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Jan Ceysens  
Head of Unit, Digital Finance (FISMA B.5)  
European Commission, DG FISMA  
Rue de Spa 2  
Brussels, Belgium

18 May 2021

Dear Jan

Re: ***EMA Response to the EC Consultation on a Proposal for a Directive (COM 2020) 596 to address the impact of the proposal for a regulation on digital operational resilience for the financial sector (DORA) on EU Directives***

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 EMA 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.

The EMA submitted a [detailed response](#) during the earlier consultation on a draft regulation on digital operational resilience for the financial sector (**DORA**). We support the EC effort to address the impact of the introduction of DORA on existing Directives through the draft directive detailed in proposal [COM 2020\(596\)](#).

We expect that the changes to existing Directives that are detailed in **Articles 5 and 7** of the Directive will impact the operational processes of EMA members.

In **Article 5**, we support the proposed amendment to Art. 85(2) of [Directive 2013/36](#)<sup>1</sup> to reference the requirement for credit institutions to have in place business continuity/disaster recovery plans for the ICT systems/tools introduced in Art.6 of DORA.

In **Article 7** we offer the following comments to the proposed amendments to [Directive 2015/2366](#) (PSD2):

1. We support the proposed amendment to the payment institution authorisation requirements<sup>2</sup> to include an explicit reference to the ICT risk identification, management requirements detailed in Chapter II of DORA. We encourage the Commission to work with the relevant ESAs (and with national competent authorities) to ensure a consistent interpretation of the outsourcing risk management framework detail that payment institutions will be required to provide in their authorisation application across all EU jurisdictions.
2. We request that the Commission provides further clarity on the proposed change to Art. 95(1) of PSD2. Specifically, the proposed change appears to require payment service providers (PSPs) to treat security and operational risks that are detailed in [the EBA Guidelines on ICT and security risk management](#) (EBA/GL/2019/04), separately from risks detailed in Chapter II of DORA. However, there is obvious overlap between such risks and associated risk controls. Furthermore, PSPs already use existing incident detection and classification frameworks<sup>3</sup> to identify incidents that arise due to events that impact their digital operational resilience (or that of Critical ICT outsourcers). We encourage the Commission to ensure that DORA does not introduce any new incident report detection/classification frameworks that are inconsistent with existing frameworks or cause duplication of reporting requirements.
3. Building on our comment above, we also encourage the Commission to clarify the proposed amendment to Art. 96(1) of PSD2. *ICT-related incidents*<sup>4</sup> are currently monitored/detected, classified and reported to the relevant NCA by

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<sup>1</sup> On access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms

<sup>2</sup> Art. 5(1) of PSD2

<sup>3</sup> Per the *EBA Guidelines on major incident reporting under PSD2* (EBA/GL/2017/10).

<sup>4</sup> As defined in Art. 3(6) of DORA

the affected PSP in compliance with [the EBA Guidelines on ICT and security risk management](#) (EBA/GL/2019/04). PSPs have made significant, recent investments in their incident detection and notification infrastructures to align with the requirements in these EBA Guidelines. At present, it is unclear where such ICT incidents should be reported under the proposed PSD2 text amendment. As noted above, there is significant overlap between security and operational events and ICT incidents that impact the digital operational resilience of PSPs.

Finally, based on the experience with the development of PSD2, the EMA considers it prudent to avoid introducing detailed DORA technical implementation detail in Level 1 legislation (Directives). The experience of the payments industry is that technical guidelines that are generated by the relevant ESA (and updated on a more frequent schedule) are a more appropriate vehicle to use to address the impact of rapid technology changes and innovation by ICT outsourcers.

We would be grateful for your consideration of our comments.

Yours faithfully

A handwritten signature in black ink that reads "Thaer Sabri". The signature is written in a cursive style with a long horizontal stroke at the end.

Thaer Sabri

Chief Executive Officer

Electronic Money Association

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