commerce businesses worldwide, representing online payments, card-based products, vouchers, and those employing mobile channels of payment. Please find full list of our members attached to this letter.

Access to accounts with credit institutions is crucial to our members’ businesses. A new requirement introduced with PSD2 under Article 36 obliges national competent authorities of member states to ensure this access is achieved. We are writing on behalf of our members to urgently request the intervention of the Central Bank of Malta in relation to a breach of Article 36 PSD2 in Malta. Below we provide further information, as well as a number of requests related to the national implementation of the Article 36.

Thaer Sabri
Chief Executive Officer
Electronic Money Association

Article 36 in Malta:

Article 36 of PSD2 introduced a requirement on member states to ensure payment service providers obtain access to bank accounts with credit institutions. In addition to non-discrimination, objectivity, proportionality, and a duly motivated decision, member states are now required to ensure access is achieved as an outcome:

Article 36

Access to accounts maintained with a credit institution

Member States shall ensure that payment institutions have access to credit institutions' payment accounts services on an objective, non-discriminatory and proportionate basis. Such access shall be sufficiently extensive as to allow payment institutions to provide payment services in an unhindered and efficient manner.

The credit institution shall provide the competent authority with duly motivated reasons for any rejection.

This provision was implemented in Malta through Article 13, Chapter 2 of the CBM Directive No 1 on the Provision and Use of Payment Services:

Access to accounts maintained with a credit institution

13. Payment institutions shall have access to credit institutions' payment accounts services on an objective, non-discriminatory and proportionate basis. Such access shall be sufficiently extensive as to allow such payment institutions to provide payment services in an unhindered and efficient manner.

The credit institution shall provide the Bank with duly motivated reasons for any rejection.

Maintaining or obtaining access to bank accounts has crucial significance to PSPs' businesses. The delivery of payment services by PSPs, both domestically and internationally, requires a number of functionalities to be present. These are enabled by access to the following types of bank account:

- **Pay-in accounts** to receive funds from clients, which may also be segregated, and compliant with safeguarding requirements;
- **Operating accounts** to manage PSP's working capital and to make day-to-day transactions without co-mingling PSP's funds with their clients' funds;
- Stand-alone **safeguarding accounts** for meeting safeguarding obligations; and
- **Other accounts** such as those from which payments can be settled with payment schemes.

The the effect of Article 36 is that CIs must consider individual PSP applications on the basis of their internal benchmarks, and must not have policies in place restricting a whole category or type of PSP without assessing risks specific to that institution. Banks should build an understanding of the varying risks, costs and

revenues associated with different PSPs within the same category. These differences must be managed appropriately rather than generically treating categories of customers in the same way. In practical terms, this means that when assessing applications from prospective customer PSP, or when considering the termination of an existing relationship, not only the category of PSP must be considered, but all individual circumstances of that specific provider. This corresponds to the risk-based approach to managing risk by credit institutions.

De-risking by Bank of Valetta:

EMA member firms have raised serious concerns with the EMA regarding a de-risking exercise undertaken by the Bank of Valetta, and we are approaching the Central Bank of Malta on their behalf to request intervention under Article 36 PSD2.

Between September and October 2019, four members of the EMA received letters from the Bank of Valletta – notifying them of closure of their accounts. The reason given by the Bank of Valetta is that they have had to exit all business relationships with payment institutions and electronic money institutions. This decision does not appear to be taken on a risk-based approach, as the four firms have different business offerings, risk profiles and customer bases. In addition, the Bank of Valletta continues to serve other types of customers that do have high AML/TF risk profiles.

Instead, the decision appears to have been taken on a discriminatory manner, and all EMIs and PIs we contacted have been given 2 months to find another provider, with no dialogue or investigation into the actual risk posed by each EMI/PI. Bear in mind that it often takes at least 6 months to obtain a bank account with a CI that has no prior knowledge of the applicant.

