



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

Baroness Donaghy CBE FRSA
Chair of the EU Services Sub-Committee
House of Lords
London
SW1A 0PW

23 November 2020

Dear Baroness

Re: Ongoing inquiry into financial services after Brexit

1. We very much welcome the opportunity to provide input to the EU Services Sub-Committee's ("The Committee") ongoing inquiry into financial services after Brexit.
2. The EMA is the EU trade body of FinTech and BigTech firms engaging in the provision of alternative payment services and the issuance of electronic money. Our members include leading payments and e-commerce businesses providing online/mobile payments, card-based products, electronic vouchers, virtual currency exchanges, electronic marketplaces, merchant acquiring services and a range of other innovative payment services. A list of current EMA members is provided at the end of this document.
3. We fully concur with the key conclusions and recommendations of The Committee's predecessor, the EU Financial Affairs Sub-Committee, and very much support what is set out in its letter of March 2020 to the Chancellor. A broader discussion of the significant challenges the EMA members and the UK financial markets are facing as a consequence of the withdrawal from the EU has been provided in our earlier input into the House of Commons 2019 Inquiry (see Appendix) to which we herewith refer. The remainder of this document responds more specifically to the additional questions the Committee has now put forward.

Questions	EMA response
<p>I. Is the UK financial services sector well prepared for the end of the Brexit transition period? What are the main areas where arrangements are not yet in place for the end of the Brexit transition period? Could a lack of certainty prompt companies to move assets and personnel to the EU? How have these preparations shaped the UK financial services sector?</p>	<p>Despite enormous efforts, and due to the persistently evolving but recurring uncertainties in terms of both the timeline and the specific impact of the withdrawal and the cliff edge effects of a ‘no-deal’ scenario likely to hit the industry in less than 6 weeks, it has been difficult for EMA members to fully prepare for what is now approaching. The UK government has focused on managing and mitigating these cliff edge risks by way of a significant number of short-term and costly remedial activities, however with no view of what any agreement between the EU and UK will and ideally should look like.</p> <p>For EMA members responding to these uncertainties was all the more difficult since, unlike the temporary measures taken by the UK regulatory bodies (the temporary permission regime (TPR) and the financial services contract regime (FSCR)), accommodating reciprocal provisions in the EU 27 Member States, if introduced at all, varied significantly both in terms of timing and substance. It took time to fully appreciate, and eventually act upon the fact that the only possible way of ensuring a safe and responsible continuation of business operations with customers in the EU 27 was for EMA members to set up operations and seek authorisation within the EU 27 as a matter of urgency. By now most (but not all) EMA members that used to operate EU cross-border services from the UK have moved the EU business to another EU 27 jurisdiction or at least set up licensed operations to do so swiftly as and when necessary. However, around 5% of EMA members have opted to terminate these activities and now limiting certain business activities to the UK territories.</p> <p>From the EMA’s perspective, Brexit and the EMA member preparations to respond to the legal uncertainties it has caused have had a significant adverse impact on the UK financial services sector and the payments and FinTech industry in particular. The UK has lost business, significant growth potential and some of its innovative clout. Moreover, since the withdrawal from the EU terminates not only the freedom of movement of services and goods but puts an end also to the freedom of</p>

Questions	EMA response
	<p>movement of persons, the UK has lost a significant element of attractiveness for talent from outside third countries, which is a key ingredient for a healthy, thriving and internationally competitive financial services sector. Talent is particularly important during this crucial phase of a rapidly unfolding digitalization of our economy and society.</p> <p>A number of specific areas remain without arrangements for the end of the Brexit transition period:</p> <ul style="list-style-type: none"> - Access to eIDAS certificates issued by EU QTSPs to UK Third Party Providers (TPPs). Following an EBA announcement earlier this year, EU QTSPs currently issuing valid eIDAS certificates for UK TPPs to use to identify themselves to ASPSPs are requested to revoke the validity of those certificates as of 31 December 2020. As there are currently no UK-based QTSPs, this leaves UK TPPs without access to a valid eIDAS certificate from January 2021. This development was unexpected, and the FCA have prepared a solution to allow UK TPPs to migrate to other certificates. However, the industry may be unable to complete the full migration by 31 December, and ASPSPs must also build their systems to accept these alternative certificates. This process will run well into 2021. - Most EMA members have obtained licences in another EU jurisdiction, at significant cost and resource, particularly for smaller start-ups that depend on the single market to expand and scale up. However, there are a remaining few firms that, despite submitting applications some time ago, continue to be at risk of not being able to service their EU customers on 1 January 2020 due to delays in their application. - The payments industry – card issuers, acquirers and merchants continue to work towards an extended deadline to bring in Strong Customer Authentication for card-based online payments. However, the deadline for adoption in the UK is 6-9 months later than that in most EU Member States. There remains a lack of clarity regarding the likely treatment of

