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Dear Sirs

Re: Payment Services Guidelines

The EMA is the EU trade body representing electronic money issuers and innovative payment service providers ("PSPs"). Our members include leading payments and ecommerce 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, and a number of EMA members have recently obtained – or are currently applying for- licences in Lithuania.

A list of current EMA members is provided at the end of this document.

The EMA welcomes the opportunity to provide our comments to the Bank of Lithuania on the draft Payment Service Guidelines. Please see annex A of this letter for our comments.

Please let us know if you have any questions.

Kind regards

Thaer Sabri
Chief Executive Officer
Electronic Money Association

Annex A

General comments:

1. In general, the guidance appears to be written without reference to specific provisions in the existing statutory requirements. In order to assist those within firms that are responsible for ensuring compliance with the requirements, particularly smaller PSPs, we consider it would be helpful to include more references to the applicable articles from the Law on Payments.

Comments by paragraph

1. Paragraph 4.2.7

Guidelines: The PSP should take into account the individual needs and skills of the payment user when considering what type of durable medium should be used to provide the framework contract and information during the term of the framework contract.

EMA comment: We consider that tailoring the type of durable medium for each customer would create an unnecessary burden on the PSP and may require technical development. Where the PSP is obligated to provide or make available information to the payment service user on a durable medium, we consider that providing or making this information available on *any* durable medium should be considered sufficient to discharge that obligation. We therefore consider it to be beneficial to clarify in the Guidelines that PSPs need only consider which durable medium would fulfil the individual needs and skills of the payment service user, to the extent the PSP offers a choice of durable medium.

2. Paragraph 4.4.5

Guidelines: Article 13 of the Law of Payments provides: The terms and conditions for the provision of payment services shall be set out in Lithuanian, in easy-to-understand words, in a clear and comprehensible form <u>or in another language, if agreed between the PSP and the payment service user</u>. Paragraph 4.4.5 of the Guidelines provides that this article 13 should not be understood as the possibility to choose another language instead of Lithuanian.

EMA comment: In order for Lithuania to become a leading forum for FinTech in Europe and remain competitive with other leading forums in both Europe and the rest of the world, the language in which businesses and their customers contract should not be restricted to the Lithuanian language only.

Local Lithuanian law as well as European law supports this view.

Article 36(8)(7) of the Law on Consumer Protection states that the agreement between the consumer and the financial service provider must include a paragraph on the language or languages in which the information on the terms and conditions of the contract is provided, as well as the language or languages the service provider undertakes to communicate with the consumer during the contract.

Article 51(1) of the PSD2 provides: The information and conditions shall be given in easily understandable words and in a clear and comprehensible form, in an official language of the Member State where the payment service is offered or in any other language agreed between the parties.

We consider the Guidelines should reflect the position taking in (i) article 13 of the Law of Payments, (ii) article 36(8)(7) of the Law of Consumer Protection and (iii) article 51(1) of PSD2, namely, that the service provider and their customer may contract in another language, permitting this is agreed.

3. Paragraph 4.4.9

Guidelines: Merely including a term in the framework agreement stating the payment service user consents to receive information under the framework contract in a language other than Lithuanian is unenforceable.

EMA comment: We consider it would be helpful for the Guidelines to clarify a compliant way for the PSP and a payment service user to agree on a language other than Lithuanian. If including a term in the framework contract is not sufficient, it would be helpful to know what would be considered sufficient.

4. Paragraph 5.4.6

Guidelines: The PSP and the payment service user should agree in advance on the terms of the framework contract, on a list of acceptable durable media for the submission of those conditions, including the permitted frequency of such requests from which the payment service user may choose the specific durable medium on which he requests the information to be provided and the time limit within which the payment service provider must comply with such request from the payment service user. The payment service provider shall ensure that the payment service user has access to the terms of the framework contract free of charge on individual request at least once per calendar month.

EMA comment: We consider this Guideline would result in the PSP providing a personalised service to the payment service user. Providing a personalised service to each payment service user is not possible for PSPs as this would require PSPs to retain more human resources and result in significantly higher costs. Article 51 of PSD2 requires the payment service provider to provide the payment service user with the framework contract on a durable medium "in good time before the payment service user is bound by any framework contract or offer". This time period allows the payment service user to review the framework contract, including terms concerning how information will be provided to the customer during the term of the contract. Terms need not be agreed in advance with each customer. We suggest this guideline be removed for the above reasons.

5. Paragraphs 6.1.5 and 6.1.6

Guidelines: Where a PSP proposes changes to the payment instrument or payment account, the PSP must (i) obtain the prior consent of the payment service user, and (ii) to inform the payment service user of any steps they must take in order to give effect to this change.

There are four instances where prior consent need not be obtained as follows:

1) changes must be made as soon as possible (e.g. in the case of fraud);
2) it would not possible to continue to providing the payment service otherwise;
3) the change of these conditions is an unavoidable consequence of other changes (if the framework contract is assigned to another PSP who does not have the technical capacity to smoothly take over the service without changing individual conditions); or
4) as provided for in another law.

