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Submitted by email to Dirk.Haubrich@eba.europa.eu

31 October 2022

Dear Mr Mauro,

**Re: EMA response to the EBA's Consultation on draft revised guidelines on methods for calculating contributions to deposit guarantee schemes (EBA/CP/2022/10)**

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. Most members operate across the EU, most frequently on a cross-border basis. The comments provided below reflect those of the EMA as a whole; individual members may hold different views. A list of current EMA members is provided at the end of this document.

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

Yours sincerely,

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

## EMA responses

Question 4:

*Do you have comments on the proposed approach to account for covered deposits held in beneficiary accounts or other deposits where there is uncertainty to the coverage, as set out in section 4.3 of the Guidelines?*

EMA response:

1. The EMA is in support of treating safeguarded funds of payment institutions ('PIs') and e-money institutions ('EMIs') as covered funds for the purposes of the DGSD, as this will protect PIs' and EMIs' businesses in the event of credit institution ('CI') failure. E-money holders will indirectly benefit from this protection, as it will allow PIs and EMIs to honour the claims of their customers on an ongoing basis. Coverage by the DGSD will thus increase the strength of the safeguarding regime already in place for PIs and EMIs.

2. We also agree with the approach to calculating contributions relating to funds held in safeguaring accounts outlined in section 4.3, para. 23 of the Guidelines:

   > *In relation to Article 7(3) of the DGSD, if a member institution does not accurately determine the precise amount of covered deposits in beneficiary accounts or established maximum amount of covered deposits in such accounts, the DGS should assume all funds in the beneficiary accounts to be covered for the purpose of calculating contributions. Where a member institution reports the precise amount of covered deposits in such accounts, or an established maximum amount of covered deposits in beneficiary accounts, the DGS should take these figures into account when calculating the member institution's contributions. The competent authority in cooperation with the designated authority should determine which information is necessary to take into account the precise amount or the established maximum amount of covered deposits in a beneficiary account.*

   These options give firms the flexibility to provide the information to the DGS that best achieves the twin aims of keeping contributions to a minimum and keeping information costs to a minimum. Both these costs are important for the payment services and e-money sectors given the increasing difficulty for PIs and EMIs to obtain safeguarding accounts and the increased costs associated with these accounts. We note in this respect the EBA's assessment that there would only be a small impact of the inclusion on the overall amount of covered deposits.

3. However, we would like to take this opportunity to stress to the EBA that funds received by EMIs in exchange for issued e-money are not funds to which 'the depositor is not absolutely entitled' in accordance with Article 7(4) DGSD. Funds safeguarded by EMIs with a CI are funds to which EMIs are absolutely entitled, with customers' interests in these funds having been transferred to the e-money that they hold and can spend at merchants. EMIs may invest these funds, derive income from them and may even substitute them with an oppropriate insurance or guarantee. In the UK, this understanding

of the legal status of safeguarded funds has been confirmed in the *Ipagoo* litigation.[1] While we are in support of treating safeguarded funds of both PIs and EMIs as covered funds for the purposes of the DGSD (see point 1 above), we think it is important that EBA guidance should not cast doubt on the legal status of safeguarded funds received in exchange for e-money. This doubt is created when e-money safeguarding accounts are described as 'beneficiary accounts.' To this end, we request amendment of the guidance text in section 4.3, para. 23 as follows:

> *In relation to Article 7(3) of the DGSD or where deposits are otherwise deemed to be covered by the guarantee, as is the case with the safeguarded funds of Electronic Money Institutions, if a member institution does not accurately determine the precise amount of covered deposits in beneficiary or e-money safeguarding accounts or established maximum amount of covered deposits in such accounts, the DGS should assume all funds in the beneficiary or e-money safeguarding accounts to be covered for the purpose of calculating contributions. Where a member institution reports the precise amount of covered deposits in such accounts, or an established maximum amount of covered deposits in beneficiary or e-money safeguarding accounts, the DGS should take these figures into account when calculating the member institution's contributions. The competent authority in cooperation with the designated authority should determine which information is necessary to take into account the precise amount or the established maximum amount of covered deposits in a beneficiary or e-money safeguarding account.*

4. We would also like to make the EBA aware that in the event of CI failure, payment of the covered funds to payment services customers/e-money holders directly would endanger the day-to-day running business of PIs and EMIs, which may themselves be unaffected by the CI failure. Customers of these firms are generally unaware that funds they have transferred to the PI or EMI are held in safeguarding accounts with a CI and would not expect repayment of these funds unless explicitly requested. Therefore, payment should be made to an alternative safeguarding acount held with a different CI in the first place, with direct payment of the covered funds to payment services customers/e-money holders only to be considered in the event of a linked failure of a PI or EMI. While we realise that the guidance currently consulted on is chiefly concerned with the calculation of contributions by member institutions, we request the EBA's support for this approach, which is already in the process of adoption in the UK.[2]

[1] *Re Ipagoo LLP (In Administration)* [2021] EWHC 2163 (Ch); *Re Ipagoo LLP (In Administration)* [2022] EWCA Civ 302. For an account of the debate and a more detailed legal analysis, see Jacques, J (2022) 'E-money and Trusts: A Property Analysis' 138(Oct) *Law Quarterly Review*, 605-623.

[2] Bank of England CP9/22 – Depositor Protection, section 5.

**Members of the EMA, as of October 2022**

AAVE LIMITED
Account Technologies
Airbnb Inc
Airwallex (UK) Limited
Allegro Group
Amazon
American Express
ArcaPay Ltd
Azimo Limited
Banked
Bitstamp
BlaBla Connect UK Ltd
Blackhawk Network Ltd
Boku Inc
Booking Holdings Financial Services International Limited
CashFlows
Checkout Ltd
Circle
Citadel Commerce UK Ltd
Contis
Corner Banca SA
Crypto.com
Curve
eBay Sarl
ECOMMPAY Limited
Em@ney Plc
emerchantpay Group Ltd
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
MANGOPAY
Modulr FS Europe Limited
MONAVATE
Moneyhub Financial Technology Ltd
Moorwand
MuchBetter
myPOS Payments Ltd
NOELSE PAY
NoFrixion Ltd
Nuvei Financial Services Ltd
OFX
OKTO
One Money Mail Ltd
OpenPayd
Own.Solutions
Park Card Services Limited
Paymentsense Limited
Paynt
Payoneer Europe Limited
PayPal Europe Ltd
Paysafe Group
Plaid
PPRO Financial Ltd
PPS
Ramp Swaps Ltd
Remitly
Revolut
Ripple
Sable International FX Limited
Securiclick Limited
Skrill Limited
Soldo Financial Services Ireland DAC
Square
Stripe
SumUp Limited
Syspay Ltd
Transact Payments Limited
TransferMate Global Payments
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Trustly Group AB
Uber BV
Vitesse PSP Ltd
Viva Payments SA
Weavr Limited
WEX Europe UK Limited
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