



Electronic Money Association

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David Parody,
National Coordinator for Anti-Money Laundering and Terrorist Financing,
Gibraltar Financial Services Commission (GFSC)
(by email)

5 June 2020

Dear David

Re: EMA comments on the Consultation draft: 2020 National Risk Assessment Money Laundering and Terrorist Financing Risks

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, including those authorised in Gibraltar. 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.

We welcome the opportunity to provide comments on the draft 2020 NRA. In doing so, we highlight concerns regarding the risk rating given to e-money in the current draft, both in terms of the rationale, and current evidence from our membership. We would be grateful for your consideration of our comments and proposals.

Yours sincerely,

A handwritten signature in black ink that reads 'Thaer Sabri'. The signature is written in a cursive style and is underlined with a long horizontal stroke.

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA comments

The comments below are based on EMA experience and expertise over a number of years, and on evidence provided by a number of E-Money institutions (“EMIs”) who operate across the EEA. All of our comments relate to the E-Money section within the 2020 Gibraltar Draft Risk Assessment.

We note that the GFSC conducted four onsite inspections of Gibraltar based E-Money Institutions (EMIs) in late 2018. The resultant report concluded that most firms were generally performing adequately, with the exception of one firm. We also note that the GFSC has not taken formal action against any of the four firms beyond working with firms to remediate any issues identified.

Simplified Due Diligence (SDD)

The draft NRA states that the GFSC has concerns about prepaid cards or vouchers that take advantage of the customer due diligence exemptions permitted under statute.

“Another category includes prepaid cards or vouchers with customer due diligence exemptions: these products can be used online or offline and can be purchased by cash.”

We note however there is no reference to such concerns within the GFSC thematic review report referenced above. Had it been evident from the firms that were visited and assessed as being a realistic risk, given the type and range products offered by the sample firms, we would have assumed this would have been mentioned in the concluding report.

It is unclear whether the GFSC NRA is referring to e-money products that benefit from the CDD exemption in Article 12 4MLD, or the simplified due diligence provisions in Article 15 4MLD (where the customer is registered, but full verification is not conducted until a later date when - for example - a monetary threshold is met).

Where EMIs offer anonymous products that fall under the Article 12 4MLD exemption from CDD, EU legislation limits the AML-TF risk in a number of significant ways, including applying low value thresholds, a limit of €50 for any online transactions, a ban on cash redemptions and withdrawals, and use only to purchase goods and services. Firms offering these products are also obliged to monitor transactions and where necessary carry out due diligence when required.

Products that take advantage of the SDD provisions in Article 15 4MLD are no longer offered by many EMIs due to the uncertainty surrounding the regulatory perception of the AML-TF risk associated with these products. In the limited circumstances that SDD products were offered historically it allowed consumers with limited credit history to establish an account to use an E-Money product for banking services. These products allowed financial inclusion and had lower limits placed on them, beyond which full customer due diligence was mandatory. However, due to the lowering of value thresholds introduced by the [EBA Guidelines on SDD and EDD](#), not only has the ML-TF risk been significantly reduced, they have effectively been rendered redundant as a viable product proposition for many EMIs. It is important to note that the SDD provisions can be applied to other financial products as well as e-money.

Cash loading of SDD products has been identified by the GFSC as a potential money-laundering risk. However, in practice usually limit the use of cash within any product offering, especially those where SDD has been applied, effectively mitigating this potential risk. There does not appear to be any evidence of this risk within the GFSC Thematic review findings yet it has been included within the draft NRA.

Money-laundering

The draft NRA states: *“Among the wide range of e-money products, the products most exposed to money laundering risks are the ones that can be purchased for cash. The use of these products individually for money laundering purposes is costly because of the lower thresholds and the cost of hiring frontmen to circumvent the thresholds for applying customer due diligence”*

Please note that the most common method of loading funds to E-Money accounts is by bank transfer or debit or credit card deposits and very few products allow cash to be loaded. Also, loading and withdrawal of cash, when permitted under AML legislation¹, are activities that all firms monitor closely as part of transaction monitoring. Where any anomalies or suspicions are identified these will be investigated, and where necessary the account will be blocked and a suspicious activity report will be filed. This will therefore limit the scope for e-money cards or wallets to be used to launder the proceeds of crime in to any significant degree as suggested in the draft NRA.

The GFSC Thematic report concluded that three out of four EMIs in Gibraltar that had been assessed had adequate transaction monitoring controls; this supports the argument that effective transaction monitoring can mitigate AML-TF risk associated with these products.

The draft NRA later states: *“The money laundering inherent risk is considerably lower for the remaining e-money products linked to a bank account or a payment account.”* We would agree that the risks of money-laundering are much reduced when funds are deposited from another bank or payment account; this reflects normal customer behaviour within EMA member firms’ experience.

Terrorist Financing

The draft NRA states:

“Having effective checks in place in relation to terrorist financing can require a lot of AML/CFT staff, which can affect the business model of small e-money firms and reduce the efficiency of their monitoring systems, even when they have proper software tools to monitor transactions.”

The EMA’s experience does not support this assertion that smaller EMIs struggle with transaction monitoring and do not have adequate AML resources to investigate, therefore reducing their ability to monitor suspicious activity effectively. In the EMA’s experience, reliance on technology actually improves efficiency in identifying suspicion, particularly where high-risk countries are involved.

¹ Cash withdrawal or redemption is not permitted for products using the 4MLD Article 12 full exemption from CDD.

The draft NRA states:

“Extra vigilance is required in transaction monitoring where e-money products are used in locations close to borders of conflict zones or within conflict zones themselves to ensure that TF is not occurring, even with small amounts that could be financing lifestyle or living expenses of FTFs or terrorist organisations.”

The EMA’s experience is that risk-based transaction monitoring is in place in EMLs to identify exactly this behaviour and generate an alert for compliance staff to investigate. Where these accounts can be closely monitored and suspicious activity notified to the authorities.

Risk ratings:

The draft NRA currently assigns the following risk ratings:

Ref	Risk Description	Money Laundering Risks			Terrorist Financing Risks			Total
		Threat	Vuln.	Score	Threat	Vuln.	Score	
9.5.1	E-money products over €150	4	3	7	4	3	7	14
9.5.1.1	E-Money products under €150	2	1	3	5	2	7	10

Given the risk mitigation measures taken by EMLs, we believe the residual risk ratings for money-laundering and terrorist financing with e-money products in Gibraltar should be lowered.

The risk of E-money products over €150 being used for money-laundering would be significantly reduced both in terms of threat and vulnerability given the sums involved and the loading patterns evidenced from other bank or payment accounts as previously stated. Please also note that a large proportion (if not the majority) of e-money products do not take advantage of any exemption from CDD, but instead apply the same rules as the remaining financial services industry when onboarding customers. Applying such a high-risk rating to a product/sector based on a small subset of product types appears disproportionate.

In terms of risk of terrorist financing, given the quality of transaction monitoring the vulnerability risk rating may be improved, leading to a lower overall risk rating for products over €150.

In terms of the remaining products under €150 we feel given the lack of evidence of any such products being used for ML or TF purposes, coupled with the limitations placed on them by EU AML law (4MLD and 5MLD) makes them inherently lower risk from both a money-laundering and a terrorist financing perspective.

Members of the EMA, as of June 2020

[AAVE LIMITED](#)

[Airbnb Inc](#)

[Airwallex \(UK\) Limited](#)

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[Azimo Limited](#)

[Bitstamp](#)

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