Questions		EMA response
		cross-border transactions involving card payments in the EU or UK where the merchant, acquirer or issuer are in either jurisdiction.
2.	<p>How important is a UK-EU comprehensive trade agreement for the UK's financial services sector?</p> <p>Which specific areas should be a priority?</p>	<p>A comprehensive trade agreement with the EU could be extremely valuable for the UK's financial services sector, and in particular for the payments and FinTech industry represented by the EMA. A trade agreement would be key to stop and, if at all possible, reverse the exodus of UK businesses to the EU 27. Although the onshored EU payments legislation (e.g. PSD2, EMD2, IFR etc.) does not include any equivalence provisions, the UK could consider building provisions into a comprehensive future trade agreement, which require the European Commission to take all necessary steps to allow for equivalence in other legislative texts such as those mentioned above at a later date. However, it is essential that in the event of withdrawal of equivalence, firms are given sufficient time to make alternative arrangements to continue servicing their EU customers.</p> <p>In whatever shape or form this could eventually reduce the uncertainties that not only drove businesses to the EU 27 but also hindered firms engaging in a reliable medium- to long-term planning of their businesses and business models. Moreover, the adverse impact of these uncertainties is not only felt by established UK businesses, it also jeopardizes the attractiveness of the UK as the jurisdiction of choice for starting new or moving existing businesses from outside the UK.</p> <p>As to priority areas for future EU-UK negotiations the EMA would argue, and not just out of self-interest, that payment and other related digital financial services should be very high on the agenda. As set out already in our initial submission to this inquiry, electronic payment services are a key infrastructure component enabling local and global trade of digital and non-digital goods and assisting the rapidly advancing digitalization of our economy and society. They also underpin the emerging new financial ecosystems, including platformification, and are in this regard inseparable from other innovative services provided by technology companies outside the traditional perimeter</p>

Questions	EMA response
	<p>of financial services regulation (e.g. cloud computing services, AI, etc.). A privileged treatment of payment services in negotiations of the future UK relationship with the EU (but also other jurisdictions) is also justified by their specific reciprocal character.</p>
<p>3. What would be the implications of a 'no agreement' scenario for financial services firms? What more can be done to help the financial services sector prepare for a 'no agreement' scenario?</p>	<p>A 'no agreement' scenario would obviously put an end for the time being to any EU and EEA cross-border provision of payment and other financial services by UK-based entities. Firms are generally prepared for the cross-border provision of services to EU and EEA customers to licensed EU 27 operations from 1 January 2021.</p> <p>We are afraid little more can be done to alleviate the cliff edge effects of a 'no agreement' scenario.</p>
<p>4. What would be the consequences if the EU does not grant the UK positive equivalence determinations? In what areas are equivalence decisions particularly important?</p>	<p>As set out before, as there are currently no equivalence provisions in EU payments-related legislation (PSD2, EMD, IFR, CBPRII, etc.) UK firms will not be able to offer any cross-border payment services to EU and EEA clients after the end of the withdrawal period.</p> <p>From an EMA perspective equivalence decisions could be useful if the necessary provisions were to be inserted into the relevant EU texts, and into key onshored regulations, namely PSD2 and EMD2, and for related UK regulations on AML/CTF, conduct of business, and consumer protection as they apply to the payments sector. However, as mentioned before, the risk of an equivalence decision being withdrawn at short notice may undermine the value to firms of having an equivalence regime in the first place, and most EMA members have already set up operations in another EU jurisdiction in order to provide services in the EU.</p>
<p>5. How important is it that any positive equivalence determinations are underpinned</p>	<p>We have little to add to what the March 2020 letter to the Chancellor set out on the importance of an agreed framework for the orderly withdrawal of equivalence. Reliable and mutually beneficial customer relationships cannot be built on a legal basis that could be jeopardized by the EU's</p>

