



Electronic Money Association

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Mr Jamie Slater
Payments & Fintech Team, Financial Services Group
HM Treasury
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1 Horse Guards Road
London, SW1A 2HQ

By email to: Jamie.Slater@hmtreasury.gov.uk

12 April 2024

Dear Mr Slater,

Re: EMA Comments on [draft SI enabling delay in payments \(The Payment Services \(Amendment\) Regulations 2024\)](#)

The EMA is grateful for the opportunity to provide comments on the draft SI (The Payment Services (Amendment) Regulations 2024) (“**Draft SI**”). This legislation aims to enable payment service providers (“**PSPs**”) to delay processing of payments, for up to 4 business days, in the event of suspected fraud, by amendment to the Payment Services Regulations 2017 (“**PSR**”).

As you will be aware, the Electronic Money Association (“**EMA**”) is a UK trade association for non-bank payment service providers (such as electronic money institutions and payment institutions). The list of our members is attached at the end of this letter.

Below, we set out our comments on the Draft SI and would be grateful for your consideration of our comments.

Yours sincerely,

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA Comments

1. Monitoring and review of the effects of the new legislation

HMT's Policy Note (Para 4.5) states “To monitor the impact of this legislation and ensure it is used in a proportionate manner, the FCA will engage with payment service providers over reporting requirements in respect of compliance with the new provisions.” However, we note the Draft SI does not lay down any direction or objectives for the FCA’s monitoring the impact of the new rules.

The impact of slowing down payments, not only on combatting fraud, but also on legitimate payments and the effectiveness of the UK payment systems, could be significant. We agree this warrants monitoring. Given the clear link with the Payment Systems Regulator's rules on mandatory APP fraud reimbursement, it would be sensible to consider the effects of this legislation, and the APP scam reimbursement rules, as a whole, and comprehensively. At the same time, the PSPs are already overwhelmed with the amount of regulatory change in this area, and it is important to ensure that the regulatory burden from any additional reporting, if imposed, is kept to a minimum.

The EMA remains sceptical whether the scope of the FCA’s monitoring of the impact of this legislation will benefit the understanding of the impact of these changes on broader issues such as, for example, competitiveness of the UK payment services market as a whole. The EMA proposes the HMT should consider specifying the scope and objectives of the FCA’s monitoring of the impact of the new rules. Separately, it should be considered how this should interact with the work and competences of the Payment Systems Regulator on APP scams.

2. PSP liability for interest and charges in the event of delayed payments

Uncertainties remain over the intended scope of the PSP liability in the event of delayed payments. This may evolve into a new area for disputes, with significant added costs from litigation and FOS complaints that may ensue. The EMA suggests the scope of the PSP liability should be clarified at the outset, to avoid these issues.

The Draft SI extends the PSP liability under Regulation 94 PSR for any charges for which the payment service user (“**PSU**”) is responsible, and any interest which the PSU must pay, as a consequence of delay to the execution of a payment order in reliance on the new rules, irrespective of whether the payment order is ultimately executed¹. We understand this liability, as it is currently drafted, could extend to the interest and charges payable by the PSU to third parties, such as the receiving PSP.

The EMA proposes a clarification that PSP’s liability for interest and charges payable by the PSU to third parties, is limited to circumstances where a PSP has not met its obligations under the new rules. In other words, where a PSP has delayed or refused a payment within the parameters set by the new rules, they should not be held liable. The new rules enable the delay in payments where there are reasonable grounds to suspect the PSU is being defrauded, i.e. they are for the protection of the

¹ Regulation 2(5) of the Draft SI

PSUs, and PSPs should not be held liable when they have met the standard expected of them. On the other hand, the delaying PSPs should remain responsible to reimburse any interest and charges payable to them, as result of the delayed payment – as this is something that is within the delaying PSP's control.

It would also be helpful to clarify that Regulation 94 liability does not extend to any consequential losses.

Members of the EMA, as of January 2024

[Aave Limited](#)
[Airbnb Inc](#)
[Airwallex \(UK\) Limited](#)
[Allegro Group](#)
[Amazon](#)
[Ambr](#)
[American Express](#)
[ArcaPay UAB](#)
[Banked](#)
[Bitstamp](#)
[BlaBla Connect UK Ltd](#)
[Blackhawk Network EMEA Limited](#)
[Boku Inc](#)
[Booking Holdings Financial Services International Limited](#)
[BVNK](#)
[CashFlows](#)
[Circle](#)
[Citadel Commerce UK Ltd](#)
[Coinbase](#)
[Contis](#)
[Crypto.com](#)
[Currenxie Technologies Limited](#)
[Decta Limited](#)
[eBay Sarl](#)
[ECOMPAY Limited](#)
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[EPG Financial Services Limited](#)
[eToro Money](#)
[Etsy Ireland UC](#)
[Euronet Worldwide Inc](#)
[Facebook Payments International Ltd](#)
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[Flex-e-card](#)
[Flywire](#)
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[Google Payment Ltd](#)
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[Imagor SA](#)
[Ixaris Systems Ltd](#)
[J. P. Morgan Mobility Payments Solutions S. A.](#)
[Lightspark Group, Inc.](#)
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[myPOS Payments Ltd](#)
[Nuvei Financial Services Ltd](#)
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