



Electronic Money Association

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**José Manuel Campa
Chairman**

European Banking Authority
One Canada Square (Floor 46)
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14 September, 2020

Dear José,

Re: EMA Response to EBA Call for input on ‘de-risking’ and its impact on access to financial services

The Electronic Money Association (“EMA”) welcomes the opportunity to respond to the Call for input on ‘de-risking’ and its impact on access to financial services. We are grateful for the EBA’s interest in this challenging issue.

The EMA is the European trade body representing electronic money issuers and alternative 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, many of whom operate on a cross-border basis in the European Union (“EU”). A list of EMA members is given at the end of this letter.

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

Yours sincerely,

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

6. IN WHICH MEMBER STATE IS THE FINANCIAL INSTITUTION THAT DECIDED NOT TO HAVE/WITHDRAW BUSINESS RELATIONSHIP WITH YOU ESTABLISHED?

EMA members reported de-risking experiences by Financial Institutions authorised in the following member states: Germany, Sweden, Poland, Bulgaria, Lithuania, Estonia, Latvia, Malta, Italy, and the UK.

Please note that in the last 3-5 years, several EMA members who responded to our request for input had been de-risked or refused an account by 5-10 institutions in the EEA. Several members had been de-risked by institutions with whom they had been banking for 8-10 years with 1-2 months' notice. The firms in question had varying risk profiles and were not only small startups, but also large well-established firms with a considerable customer base.

Implementation of PSD2 Article 36 across the EEA

Our members' businesses require access to bank accounts, and indeed they cannot function if deprived of access or if this is made difficult. Article 36 of PSD2 obliges national competent authorities to ensure payment service providers obtain access to bank accounts with credit institutions (CIs). In addition to non-discrimination, objectivity, proportionality and a duly motivated decision by the CI, member states are now required to ensure access is achieved as an outcome.

PSD2 Article 36 offers a unique opportunity to monitor and track the extent of the problem of de-risking, as it allows NCAs to collect data in relation to declined bank accounts, and - if published - could assist industry in tracking the extent of the problem. Publication of more granular detail would also assist PSPs in identifying groups or individual CIs that are engaging with PSPs and offering banking services, thus saving resources on the side of both applicant and CI.

However the EMA's correspondence with NCAs regarding the implementation of PSD2 Article 36 across the EEA has found that there are very few Member States that have:

- Any formal mechanism in place for CIs to report to the NCA under this Article,
- Any guidance for CIs in relation to their obligations under this Article, for example at what stage a refusal to onboard must be notified to the NCA, what mechanism they should use to notify the NCA, or in what circumstances the closure of an account must be notified to the NCA.
- any formal mechanism for PIs or EMIs to submit a complaint about being de-risked, or a refusal to onboard

For example, we received responses from NCAs claiming they had received no notifications under this Article, when EMA members had either been de-risked or refused

an account by a CI authorized in the same Member State, indicating that the PSD2 Article 36 reporting obligation is not properly enforced – or understood - in several EEA Member States.

As well as the above suggestions in relation to collecting and publishing data, the EMA also propose the following:

1. CIs do not currently disclose the internal benchmarks for financial returns that they apply to non-bank PSPs, nor the manner in which they assess any compliance risks posed by the PSPs. Publication of such criteria would be helpful in both understanding the requirements expected by CIs and in making the application of the process more transparent.
2. It would be helpful if the review process that the regulator exercises in relation to reports of refused applications is published, and actions that the national competent authority undertake as a consequence are transparent.
3. It would of course be helpful if affected firms were able to make submissions to the regulator 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.

We would be grateful if the EBA were to consider recommending such actions for NCAs across the EEA in order to take some steps to address the issue of de-risking.

7. WHICH FINANCIAL PRODUCT HAVE YOU BEEN DENIED ACCESS TO?

EMA members have had a variety of bank accounts closed or denied access to:

- Pay-in accounts to receive funds from clients
- Operating accounts to manage PSP's working capital and to make day-to-day transactions
- Stand-alone safeguarding accounts for meeting safeguarding obligations.
- Withdrawal of access to UK payment systems through banks
- Correspondent bank accounts in order to be able to settle SWIFT transactions

8. HOW DID IT AFFECT YOU AND WHAT WAS THE CONCRETE IMPACT OF THIS DECISION? PLEASE PROVIDE QUANTITATIVE DATA WHERE POSSIBLE IN SUPPORT OF YOUR RESPONSE.

One impact is the time spent and the associated cost to secure and switch to new bank accounts: CFOs, Finance and Compliance departments and banking relationship teams have to invest a significant amount of time constantly secure new banking relationships (EMA members operating globally commented that this issue is especially acute in the EU market). Once the new account has been sourced, the cost/time required for onboarding, integration and implementation can be significant, depending on the service provided (for example offering indirect access to payment systems). These teams would otherwise be

in a position to advance products and processes to improve the services offered to customers.

PSPs negotiate commercial terms when they enter into business relationships with other financial institutions: When a business relationship is withdrawn, PSPs are under time pressure to secure a new contract to avoid any disruptions for customers. In addition, the number of Financial institutions offering the currencies, links into payment systems and level of automation needed is limited and PSPs have to therefore often accept more costly arrangements.

To mitigate the risk of being “de-banked” and no longer being able to meet regulatory obligations such as to safeguard client funds and to service customers, PSPs engage with a variety of banking partners. With an ever diminishing number of banks willing to onboard PSPs, and an increase in the number of PSPs seeking banking services, the cost has increased, and spreading the risk across multiple banks becomes almost impossible, especially for smaller market participants.