Questions		EMA response
	by an agreed framework for the orderly withdrawal of equivalence?	unfettered right to withdraw an equivalence finding, albeit to date the examples of such withdrawals indicate that in reality it takes several years to withdraw equivalence.
6.	How should future UK-EU regulatory dialogue be structured? How should divergence be managed?	<p>The UK-EU regulatory dialogue should cover the full scope and all relevant levels of regulation including the legislative and general policy level, the level of more specific prudential and conduct regulation, and the supervisory level.</p> <p>Key for the proper management of divergence is agreement on how to define and identify divergence. We agree with the statement of Nausicaa Delfas, Executive Director of International at the FCA, before The Committee highlighting the need for an ‘outcomes-focused’ approach to equivalence that would allow each jurisdiction’s regime “to evolve yet still deliver the same substantive outcomes.” (see also Andrew Bailey’s speech on “The Future of Financial Conduct Regulation” held 23 April 2019, and our initial submission, para 18 and 19)</p>
7.	The Government has now published the Financial Services Bill and Financial Services Future Regulatory Framework Review consultation paper. What are the strengths and weaknesses of these proposals?	We very much welcome the proposal put forward in HMT’s consultation paper. We believe the suggested horizontal layering with more regulatory power being delegated to the regulatory bodies that benefit from the expertise gained from ongoing supervision of financial service providers is most sensible. We would urge, however, for this approach and structure to be expanded as soon as possible to the regulation of payment and other financial services not covered by the FSMA.
8	What impact could a greater delegation of powers to financial regulators have?	We would expect rulemaking to benefit from being in the hands of the regulatory bodies with the expertise and practical insights into the workings of UK financial markets, businesses and business

Questions		EMA response
	What oversight should there be of these bodies?	<p>models, which can only be gained from ongoing supervision of these markets, the different industries and the supervisory dialogue with individual firms.</p> <p>The proposed delegation of significantly more rulemaking powers to regulatory bodies presupposes a much-strengthened governance with full democratic legitimization. Much tighter control and ongoing scrutiny by Parliament and parliamentary committees assisted by enhanced accountability of regulatory authorities must be built into the new Regulatory Framework. In particular we would echo what Miles Celi told the Committee: that “a step change ... in the funding and support given to committees” will be needed. It is a long-standing principle that financial service providers when outsourcing activities to third party service providers have to retain inhouse the expertise and the resources necessary to control the service provider. The same will have to apply in the case of delegation of regulatory power from the Parliament to UK regulatory bodies.</p>
9	How could the absence of a positive data adequacy decision from the EU impact the sector?	We have little to add to what the Committee has set out on the subject in its March 2020 letter to the Chancellor. Many EMA members are already using standard contractual clauses. However, the use of these clauses does not solve the problems occurring in a likely ‘no agreement’ scenario.

Yours sincerely,

Dr Thaer Sabri
 Chief Executive Officer
 Electronic Money Association

List of EMA members as of November 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](#)
[ePayments Systems Limited](#)
[Euronet Worldwide Inc](#)
[Facebook Payments International Ltd](#)
[Financial House Limited](#)
[First Rate Exchange Services](#)
[FIS](#)
[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 Limited](#)
[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](#)
[WorldRemit](#)

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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

Rt Hon Nicky Morgan MP
Chair of the Treasury Committee
House of Commons
Committee Office
London SW1A 0AA

7 May 2019

Dear Nicky

Re: The Future of the UK's financial services – Treasury Committee inquiry

1. We very much welcome the opportunity to provide input to the Treasury Committee's inquiry on the shaping of the future relationship of the UK financial services sector with the EU and the rest of the world.