- The two months will therefore have an immediate catastrophic impact on such PSPs.
- We note that the letter also provides for 15 days' notice for the termination of credit cards linked to the account. The impact on day to day operational payments is again catastrophic.
- Finally an extensive CDD process is set out as a condition for funds to be withdrawn. This will cause yet more delay and disruption to business, and raises the question of why CDD is being undertaken at account closure.

PSPs have had to seek alternative CI and have approached BNF Bank, Lombard Bank and Sparkasse Bank, HSBC Malta all refusing citing different reasons. Banks such as ABS Bank in Malta are starting to withdraw services from existing customers.

- 1. Given the requirement in Article 36 PSD2 for: “Such access shall be sufficiently extensive as to allow payment institutions to provide payment services in an unhindered and efficient manner”, we would be grateful for**

more information regarding how this assessment is being undertaken, what conclusions have been reached to date and what intervention you may be looking to introduce in order to remedy problems that have been identified, including those outlined above.

- 2. Specifically in relation to the issue raised above, we call on the CBM to require the Bank of Valetta to assess each case on its merits and provide duly motivated reasons for its actoons, and where these are not proven, for the relationship to continue.**
- 3. Where a termination is made, to extend the term of termination to at least 6 months in order to allow firms enough time to find an alternative provider. Similarly to extend the use of credit cards to the same term.**
- 4. Also, where alternative banking services are not available, to suspend such termination, in order to meet the requirements of Article 36 for such services to be 'sufficiently extensive', pending such services becomeing available.**
- 5. It would of course be helpful if affected firms were able to make submissions to the CBM where they feel the process has not been executed reasonably or fairly, or where little rationale has been provided for refusing to grant banking facilities.**

Competition and Article 36:

It appears that the Bank of Valetta – and possibly other CIs in Malta - are regarding non-bank PSPs as higher risk, even though they are regulated financial institutions, and regulated by the same competent authorities that have responsibilities over CIs (Central Bank of Malta and MFSA).

Whilst the industry opposes the principle that banks should assess the compliance and business of other PSPs regulated in their own or other EU jurisdiction; if this is an objective that is sought, then the regulator or legislator should set this out clearly, describing a perimeter for the assessment, the areas in scope and reasonable expectations in this context.

Failing to do so will simply give an advantage to bigger and more established businesses, and will provide a means for banks to act in an intrusive and possibly anti-competitive manner.

This is a very urgent matter that we would ask is considered at your earliest convenience, and we will write again with a more general set of concerns in relation to the de-risking of PSPs by credit institutions.

EMA membership as of December 2019:

[AAVE LIMITED](#)
[Airbnb Inc](#)
[Airwallex \(UK\) Limited](#)
[Allegro Group](#)
[American Express](#)
[Azimo Limited](#)
[Bitstamp](#)
[BlaBla Connect UK Ltd](#)
[Blackhawk Network Ltd](#)
[Boku Inc](#)
[CashFlows](#)
[Circle](#)
[Citadel Commerce UK Ltd](#)
[Coinbase](#)
[Contis](#)
[Corner Banca SA](#)
[Curve](#)
[eBay Sarl](#)
[ePayments Systems Limited](#)
[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](#)
[Moneyhub Financial Technology Ltd](#)
[MuchBetter](#)
[myPOS Europe Limited](#)
[Nvayo Limited](#)
[One Money Mail Ltd](#)
[OpenPayd](#)
[Optal](#)
[Own.Solutions](#)
[Park Card Services Limited](#)
[Paybase Limited](#)
[Paydoo Payments UAB](#)
[Payoneer](#)
[PayPal Europe Ltd](#)
[Paysafe Group](#)
[PPRO Financial Ltd](#)
[PrePay Solutions](#)
[QIX Ltd](#)
[Remitly](#)
[Revolut](#)
[SafeCharge UK Limited](#)
[Securiclick Limited](#)
[Skrill Limited](#)
[Soldo Financial Services Ireland DAC](#)
[Stripe](#)
[SumUp Limited](#)
[Syspay Ltd](#)
[Token.io](#)
[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](#)
[Wirecard AG](#)
[Wirex Limited](#)
[WorldFirst](#)
[Worldpay UK Limited](#)