



Electronic Money Association
Crescent House
5 The Crescent
Surbiton, Surrey
KT6 4BN
United Kingdom
Telephone: +44 (0) 20 8399 2066
www.e-ma.org

Suspended Funds Team
Economic Crime Reform, Homeland Security Group
Home Office 2 Marsham Street, London, SW1P 4DF
HOSuspendedFunds@homeoffice.gov.uk

15 September 2023

Dear Sir/Madam

Re: EMA response to the Government engagement exercise on “Unlocking Suspected Criminal Funds”

The EMA is the UK and 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 in the UK and across the EU, most frequently on a cross-border basis. A list of our members is annexed to this response.

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

Yours faithfully

A handwritten signature in black ink that reads 'Thaer Sabri'. The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA response:

3.8. Do you support the principles of the scheme? If not, please explain your reason(s).

Answer: Yes, the EMA supports the principles of the scheme.

4.9. Do you agree with Government's proposals on in and out of scope assets? If not, please explain your reasons.

Answer: The scope set out in sections 4.2 and 4.3 should be clearer as almost all financial sector firms will be holding suspected criminal funds. The EMA believes that the initial scope should be wider than currently proposed. The UK The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("**MLRs**") apply to electronic money institutions ("**EMIs**") and Payment Institutions ("**PIs**"), the same way they apply to credit institutions (such as banks and building societies) ("**CIs**"). This includes obligations to report suspicious activity and to prevent fraud. All of these firms suspend suspected criminal funds and therefore hold funds that may qualify for the scheme.

- It should be clarified that e-money is in scope. Even though it is not a 'cash deposit', there is an underlying deposit for the purchase of electronic money ("**e-money**") and those funds are safeguarded by the EMI. EMIs are obliged to safeguard 100% of the e-money in issuance meaning that they are segregated and held in an account with a CI. This requirement applies regardless of whether the e-money is e.g. frozen or accounts are suspended.
- PIs equally receive funds on behalf of merchants and are obliged to safeguard client funds under the Payment Services Regulations 2017 ("**PSRs**") and safeguarding frozen funds gives rise to cost.

The geographic scope should be clarified: Most firms operate internationally and transactions are in many cases cross- border: The scheme rules should clearly define the geographic scope including the origin and destination of eligible funds.

Please note that unlike CIs, EMIs and PIs cannot reinvest the funds that they safeguard for their own benefit. This means that safeguarding is a cost not a revenue stream for EMIs and PIs. To make the participation in the scheme attractive to EMIs and PIs the law would need to be clarified so that funds transferred into the proposed scheme are considered to be safeguarded for the purposes of the EMRs and PSRs.

4.10. Do you agree with the criteria set out for the eligibility of funds? If not, please explain your reasons and suggested alternative proposals.

Answer: Section 4.4 requires firms to make ‘reasonable efforts’ to identify the victims and to return monies where possible. Please note that firms are under an obligation to identify suspicious transactions and to raise internal and external SARs to the NCA. As part of the process, accounts will in most cases be suspended (unless e.g. Law enforcement request for an account to remain active). Establishing who the victims are is part of the remit of Law Enforcement and firms will in most cases not have sufficient or appropriate information to identify victims.

Regulation 43 of the Electronic Money Regulations 2011 (“**EMRs**”) allows e-money issuers to refuse a redemption request when the request is made more than six years after the date of termination in the contract. The vast majority of EMIs exercise this right in practice unless the relevant e-money contract explicitly states that the e-money will continue to be valid for more than six years, it will expire after six years. Therefore, in the context of e-money, the seven- year waiting period strongly limits the usefulness of the scheme.

As stated in Section 5.13 of the consultation, only a very small portion of suspended funds are claimed by customers after 13 months. It is therefore not clear why a seven-years waiting period would be required and the consultation does not provide a rationale.

In addition, some industry players e.g. in the Fintech industry, may not have been in operation for a period of seven years and could not participate despite being subject to the MLRs and holding frozen funds.

The EMA suggests a reduction of the holding period to 18 months to increase the volume of eligible funds and to include a wider range of (younger) market participants. This reduction would result in significant savings in safeguarding costs and still exceed the industry experience of few funds older than 13 months being reclaimed.

4.11. Are there any other asset classes that you would propose for consideration?

Answer: To ascertain a level playing field, cryptoassets should be in scope as Crypto Asset Service Providers (“**CASPs**”) are subject to MLRs. Therefore, they have the same anti-money laundering compliance obligations as CIs or EMIs.

4.12. Do you agree that this scheme's scope should be AML regulated sector wide?

Answer: Yes, the EMA agrees with the proposed scope.

5.14. Please provide your views for the proposed model, noting the pros and cons for your organisation and business type. If you identify challenges, please provide details of any concerns relevant to this specific model and propose solutions that would address these and incentivise your participation. The proposals can include adaptations of current rules, legislation, and regulations.