Executive Summary

2. The EMA is the EU trade body of FinTech and BigTech firms engaging in the provision of alternative payment services. As a world-leading financial jurisdiction providing direct trading access to the EU internal market, the vast majority of our members have launched, and continue to conduct, their European and, in many cases, global business activities, from the UK. The strength of the UK financial regulatory framework, including in particular its policy of innovation facilitation were instrumental in making the UK home to most large and innovative FinTech and payments services providers in the EU. This industry has been driving the development of a new infrastructure of alternative payment services across and beyond the EU. It continues to be at the forefront of the pending technology-driven upheaval in financial markets world-wide and contributes significantly to the emergence of a new financial ecosystem where Big Data, the use of AI and Machine Learning technology, and “platformification” are transforming traditional business models and value chains of financial services providers.
3. These achievements are jeopardized by the imminent withdrawal of the UK from the EU and the vast majority of our members are in the process of moving their European business activities to newly established legal entities outside the UK - or have done so already. To counteract these

damaging developments the UK should pursue a **global strategy** aimed at creating, ideally **jointly with other key jurisdictions** and the **industry**, an environment of **consistent, mutually recognised regulatory frameworks** and **global industry-driven technological standards**. These standards should **facilitate trade**, particularly on the **expanding digital marketplace**, and **promote responsible technological, service and regulatory innovation**. To this end the UK should **deepen bilateral and multilateral cooperation with other jurisdictions inside and outside the EU** (e.g. through the FCA's much welcomed GFIN initiative).

4. The approach to the shaping of the **future trading relationship to the EU** should form part of this global strategy. The **“close and structured cooperation” with the EU** suggested in the Political Agreement should be developed as a matter of urgency. In order to take comfort from the regained **freedom to regulate at national level** the UK should insist on mutual recognition of **regulatory autonomy** and an **outcomes-based approach to equivalence**. At the same time the UK should maintain and develop its current **leadership in the international regulatory debate** in order to **push for accommodating global standard setting** in the relevant G20 (FSB and BCBS), and, as needed, other global fora (e.g. G7, IOSCO, IAIS, FATF, GFIN).
5. At the national level the UK should **continue** its **policy of innovation facilitation**. It should review and modernize its current regulation with the aim of **creating a globally attractive, lower burden and outcomes-based regime** for financial services and of **removing any barriers to responsible innovation**. Regarding payment services in particular it should take into account that they are a **key infrastructure component** enabling local and global trade of digital and non-digital goods, **vital for the emerging new financial ecosystem** and **inseparable from other innovative services** provided by technology companies outside the traditional perimeter of financial services regulation (e.g. cloud computing services, etc). At the same time, due also to their specific reciprocal character, payment services, more than other financial services, call for **privileged treatment in negotiations regarding future trading relationships** with the EU and other key jurisdictions, and should as much as possible benefit from **full mutual recognition of the respective regulatory frameworks**.
6. Finally, in order to maintain the UK's **leading role in FinTech-driven innovation**, immigration policy should seek to continue to **attract the broad range of necessary expertise and skills**.

Introduction

7. The EMA is the EU trade body of FinTech and BigTech firms engaging in the provision of alternative payment services and the issuance of electronic money. Our members include leading payments and e-commerce businesses providing online/mobile payments, card-based products,

electronic vouchers, virtual currency exchanges, electronic marketplaces, merchant acquiring services and a range of other innovative payment services. Most members operate across the European Union (“EU”) and globally on a cross border basis. A list of current EMA members is provided at the end of this document.

8. Retail financial services, and more specifically efficient and cost-effective payment services, are vital for the ability of both the local and global economy to function well. Innovation in payment services facilitates access to global markets for SMEs and individual consumers, drives competition, fulfils evolving customer needs, and provides the foundation for innovation in all sectors of the economy to flourish.
9. This sector plays a significant role in driving, and also drawing on, the rapid pace of technological innovation in financial services and e-commerce. It is at the forefront of the fundamental changes that the delivery of payments and more generally retail (and increasingly corporate) financial services is undergoing. EMA members play a key role in how FinTech, Open Banking, APIs, and Big Data are transforming traditional business models and value chains in the delivery of national and international financial services. This technology-driven upheaval experienced by financial markets world-wide poses significant challenges for the regulation of financial services. Over the next decade the UK government will have to adjust its policy and the UK regulatory regime to respond to:
 - The emerging new financial services ecosystem, and a rapidly growing digital market that will require an efficient and cost-effective global payment infrastructure,
 - “Platformification” as a key financial service delivery model used by legal entities operating in different jurisdictions and under different regulatory regimes,
 - The collection, processing and exploitation of Big Data, using rapidly advancing AI and Machine Learning technology and an exponential growth in client (and other) data to inform the design of mass-customised financial services and products, and the management of related risks,
 - The complexities and vulnerabilities of the technical infrastructure underpinning the emerging new financial services ecosystem and global digital market, and
 - The potentially disruptive impact on traditional business models in financial markets and on the local and global trade of digital and non-digital goods and services,
10. The aim should be to create, ideally jointly with other key jurisdictions and the industry, an environment of consistent, mutually recognised regulatory frameworks, and to foster global technological standards that:
 - Facilitate trade on the emerging digital marketplace,
 - Promote responsible innovation aimed at generating sustained benefits for consumers and the real economy,