In this context it is important to note that the de-banking process can be swift (1-2 months) with little communication or formal notice whereby securing alternative banking relationships may take up to one year. Many examples were provided of firms who were given 1-2 months’ notice to find an alternative solution, even during the peak of the COVID 19 crisis.

Some firms have had to consider closing the e-money segment of their business due to difficulties obtaining an account.

9. HOW WAS THE DECISION NOT TO HAVE/WITHDRAW A BUSINESS RELATIONSHIP WITH YOU EXPLAINED BY THE FINANCIAL INSTITUTION?

The main argument for terminating an existing business relationship reported by the EMA’s membership is the bank’s risk appetite: Financial institutions perceive that the Money laundering risk associated with PSPs is outside their risk appetite as they are unable to ensure they meet their ML obligations, so they no longer wished to service the sector.

Whilst at some certain product types and/or customer segments may pose a higher ML risk – this is not the case across the whole non-bank PSP sector, and many EMA members’ product offerings and customer segments are medium or low risk .

It is questionable whether financial institutions that previously serviced the PSP sector have the right under Article 36 PSD2 to exclude or de-risk a whole sector, regardless of the risk posed by individual institutions. These strategic decisions appear to be taken by senior management with limited consideration of the individual applicant’s ML risk profile or controls; instead the credit institution refuses to service the sector as a whole.

Examples have been given of banks in Italy and in Denmark limiting their service provision only to customers within their own member state.

In several instances, an existing business relationship was terminated in writing but no explanation was given.

When trying to open new bank accounts, the decision not to onboard a particular EMI was explained by a breach of the bank's policy (no EMIs, no VASPs, no EMIs servicing VASPs, etc.). In some instances an application would not progress and it would become apparent that the bank would not onboard a PSP. In other cases firms would get through a lengthy CDD process only to be denied at risk committees or similar without any detailed reasons.

10. WERE YOU GIVEN AN OPPORTUNITY TO HAVE THIS DECISION REVIEWED AND IF SO, WHAT WAS THE PROCESS INVOLVED WITH WHAT OUTCOME? PLEASE PROVIDE DETAILS.

The process of terminating an existing business relationship varies between banks. It is not clear to applicant PSPs what the decision-making process is or which committees may be involved in such decisions. The appeals process is likewise often opaque, with no indication whether any formal mechanisms exist at all. When EMA members appealed against banks' decisions there were several instances where they were refused the opportunity to address an internal committee (or similar) or were told that their request had been denied or that it was impossible to reverse the decision.

In other cases, where the bank was challenged citing PSD2 Article 36 (or the equivalent national provision), the bank reversed the decision. This indicates that PSD2 Article 36 has not been effectively implemented across the EEA.

11. WERE YOU ABLE TO USE ALTERNATIVE CHANNELS TO ACCESS FINANCIAL SERVICES? PLEASE EXPLAIN.

PSPs have to resort to using accounts offered by other PSPs instead of using bank accounts. PSPs' preference (for business continuity reasons as well as other risk management purposes) is to have several bank accounts in use, but this is often not possible, and increasingly difficult to achieve.

In any case, securing banking relationships and keeping those business relationships are vital for PSPs to continue to operate.

List of EMA members as of September 2020:

[AAVE LIMITED](#)
[Account Technologies](#)
[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](#)
[Crypto.com](#)
[Curve](#)
[eBay Sarl](#)
[ECOMMPAY Limited](#)
[Em@ney Plc](#)
[Euronet Worldwide Inc](#)
[Facebook Payments International Ltd](#)
[First Rate Exchange Services](#)
[Flex-e-card](#)
[Flywire](#)
[Gemini](#)
[Globepay Limited](#)
[GoCardless Ltd](#)
[Google Payment Ltd](#)
[IDT Financial Services Limited](#)
[Imagor SA](#)
[Ixaris Systems Ltd](#)
[Modulr FS Europe Limited](#)
[Moneyhub Financial Technology Ltd](#)
[MuchBetter](#)
[myPOS Europe Limited](#)
[Nvayo Limited](#)
[OFX](#)
[OKTO](#)
[One Money Mail Ltd](#)
[OpenPayd](#)
[Optal](#)
[Own.Solutions](#)
[Park Card Services Limited](#)
[Paydoo Payments UAB](#)
[Paymentsense](#)
[Payoneer](#)
[PayPal Europe Ltd](#)
[Paysafe Group](#)
[Plaid](#)
[PPRO Financial Ltd](#)
[PPS](#)
[Remitly](#)
[Revolut](#)
[SafeCharge UK Limited](#)
[Securiclick Limited](#)
[Skrill Limited](#)
[Soldo Financial Services Ireland DAC](#)
[Stripe](#)
[SumUp Limited](#)
[Syspay Ltd](#)
[Token.io](#)
[Transact Payments Limited](#)
[TransferMate Global Payments](#)
[TransferWise Ltd](#)
[TrueLayer Limited](#)
[Trustly Group AB](#)
[Uber BV](#)
[Vitesse PSP Ltd](#)
[Viva Payments SA](#)
[WEX Europe UK Limited](#)
[Wirecard AG](#)
[Wirex Limited](#)
[WorldFirst](#)
[Worldpay UK Limited](#)
[WorldRemit](#)