

**MFSA**

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**MALTA FINANCIAL SERVICES AUTHORITY**

# **Feedback Statement**

**Feedback Statement Issued Further to Stakeholder Responses to the MFSA Consultation Document on Proposed Amendments to the Credit Institutions and Financial Institutions (Payment Accounts) Regulations (S.L. 371.18)**

**[MFSA REF: 05-2018]**

## **Introduction**

On the 22<sup>nd</sup> of November 2017, the Malta Financial Services Authority (the “MFSA”) issued a consultation document on the proposed amendments to the Credit Institutions and Financial Institutions (Payment Accounts) Regulations (S.L. 371.18) (hereinafter referred to as the “PAR”) which transposes Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (hereinafter referred to as the “PAD”).

## **Feedback Received by the MFSA**

Stakeholders were given until the 6<sup>th</sup> of December 2017 to provide the MFSA with feedback and comments on the manner the Authority intended to amend the PARs. The MFSA received feedback from four stakeholders. In addition one stakeholder also approached the MFSA with other queries and clarifications on the interpretation of the proposed amendments to the PARs. A summary of the feedback received together with the relevant MFSA position, including any actions taken to address any identified issues is being presented below.

### Stakeholders’ comment:

Regulation 1(6) states that Regulations 8, 10, 12, and 13 will come into force on such date as the Minister responsible for Financial Services may establish in the Government Gazette. Some stakeholders queried on whether market players will be advised of entry into force of such Regulations. Others also queried on when all the other regulations actually come into force (including Regulations 19, 25 and 31).

### ***MFSA’s position:***

The MFSA will issue a circular to advise market players when these Regulations are in place. As a guide as to when these Regulations will come into force, market players are encouraged to monitor developments of the EBA delegated act referred to in Article 3(4) of the PAD. It is to be noted that Regulations 8, 10, 12, and 13 will come into force nine months after the entry into force of the said EBA delegated act.

It should also be made clear that all the other regulations will enter into force immediately upon the publication of the amended PARs.

### Stakeholders’ comment:

The definition of ‘legally resident in Malta or in another Member State’ found in Regulation 2 of the PARs has the following meaning: “where a natural person has the right to reside in Malta or in another Member State by virtue of EU or national law, including customers with no fixed address and persons seeking asylum under the Geneva Convention of 28 July 1951 relating to the Status of Refugees, the Protocol thereto of 31 January 1967 and other relevant international treaties”.

Stakeholders raised the issue that the inclusion of persons legally resident in Malta or in another Member State with no fixed address might pose a contradiction with Anti-Money Laundering obligations which credit institutions must adhere to.

***MFSA's position:***

Following meetings with the industry and FIAU it was noted that none of the provisions of the PARs are in contradiction with national or EU legislation on the prevention of money-laundering and terrorist financing. Credit institutions are encouraged to follow the [\*EBA's Opinion on the application of customer due diligence measures to customers who are asylum seekers from higher risk third countries or territories\*](#) in order to mitigate and address certain risks which such consumers may pose.

The MFSA further wishes to make clear that although this particular query applies specifically to credit institutions with regard to the opening of payment accounts with basic features, both credit and financial institutions have to abide fully with national and EU legislation on the prevention of money-laundering and terrorist financing.

Stakeholders' comment:

It was suggested that the definitions of “consumer”, “payer”, and “payment account” contained in Regulation 2 of the PARs it is not clear whether only natural persons can operate a payment account with basic features.

***MFSA's position:***

It should be noted that the definition of consumer in both the PARs and the PAD refer to only natural persons. In light of this, it is clear that, with regards to both switching services and the opening of a payment account with basic features, where the PARs make reference to consumer(s) it is referring to natural person(s) acting for purposes which are outside one's trade, business, craft, or profession. It is also clear that the definition of ‘payer’ refers to both natural and/or legal persons in both PARs and PAD and, as such, where reference is made to payer(s) in the PARs both natural and legal persons are included in the definition of the term.

Furthermore, it should be noted that with respect to Directive (EU) 2015/2366 (hereinafter referred to as the “PSDII”), the definition of payment account found in Article 4 of this Directive makes reference to payment service users and not consumer. Therefore, although the scope of the PARs and PAD targets mainly services to natural persons, it should be noted that for the purposes of the PSDII both natural and legal persons can open a payment account under the PSDII.

Stakeholders' comment:

Stakeholders queried on whether there are any specific frequencies within which the information required under Regulation 13(2B) is to be provided to the MFSA.

***MFSA's position:***

Since the comparison website is to be updated on a real-time basis, payment service providers are required to provide the information pertaining to Regulation 13(2B) as soon as any changes are put in place.

Stakeholders' comment:

Stakeholders queried why the wording in Regulation 1(3) was changed in such a way that reference to other Member States was removed. The stakeholders were particularly preoccupied that this removal might cause difficulties to consumers.

***MFSA's position:***

The Authority's remit is confined to regulating licensed credit and financial institutions and, in light of this, the Authority cannot put any obligation on entities licensed in other Member State. It should be noted, however, that this change should not hinder the facilitation of cross-border payments within the European Union as the scope of the PARs and the PAD itself is to facilitate further such services.

Stakeholders' comment:

Stakeholders suggested that information given to consumers should be available in a manner that the consumer understands, by also catering for different languages apart from Maltese and English, and forms of disability.

***MFSA's position:***

The Authority deems that such a suggestion falls beyond the scope of the PARs. Although it would be desirable to cater for the needs of as many consumers as possible, such an initiative is the prerogative of the particular payment service provider offering such services.

Stakeholders' comment:

Stakeholders asked for a clarification of the provisions outlining a 'genuine interest' found in regulation 19(3A) in the PARs.

***MFSA's position:***

The Authority decided to introduce the provisions on 'genuine interest' in regulation 19(3A) in order to limit the possibility of persons availing themselves of the rights put forward in the PARs with the intention of acting in bad faith. It should be noted, however, that in order for such rights not to be curtailed for genuine consumers, the Authority emphasised that the requirement to show a genuine interest by payment service providers should be done without prejudice to regulation 17 of the PARs containing non-discrimination provisions. Furthermore, the new regulation 19(4A) further makes clear that a payment service provider cannot refuse an application to open a payment account with basic features on the basis of a consumer's financial circumstances, including their employment status, level of income, credit history or

personal bankruptcy. Thus, a payment service provider cannot conclude that a consumer has no genuine interest in opening a payment account with basic features solely because such a consumer is unemployed, does not work in Malta, does not have a fixed address, and/or is not in possession of a permanent identification document; but other interests on a social and human basis should also be taken into account.

In cases where an application to open a payment account with basic features is rejected, a credit institution is obliged to issue a rejection letter to the consumer explaining the specific reason for the refusal. Furthermore, the letter should also include information with regards to the option to lodge a complaint to the Arbiter for Financial Services.

#### Stakeholders' comments:

Stakeholders suggested that references to Directive 2005/60/EC be removed since the transposition of the new Directive (EU) 2015/849 is close to completion.

#### ***MFSA's position:***

The MFSA has taken up this suggestion and adopted more neutral text by not referring to Directive 2005/60/EC.

## **Way Forward**

The newly amended PARs will enter into force with immediate effect with the exclusion of Regulations 8, 10, 12, and 13 which shall enter into force on such date as the Minister responsible for the Regulation of Financial Services may establish by notice in the Government Gazette.

## **Contacts**

Any queries are to be addressed by email on [bsupolicy@mfsa.com.mt](mailto:bsupolicy@mfsa.com.mt).