- Secure the functioning and stability of national and international payment systems throughout and beyond an extended period of significant change, and
- Assist the transformation that the City of London (and other global financial hubs) are facing.

11. The UK should take a leading role in managing and shaping the future of financial services and of corresponding regulatory frameworks at a global level. For many years the UK has been a driving force in the development of financial services regulatory policy and standards at the European and wider international level, not least through the participation of its regulatory bodies in the G20 and other international fora (including the Financial Stability Board (“FSB”) and the Basel Committee of Banking Supervisors (“BCBS”). The FCA in particular is a world leader in FinTech regulation and digitisation of regulatory compliance, with its creation of regulatory sandboxes, focus on RegTech/SupTech, and regulatory compliance modelling. The UK therefore has an outstanding track record of contributing to the international regulatory debate by leveraging the expertise and intelligence gained from overseeing one of the most important and dynamic financial jurisdictions in the world.

12. At the same time, EU-wide harmonisation of financial services legislation as the prerequisite for access to the EU single market has meant that more advanced approaches to regulation at the national level were hampered by the need for compromise across all EU Member States. Regulatory outcomes often had to adjust to a majority of domestic financial markets different in nature from, and a fraction of the size of, the UK market. Going forward, the aim should be to counteract as much as possible the significant drawbacks of leaving the European Union by taking comfort from the freedom to regulate at national level and pushing for ambitious and accommodating global standard setting in the relevant G20 (FSB and BCBS), and other global fora (e.g. G7, IOSCO, IAIS, FATF, GFIN). To that end the UK should maintain and develop its current leadership in this area and seek to maximise its influence by way of bilateral and multilateral cooperation with key jurisdictions including the EU.

Question 1: What should the Government’s financial services priorities be when it negotiates its future trading relationship with the EU?

13. The financial services priorities in future trading negotiations with the EU should be to establish an **open trading access environment** that compensates as much as possible for the loss of EU passporting rights, and allows the UK to continue a policy of **promotion of responsible technological, service and regulatory innovation**. Trading access to the EU combined with the UK’s innovation policy has been instrumental in making the UK home to the largest and most significant FinTech industry¹ in the EU, including numerous companies providing alternative payment services across Europe and world-wide².

¹ [Bank of England, Quarterly Bulletin, Q1' 2019, Embracing the promise of fintech.](#)

² The UK hosts in excess of 40% of all EEA electronic money and payment institutions. The businesses represent some of the most innovative payment providers including online acquirers, e-commerce and social networking platform providers, developers of new mobile payment models, money remittance and global foreign exchange service providers and numerous (virtual) card and e-vouchers. Others focus on digital currencies and increasingly new businesses will compete in the recently regulated payment initiation and account information space.

14. The following are key considerations to take into account:

Payment services are a key infrastructure component and distinct from other financial services:

15. Payment services should be distinguished from other financial services. They are a key infrastructure component that enables trade and commerce of digital and non-digital goods - including the provision of a broad range of other financial services and products. In particular, the alternative payment services industry that has developed in the UK and expanded across Europe and world-wide represents the backbone for an emerging new financial services ecosystem and the rapidly expanding global digital market place. Efficiency and increasing speed in the provision of payment services provides certainty, immediacy, improves liquidity and decreases the cost of business for all market participants. It underpins e-commerce, allowing consumers and businesses of all sizes to participate in the digital local and global economy.
16. Moreover, it is a peculiar feature of payment services that their provision is reciprocal in nature. Both payment providers of the payer and payee act as senders and receivers at all times. The benefit of executing payments is experienced by the sender and the recipient of a payment. There is therefore mutual advantage in encouraging the efficient provision of payment services in the jurisdictions of both the payer and the payee³. As a consequence it makes sense to create a regime that facilitates as much as possible the ability for EU payment providers to operate unhindered in the UK, and UK providers to operate unhindered in the EU.