EMA comment: We consider it is necessary to inform the payment service user of such changes, but not necessary to obtain their express consent. Obtaining the payment service user's consent for certain changes may result in an interruption to the payment service user's service.

We consider there is no benefit to either party to provide an exhaustive list of changes in which the PSP is not required to obtain the consent of the payment service user. We suggest this list either be removed or, alternatively, be reframed as a list of changes that may come into force immediately (and the payment service user informed after the change has come into effect).

Please note there are no requirements in the Law on Payments (or other applicable law) to obtain the consent of the payment service user in the event of a change in individual payment service conditions. Accordingly, we consider the guidelines should follow the standard set down in the legislation.

6. Paragraph 6.2.7

Guidelines: Given that the payment service user has sufficient time to evaluate the proposed changes to the framework contract and to take a final decision on the continued use of the services, the PSP should take active steps to provide this information to the payment service user by means of distant communication that not only meet the requirements for durable medium, but which are also more frequently used by the payment service user.

EMA comment: Please note the Law on Payments does not impose an obligation on PSPs to use multiple channels and to monitor which of the channels the payment service user uses more frequently. In order to do so, PSPs would be required to increase resources thereby increasing costs with no significant benefit to the payment service user.

We consider the Guidelines should follow the standard set down in the PSD2, article 53(1), namely, to provide the proposed changes to the framework contract to the payment service user in the way specified in article 51(1) [on a durable medium].

7. Paragraph 6.3.2

Guidelines: Where the PSP proposes changes to the framework contract, in addition to providing the new version, the PSP must also clearly distinguish the proposed changes.

EMA comment: We understand that providing a compare version of the new version of the framework contract against the previous version would be an effective way to highlight the proposed changes to a payment service user. It would be helpful for the Guidelines to confirm whether such a comparison must also highlight immaterial and/or cosmetic changes.

8. Paragraph 6.3.3.1

Guidelines: Where the PSP proposes changes to the framework contract, the PSP should provide the reason for such changes, for example, changes in applicable law or in the provision of the service.

EMA comment: We consider that providing the reason for the proposed changes to the framework contract does not benefit the payment service user. The payment service user is free to disagree with the proposed changes to the framework contract and therefore terminate the contract during the 2-month notice period irrespective of the reason for the proposed changes. We consider that the reason for the proposed change should not be a factor the payment service user considers when determining if they accept the proposed change. The payment service user will likely instead concentrate on how the proposed change will affect them. We also consider that, permitting the PSP is complying with all relevant legal obligations, the PSP reserves the right to make confidential decisions concerning its own business and not be required to disclose the reasoning for such decisions.

9. Paragraph 6.3.3.2

Guidelines: Where the PSP proposes changes to the framework contract, the PSP should also provide a short and clear explanation of the basic content of the change and illustrate the core differences between the previous and new version of the framework contract.

EMA comment: We consider that the changes to the framework contract should be drafted clearly and concisely and in plain English / Lithuanian, and that no further explanation should be required. Providing the existing version, revised version and a comparison version of the framework contract, as well as drawing out changes to identify such changes to the payment service user is a sufficient amount of information for the payment service user to understand the change. It would not be advised to overwhelm the payment service user with a cumbersome amount of repetitive information.

10. Paragraph 6.3.3.3

Guidelines: Where a PSP proposes changes to the framework contract, in addition to providing an explanation of the changes and high-lighting the core differences, the PSP should also (i) clarify what the implications are of the proposed changes on the payment service user, and (ii) indicate the steps the payment service user must take in order to comply with the new terms.

EMA comment: Similar to the above, we consider that PSPs will draft the changes to the framework contract in a sufficiently clear manner such that any further explanation or further clarification would only result in repetition and therefore not be necessarily.

11. Paragraph 6.4.4

Guidelines: Where the PSP has proposed changes to the framework contract and the 2-month notice period has commenced and the PSP has doubts as to whether the payment service user has requested to terminate the framework contract, the PSP must take the initiative to investigate whether the payment service user does intend to terminate the framework contract as well as explain the consequences of terminating the framework contract.

EMA comment: It would be helpful if this paragraph clarified when such doubts may arise.

12. Paragraph 6.4.8

Guidelines: The PSP should allow payment service users a few days' leeway after the 2-month notice period has run to notify the PSP that they do not accept the proposed changes and terminate their framework agreement.

EMA comment: We consider this guideline would be detrimental to a PSP's business. PSPs rely on the 2-month notice period for certainty and to ensure they are aware of which framework contract applies to a particular payment service user at a specific point in time. On the day the 2-month period ceases, the PSP has certainty as to the amount of payment services users who have agreed to the proposed changes and remain under contract. PSPs also have certainty on this date of the payment service users who have not accepted the proposed changes and are no longer subject to contract. Further, if a claim arose between the parties during this time period, it would be uncertain as to whether the framework contract was on foot at the time, potentially creating another issue to be resolved within the dispute.

13. Paragraph 7.2.5

Guidelines: It is good practice to allow the payment service user to terminate their framework contract immediately and not require them to give the period of notice as set down in the framework contract (such as 14 days).

