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Raluca Pruna
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Dear Raluca

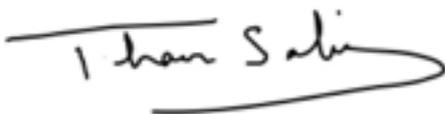
Re: ***EMA Response to the EC Consultation on Proposal for a Directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849***

The [Electronic Money Association](http://www.e-ma.org) is the trade body for electronic money issuers and innovative payment service providers. Our members include leading payments and e-commerce businesses providing online/mobile payments, card-based products, electronic vouchers, crypto asset 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.

We welcome the efforts of the European Commission to provide more consistency across the EU in the application of AML legislation; this will drive greater efficiencies in the operational of the AML/CTF framework, and reduce the opportunity for criminals to exploit the financial services system. However we have concerns that some elements of the Regulation are more likely to reduce efficiencies, and drive firms to allocate considerable resource towards activities that do not directly benefit the AML/CTF effort, moving the EU away from the risk-based approach, and more towards a tick-box approach to addressing AML/CTF risk.

We have set out our views below, and would be grateful for your consideration of our comments.

Yours sincerely



Thaer Sabri

Chief Executive Officer
Electronic Money Association

Comments on Proposal for a Directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

1. Article 2:

'entity operating on a cross-border basis' means an obliged entity having at least one establishment in another Member State or in a third country;

The definition of 'entity operating on a cross-border basis' in article 2(7) appears not to take into account entities that operate on a cross-border basis under the freedom to provide services. This contradicts other provisions in the Directive (see, for example, articles 5 and 33(2)); the definition should therefore be amended to include reference to the freedom to provide services.

2. Recital 7 and Article 5(1)

Member States may require electronic money issuers as defined in Article 2(3) of Directive 2009/110/EC25, payment service providers as defined in Article 4(11) of Directive (EU) 2015/2366 and crypto-assets service providers operating through agents located in the host Member State and operating under either the right of establishment or the freedom to provide services, and whose head office is situated in another Member State, to appoint a central contact point in their territory. That central contact point shall ensure, on behalf of the entity operating on a cross-border basis, compliance with AML/CFT rules and shall facilitate supervision by supervisors, including by providing supervisors with documents and information on request.

This provision extends the central contact point requirement to crypto-asset service providers ('CASPs'). However, CASPs are not prudentially regulated (only registered under the AML regime) and therefore are not permitted to passport their services to other EU Member States. When they do provide their services elsewhere, they are required to seek registration in that jurisdiction. We would appreciate clarification on how the requirement to appoint a central contact point could apply to them.

The provision also extends the central contact point requirement to entities that operate under the freedom to provide services (i.e., where the agents they use do not amount to an establishment according to EBA guidance. This contradicts the reasoning stated in recital 7, which only mentions establishments:

Recital 7: "In light of the specific anti-money laundering vulnerabilities that have been witnessed in the electronic money issuing, the payment services and the crypto-assets service providing industry, it should be possible for Member States to require that those providers established on their territory in forms other than a branch and the head office of which is situated in another Member State appoint a central contact point. Such a central contact point, acting on behalf of the appointing institution, should ensure the establishments' compliance with AML/CFT rules."

For EMIs, PIs and CASPs to establish local contact points in 26 member states where they use non-establishment agents would impose a considerable financial and operational burden on these firms that is not rationally supported. The logical consequence will be

withdrawal of services from these member states, with a significant impact on local businesses for which these products are a source of income, and a complete reliance on online means of distribution.

If some member states wanted to monitor some of these obliged entities more closely, other tools introduced in this directive could be used, for example supervisory colleges or cooperation between competent authorities and FIUs from different member states.

3. Article 10 (6)

Member States shall require that the reporting of discrepancies referred to in paragraph 5 takes place within 14 calendar days after detecting the discrepancy

The 14 calendar days period to report a discrepancy detected in the beneficial ownership register is too short. Indeed, the information in the beneficial ownership register is not always updated immediately after a change is reported, and the reporting of such discrepancy is time-consuming for the obliged entity. A period of 25 calendar days would be preferable.

4. Article 18

The proposed text has the effect of awarding FIUs extensive powers to access information, which is not in line with the principle of proportionality. Policymakers should reassess the necessity and proportionality of the proposed access rights. The lists should be exhaustive and specify the categories of personal data to which FIUs may have access (European Data Protection Supervisor's Opinion 12/2021).

List of EMA members as of November 2021

[AAVE LIMITED](#)
[Account Technologies](#)
[Airbnb Inc](#)
[Airwallex \(UK\) Limited](#)
[Allegro Group](#)
[American Express](#)
[ArcaPay Ltd](#)
[Azimo Limited](#)
[Bitpanda Payments GmbH](#)
[Bitstamp](#)
[BlaBla Connect UK Ltd](#)
[Blackhawk Network Ltd](#)
[Boku Inc](#)
[CashFlows](#)
[Circle](#)
[Citadel Commerce UK Ltd](#)
[Contis](#)
[Corner Banca SA](#)
[Crosscard S.A.](#)
[Crypto.com](#)
[Curve](#)
[eBay Sarl](#)
[ECOMMPAY Limited](#)
[Em@ney Plc](#)
[emerchantpay Group Ltd](#)
[ePayments Systems Limited](#)
[Etsy Ireland UC](#)
[Euronet Worldwide Inc](#)
[Facebook Payments International Ltd](#)
[Financial House Limited](#)
[First Rate Exchange Services](#)
[FIS](#)
[Flex-e-card](#)
[Flywire](#)
[Gemini](#)
[Global Currency Exchange Network Limited](#)
[Globepay Limited](#)
[GoCardless Ltd](#)
[Google Payment Ltd](#)
[HUBUC](#)
[IDT Financial Services Limited](#)
[Imagor SA](#)
[Ixaris Systems Ltd](#)
[Modulr FS Europe Limited](#)

[MONAVATE](#)
[Moneyhub Financial Technology Ltd](#)
[Moorwand](#)
[MuchBetter](#)
[myPOS Europe Limited](#)
[OFX](#)
[OKTO](#)
[One Money Mail Ltd](#)
[OpenPayd](#)
[Own.Solutions](#)
[Oxygen](#)
[Park Card Services Limited](#)
[Paydoo Payments UAB](#)
[Paymentsense Limited](#)
[Payoneer Europe Limited](#)
[PayPal Europe Ltd](#)
[Paysafe Group](#)
[Plaid](#)
[PPRO Financial Ltd](#)
[PPS](#)
[Remitly](#)
[Revolut](#)
[SafeCharge UK Limited](#)
[Securiclick Limited](#)
[Skrill Limited](#)
[Snowy Pay Ltd.](#)
[Soldo Financial Services Ireland DAC](#)
[Square](#)
[Stripe](#)
[SumUp Limited](#)
[Syspay Ltd](#)
[Transact Payments Limited](#)
[TransferMate Global Payments](#)
[TrueLayer Limited](#)
[Trustly Group AB](#)
[Uber BV](#)
[Vitesse PSP Ltd](#)
[Viva Payments SA](#)
[Vivid Money Limited](#)
[Weavr Limited](#)
[WEX Europe UK Limited](#)
[Wirex Limited](#)
[Wise](#)
[WorldFirst](#)
[WorldRemit LTD](#)