Payment services are inseparable from unregulated services:

17. However, payment services and financial services more generally can no longer be considered in isolation. The unbundling and spread of value chains in financial markets across different legal entities means that core value chain services are provided by technology companies outside the traditional perimeter of financial services regulation (e.g. cloud computing services, other ITC and cyber security related services, the provision of distributed ledger technology based services for KYC or trade finance, Big Data and related AI data analysis services, etc.). The interdependencies between financial and non-financial service providers mean that agreed privileged trading relationships with the EU should cover the full spectrum of interrelated financial and non-financial services. In other words, the new financial services ecosystem, including all components of the underlying infrastructure and the entirety of the evolving distributed financial services value chain need to be taken into account for the negotiation of the future trading relationships with the EU (and other third countries).

Regulatory autonomy versus equivalence:

18. If the UK is to benefit from the freedom to develop policy and regulation without the constraints of membership of the EU, mutually recognised regulatory autonomy and strict equivalence need to be balanced within the framework of 'close and structured cooperation' as sketched out in the

³ This is for example unlike the provision of insurance or investment services where the purpose is to sell the products to customers in other jurisdictions, and the service is more one sided and competitive – rather than collaborative - in nature.

proposed Political Agreement⁴. The UK should, for instance, develop a more advanced and outcomes-based approach to the regulation and supervision of cloud computing services, in particular more flexibility regarding data location and pooled internal controls/audits. To do so would greatly assist the development of the new financial services ecosystem, the use of Big Data in financial services, and platformification⁵. To the extent, however, that such an approach would diverge from current and future EBA standards⁶, the UK should insist on the recognition of its regulatory autonomy by the EU without access of UK financial services providers to EU markets being undermined e.g. by the withdrawal of a related equivalence decision. As the FCA's chief executive director, Andrew Bailey, put it, the objective should be “*to improve onshored EU legislation on a ‘same outcome, lower burden’ basis*”⁷. In parallel it would be helpful to synchronise the development of UK national regulation with a push in the international regulatory debate for endorsements of favourable global standards by the relevant G20 and other global fora⁸.

19. As a prerequisite, the UK should engage swiftly in spelling out and setting up together with the EU the infrastructure, governance and processes for the ‘close and structured cooperation’ suggested in the Political Agreement. The smooth and efficient functioning of such cooperation is a vital component for well-informed equivalence decisions. It is also vital for their ongoing monitoring on the one hand and the mutual recognition of regulatory autonomy on the other hand. The cooperation should include an institutionalised dialogue at technical and policy level in order to foster an understanding of the unique features and ongoing changes to payment services, to inform aligned regulatory responses, and to avoid fragmented standards and the duplication of costly authorisation requirements (see above).

Need for a global strategy:

20. Given the global character of the emerging digital market place, trading relationships with other third countries are arguably no less important than those with the EU. Accordingly, the approach to negotiations with the EU should be embedded in the broader context and strategy of negotiating trading relationships worldwide.
21. We also note that - only weeks after the initially targeted Brexit date(s) - the current situation provides ample evidence of the importance of **transitional arrangements** when progressing towards a new long-term trading relationship with the EU. Until today numerous authorisation applications submitted by UK-based payment service providers in the EU 27 are still pending and the application of informal or formal grace periods for the exercise of passporting rights in the cross-border provision of payment services is still unclear and most likely to diverge significantly

⁴ See [“Political Declaration setting out the Framework for the Future Relationship between The European Union and the United Kingdom”](#) para 24, 33 – 36, 37 - 39.

⁵ See e.g. European Commission, March 2018, [“FinTech Action plan: For a more competitive and innovative European financial sector”](#), p.11; US Department of Treasury, July 2018, [“A Financial System That Creates Economic Opportunities Nonbank Financials, Fintech, and Innovation”](#) p.10, p.44, 45, p.49; Deutsche Bank, March 2019, [“Banking on platforms”](#).