EMA comment: We consider this guideline recommending such practices would create uncertainty for PSPs. Similar to the point above, PSPs rely on time periods such as this to be certain of whether a payment service user is under a framework contract at any given point in time.

14. Paragraph 7.3.2

Guidelines: A PSP exercising their right to terminate a framework contract must be a means of last resort and should only be exercised in instances where to continue to provide the services would be contrary to law.

EMA comment: We consider that, in as far as the payment regime allows, PSPs should have the commercial freedom to provide and cease to provide services in accordance with their own business policies. Ceasing to provide services to a payment service user may not always be because continuing to provide those services will be contrary to legal requirements. For example, a PSP may wish to cease to provide services in a certain jurisdiction for a variety of reasons. We consider that, permitting the PSP ceases to provide services in accordance with PSD2, that is, by giving the payment service user 2 months' prior notice, this should be considered sufficient.

15. Paragraph 7.4.3

Guidelines: The PSP should close a payment service user's account where there is no activity on the account and the payment service user has not told the PSP that they still wish to make use of the service.

EMA comment: It would be helpful if the Bank could please clarify what "no activity" means in the context of this guideline. Generally speaking, PSPs already have internal policies and procedures in place to assist customers when the customer is not actively using the service, for example, contacting the customer and asking whether they need help with their security credentials. Permitting both parties are complying with their legal and contractual obligations, we consider it should be at the PSP's discretion as to whether they close an inactive account and should be free to follow their own internal policies and procedures.

16. Paragraph 9.2.3

Guidelines: Where a payment order has been given through a payment initiation service provider, the request to revoke the payment order should also be made through the payment initiation service provider (PISP), i. e. the payment order should be revoked at the payer's request by the PISP and not by the account servicing payment service provider (AISP).

EMA comment: It would be helpful if the Bank could clarify this guideline in paragraph 9.2.3 in light of Article 44(2) of the Law on Payments. Article 44(2) provides where a payment transaction is initiated by or through the PISP or the payee, the payer may not revoke the payment order after the PISP has given its consent to initiate the payment transaction or the payee has given its consent to execute the payment transaction.

We would also welcome addition details and examples of possible scenarios the guideline contained in paragraph 9.2.3 may be applicable.

17. Paragraph 9.9.4

Guidelines: The amount of unauthorized payment transaction and / or other amounts referred to in paragraph 9.9.3 shall be returned to the payer no later than at the end of the next business day from the day the payer's PSP became aware of such payment transaction, unless the payer's PSP has reasonable grounds to suspect the fraud on the part of the payer. The PSP must notify the Bank of Lithuania of cases where the PSP refuses to refund the payment transaction whose authorization the payer challenges, despite the fact that the payment transaction is authorized according to the data available to the payer's payment service provider (e.g internal systems data), unless the payment service provider has sufficient evidence to justify that such payment transaction is authorized.

EMA comment: It would be helpful if the Bank could clarify this guideline. We consider the guideline does not specify what information should be reported to the Bank in addition the already existing obligation to submit a FRAUD report (a report notifying the Bank of the refusal to refund in case of suspected fraud).

18. Paragraph 10.5.9

Guidelines: Where the name specified in the payment order does not match the name specified on the payee's payment account, the payee's PSP should, if possible, take immediate action. For example, in cases where the payment order indicates the payee is a company and the payee's account is held in the name of an individual.

EMA comment: We note that it may not be feasible for the payee's PSP to take any immediate action in this instance. The payee's PSP may not possess the technical functionality to compare the names of every payment order against the name that the payee's account is held. We would also appreciate further clarity on what type of action should be taken by a PSP pursuant to this guideline.

List of EMA members as of May 2020

AAVE LIMITED
Airbnb Inc
Airwallex (UK) Limited
Allegro Group
American Express
Azimo Limited
Bitstamp
BlaBla Connect UK Ltd
Blackhawk Network Ltd
Boku Inc
CashFlows
Ceevo
Circle
Citadel Commerce UK Ltd
Coinbase
Contis
Corner Banca SA
Curve
eBay Sarl
Em@ney Plc
ePayments Systems Limited
Euronet Worldwide Inc
Facebook Payments International Ltd
First Rate Exchange Services
Flex-e-card
Flywire
Gemini
GoCardless Ltd
Google Payment Ltd
IDT Financial Services Limited
Imagor SA
Intuit Inc.
Ixaris Systems Ltd
Modulr FS Europe Limited
Moneyhub Financial Technology Ltd
MuchBetter
myPOS Europe Limited
Nvayo Limited
One Money Mail Ltd
OpenPayd
Optal
Own.Solutions
Park Card Services Limited
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Paydoo Payments UAB
Payoneer
PayPal Europe Ltd
Paysafe Group
PPRO Financial Ltd
PPS
QIX Ltd
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Securiclick Limited
Skrill Limited
Soldo Financial Services Ireland DAC
Stripe
SumUp Limited
Syspay Ltd
Token.io
Transact Payments Limited
TransferMate Global Payments
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