Answer: The EMA welcomes the Home Office's initiative and the opportunity to respond at an early stage. The EMA suggests to adapt eligibility criteria:

- The minimum suspension period should be reduced; and
- Other categories of assets should be included from the outset.

5.15. In your view, for the proposed model, would a cap of between 5-10% be sufficient to reimburse customer claims? If not, please explain your reasons.

Answer: Basing the cap on feedback from a single organisation does not appear to be a robust approach. The cap should be evidence-based and potential scheme participants should be asked to provide relevant evidence. As the consultation suggests in the footnote to 5.13, further analysis should determine the cap.

The calculation of the cap over time should be clarified: The amounts transferred may vary e.g. because amounts are high in year one but significantly lower in the following years and members may therefore be in a position where the cap for a particular year has been reached even though they contributed higher amounts in previous years. We therefore suggest to base the cap on the overall sum transferred rather than on an annual contribution.

6.6. Do you agree with the proposed governance model, and the publication of an annual report? If not, please explain your reasons.

Answer: Yes, we agree.

6.7. In your opinion, how do you propose the monies received through the scheme should be spent?

Answer: Public anti-fraud education programmes

7.2. Which sector are you from?

Answer: The EMA is a trade body representing electronic money issuers, and other innovative payment service providers. Members include electronic money institutions, payment institutions, banks, crypto asset service providers and payment schemes.

7.3. What is the size of your organisation?

Answer: The EMA has 90 members from different sectors.

7.4. Within your customer mandate, do you currently provide for the suspension of customer monies and/or accounts based on your suspicion of criminality? If so, please detail the specific clauses relating to this function. Are you currently suspending funds on this basis?

Answer: N/A- Trade body

7.5. Within your customer mandate or other form of customer arrangement, do you currently provide for the suspension of customer monies and/or accounts based on other criteria (excluding sanctions)? If so, please provide details of the terms, and an estimate of the proportion of the funds currently suspended within your organisation.

Answer: N/A- Trade body

7.6. Are you otherwise suspending funds that you suspect are criminal, but are not using your customer mandate to do so? If so, please detail your mechanisms for this.

Answer: N/A- Trade body

7.7. Would your organisation consider becoming a member of this scheme? If you are not interested at this time, please explain your reasons.

Answer: N/A- Trade body

7.8. What do you consider would be the benefits to your organisation in joining this scheme?

Answer: EMIs and PIs could be in a position where they hold funds in suspended accounts and the equivalent sums in safeguarding accounts with credit institutions for years. Participation in the scheme could reduce the cost associated with safeguarding those funds.

7.9. What are the business implications for you joining the scheme?

Answer: N/A- Trade body

7.10. Are there any other issues or considerations that you wish to express?

Answer: The terminology used throughout the scheme proposal (and later the scheme rules) should be aligned with the terms defined and used in the MLRs, PSRs, EMRs and other relevant legislation to ensure clarity and to assist possible participants' understanding of the requirements. Should the scheme introduce terminology that is not defined elsewhere, a clear definition should be added.

7.11. Are you content for us to contact you further regarding your response? If so, please provide the best point of contact, and email.

Answer: Yes, the EMA would be grateful to be part of any discussions or working group on this topic, as this may have a great impact on the industry we are representing. You can contact Judith Crawford at the following email address: judith.crawford@e-ma.org.

EMA members in September 2023

[AAVE LIMITED](#)

[Airbnb Inc](#)

[Airwallex \(UK\) Limited](#)

[Allegro Group](#)

[Amazon](#)

[American Express](#)

[ArcaPay UAB](#)

[Banked](#)

[Bitstamp](#)

[BlaBla Connect UK Ltd](#)

[Blackhawk Network EMEA Limited](#)

[Boku Inc](#)

[Booking Holdings Financial Services](#)

[International Limited](#)

[BVNK](#)

[CashFlows](#)

[Checkout Ltd](#)

[Circle](#)

[Citadel Commerce UK Ltd](#)

[Contis](#)

[Corner Banca SA](#)

[Crypto.com](#)

[eBay Sarl](#)

[ECOMMPAY Limited](#)

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[merchantpay Group Ltd](#)

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[Euronet Worldwide Inc](#)

[Facebook Payments International Ltd](#)

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[Flywire](#)

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[Globepay Limited](#)

[GoCardless Ltd](#)

[Google Payment Ltd](#)

[HUBUC](#)

[IDT Financial Services Limited](#)

[Imagor SA](#)

[Ixaris Systems Ltd](#)

[J. P. Morgan Mobility Payments](#)

[Solutions S. A.](#)

[Modulr Finance Limited](#)

[MONAVATE](#)

[MONETLEY LTD](#)

[Moneyhub Financial Technology Ltd](#)

[Moorwand](#)

[MuchBetter](#)

[myPOS Payments Ltd](#)

[Nuvei Financial Services Ltd](#)

[OFX](#)

[OKG Payment Services Ltd](#)

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[One Money Mail Ltd](#)

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[Park Card Services Limited](#)

[Paymentsense Limited](#)

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[Payoneer Europe Limited](#)

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