⁶ [EBA GL/2019/02 EBA Guidelines on outsourcing arrangements](#)

⁷ See Andrew Bailey, [“The Future of Financial Conduct Regulation”](#), speech held 23 April 2019

⁸ The FSI study of July 2018 on [“Regulating and supervising the clouds: emerging prudential approaches for insurance companies”](#) provides ample evidence that work of the respective G20 fora towards convergence of the regulatory treatment of cloud computing is overdue. See also US Department of Treasury, July 2018, [“A Financial System That Creates Economic Opportunities Nonbank Financials, FinTech, and Innovation”](#) p.50-52

across the EU 27 jurisdictions. In order to avoid a cliff edge effect that continues to threaten the EU 27 business activities of UK payment services providers, negotiations for the future trading relationship should include clear and binding transitional arrangements accompanied by firm commitments to close cooperation between supervisory authorities during and beyond the transition.

Question 2: What should the Government's financial services priorities be when it negotiates with third countries in the rest of the world in order to allow UK financial services access to their markets?

22. As an integral part of the **global strategy** advocated earlier in our response, the UK's approach to negotiations with other third countries should pursue the objectives and take into account the key considerations set out earlier in the response. The ultimate aim should be to create with as many jurisdictions as possible an environment of **consistent, mutually recognised regulatory frameworks** and **technological standards**, which **facilitates trade** and **promotes responsible innovation**. In particular the following should be considered:

Maintain the UK's current leadership:

23. As mentioned before the UK has an outstanding track record of contributing to the international regulatory debate by leveraging the expertise and intelligence gained from overseeing one of the most important and dynamic financial jurisdictions in the world. Leadership in this area should be maintained and the UK should seek to maximise its influence by way of close cooperation with other jurisdictions and national and international regulatory bodies inside and outside the EU. The drawbacks of leaving the EU should as much as possible be counteracted by taking comfort from the regained freedom to regulate at the national level and push for ambitious and accommodating global standards in the relevant G20 (e.g. BCBS and FSB) and other global fora (e.g. G7, IOSCO, IAIS, FATF, GFIN).

Close cooperation and mutual recognition:

24. Next to its leadership in the international regulatory debate and the relevant global fora, the UK should continue to develop and deepen close bilateral and multilateral regulatory and supervisory cooperation with non-EU third countries (e.g. the FCA's much welcomed GFIN initiative). Where possible, it should seek mutual recognition of third country regulatory frameworks including in particular in relation to key jurisdictions such as Australia, New Zealand and India. Where this may be challenging, agreements and cooperation with the facilitation of **cross-licencing** will go a long way to promote the interests of UK payment services providers and other FinTech companies, and make the UK an attractive jurisdiction to be based.

Global technological standards:

25. Close cooperation and where possible mutual recognition of regulatory frameworks should be complemented by the promotion of **global industry-driven technological standardization** (e.g. regarding APIs). The existing standards for the operation of the

international card schemes that allow interoperability for payment services across the globe demonstrate how effective industry-driven standardization can be in promoting global trade.

Question 3: What regulatory actions are required for each specific segment of the UK financial services industry in order to maximise access to EU markets?

26. Many aspects of particular importance for the payment services industry and EMA members have been mentioned already. We would reiterate specifically:

- The **unique features**, the **reciprocal nature** and, more generally, the importance **of payment services** for the economy calls for an accommodating and fully aligned regulatory approach responding to the strong mutual interest in an efficient cross-border and global payment infrastructure.
- An **expedient GDPR adequacy decision** is vital to allow UK-based payment services providers, FinTechs, and third party service providers (e.g. cloud-hosting, artificial intelligence, machine learning) to service EU-based customers (including retail and corporate clients and financial services providers).
- **Qualifications** across a broad range of much needed skills and talents (see below response to the last question) should benefit from mutual recognition where not yet assured otherwise.
- Integrated into the concept of ‘close and structured cooperation’ as proposed in the Political Agreement, a **forum between the UK and the EU on payment services** both at a senior policy and at a technical level should be set up as a matter of urgency. The forum should be tasked to
 - foster the understanding of payment services, the ongoing change the industry is experiencing, and its importance for the current technology-driven change of financial markets,
 - pursue close supervisory and regulatory cooperation and alignment including in relation to enforcement, and
 - inform mutually recognised regulatory responses that facilitate responsible innovation.
- Continued UK **access to SEPA schemes** and representation in ERPB/EPC are vital.
- Fully **aligned regulatory responses to cyber security** and the management of related risks are paramount for a speedy, efficient and reliable payment infrastructure underpinning the emerging new financial ecosystem and the rapidly evolving global digital market.

Question 4: How can the UK financial services sector take advantage of the UK’s new trading environment with the rest of the world?

27. The UK's new trading environment hasn't taken shape yet. The imminent withdrawal from the EU and its system of world-wide trading agreements with other third countries has already done significant damage to the payments industry. It will be vital to negotiate new bilateral and - as appropriate - multilateral agreements with the EU and other jurisdictions as a matter of urgency. As set out before, these agreements should aim to establish trading relationships based upon mutual recognition wherever possible.
28. Negotiations of bilateral or multilateral trading relationships will be helped enormously by the UK's leadership in the shaping of global regulatory standards in the relevant G20 and other global fora.
29. We also fully support the UK's policy of building FinTech bridges with third countries and very much welcome the recent announcement of new bridge pilot programs in Australia and Hong Kong.⁹ We also welcome the launch of the Financial Innovation Partnership with the US.¹⁰

Question 5: Should the UK open its financial services markets to external competition from countries outside of Europe, or should the UK maintain the current regulatory barriers that apply to third countries?

30. The UK should continue to **support multilateralism and free globalized trade** as long as financial stability, market integrity, consumer and investor protection, and fair competition are preserved. The UK has worked hard over some 15 years to create an effective and supportive environment for innovation in the financial services market and the payments industry in particular. This policy was instrumental in making the UK home to the largest and most significant FinTech industry¹¹ in the EU not least by successfully attracting start-ups originating from other EU member states and from the United States. Post-Brexit, the UK should continue its policy of innovation facilitation, and should welcome companies wishing to participate in innovation initiatives, regardless of their geographic origins. It should not only **remove regulatory entry barriers** but also any **other obstacles hindering responsible innovation**, without however compromising on security, privacy, prudential soundness and improved outcomes for customers. To that end, the UK should engage in an exercise similar to that of the European Commission and task a joint public-private expert group to identify such obstacles in national and international regulatory standards and ideally also in the national and supranational regulation of its key trading partners. The results of this work should inform:
- A **comprehensive review and modernisation of national regulation** providing a **globally attractive, lower-burden and outcomes-based regulatory regime** for financial services¹²,

⁹ [See announcement of 29 April 2019](#)

¹⁰ <https://www.gov.uk/government/news/the-financial-innovation-partnership>

¹¹ [Bank of England, Quarterly Bulletin, Q1' 2019, Embracing the promise of fintech.](#)

¹² See Andrew Bailey, "[The Future of Financial Conduct Regulation](#)", speech held 23 April 2019

- The UK's negotiations of bilateral and as appropriate multilateral trading relationships with third countries, and
- The UK's positioning in key G20 and other global standard-setting fora.

Question 6: What skills and immigration policy will the UK financial services sector need once the UK has left the EU?

31. UK immigration policy should seek to continue to **attract the broad range of expertise and skills necessary to maintain its worldwide leading role in FinTech-driven innovation**, in particular expertise in Cloud orchestration, data science, anti-money laundering analysis, Big Data/AI/Machine learning technologies. The UK should also seek to attract talented individuals in a range of supporting technology fields like cyber security and other technological innovations (e.g. RegTech/SupTech) that assist efficient and cost-effective compliance and better management of financial and non-financial risks. In addition, it should make every effort to ensure that the existing UK-based scientific community remains fully integrated with international research networks and that its educational system is capable of producing much needed talent at a national level. To this end, the international exchange of scientists, lecturers and students at all levels should be facilitated and promoted. The UK is a leader in technical education and should maintain this position by allowing UK-educated technical experts to stay and work in the UK under specific conditions or at least to permit UK firms to access this talent pool before they have to leave the country.

Yours sincerely,



Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

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