

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Consultation on the implementation of the EU Payment Accounts Directive

Feedback Statement

[MFSA REF: 02-2016]

Introduction

On 15 March 2016, the Malta Financial Services Authority issued a consultation document on the implementation of the EU Payment Accounts Directive (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 account with basic features).

The Payment Accounts Directive (“PAD” or “Directive”) sets out common regulatory standards that member states are required to meet in order to:

- improve the transparency and comparability of fees related to payment accounts that are used for day-to-day payment transactions;
- facilitate switching of those accounts; and
- ensure access to bank account with basic features.

Malta, along with all other EU Member States, is required to transpose the PAD by 18 September 2016 in order to meet its treaty obligations and avoid the risk of facing legal proceedings as a result of infraction. This requires the government to make new secondary legislation in virtue of enabling powers set out in the Banking Act and the Financial Institutions Act.

The *Credit and Financial Institutions (Payment Accounts) Regulations 2016*, which were published in draft as part of the consultation, have the purpose of transposing the PAD.

Feedback received by the MFSA

Stateholders were given until 29 April 2016 to provide the MFSA with feedback and comments on the manner the Authority intended to transpose the Directive.

The MFSA received feedback from a number of stakeholders, which included the Malta Bankers' Association, the Central Bank of Malta, the Financial Intelligence Analysis Unit (Malta), a number of banks, law firms, and the Human Rights and Integration Directorate within the Ministry of Social Dialogue, Consumer Affairs and Civil Liberties.

Submissions have been received from the following entities:

- Malta Bankers' Association;
- HSBC Bank Malta plc;
- Ferratum Bank;
- APS Bank Limited;
- Mediterranean Bank plc;
- Central Bank of Malta;
- Financial Intelligence Analysis Unit;
- Human Rights and Integration Directorate within the Ministry of Social Dialogue, Consumer Affairs and Civil Liberties;
- Simon Tortell and Associates; and
- Department of Social Security and the Information Management Unit within the Ministry for the Family and Social Solidarity.

In addition, clarifications have been sought from the following entities:

- Bank of Valletta plc; and
- Novum Bank Limited.

Submissions and request for clarifications have also been received from a number of individuals.

So as to ensure that the consultation document reaches a wider spectrum of stakeholders, other entities were approached by the MFSA. These included Identity Malta, the Office of the Refugee Commissioner, and the Immigration section within the Police Headquarters.

As part of this Consultation, meetings were held with various entities, including the Agency for the Welfare of Asylum Seekers (AWAS), and the Forum for Integration Affairs which is made up of representatives of community leaders from various non-EU nationalities that live in Malta. The main discussions revolved around the fact that asylum seekers in Malta are encountering difficulties when attempting to open a bank account in Malta. Both AWAS and the representatives in the aforementioned Forum welcomed the provisions in the proposed

draft regulations which give asylum seekers in Malta a right to open a payment account with basic features. Such right, however, is not unfettered and the opening and maintenance of a basic account is subject to anti-money laundering and other specific prudential provisions as allowed by the Directive.

During discussions held between officials of the MFSA and these two entities, it transpired that the main reason why banks in Malta are rejecting applications for opening accounts is due to expired identification documentation being presented by asylum seekers during due diligence processes. Expired documents cannot be accepted by banks as in doing so would be in violation of Anti-Money Laundering and Funding of Terrorism (“AML/FT”) procedures. Regrettably, despite these regulations giving the right to asylum seekers to open a bank account in Malta, if the issues of “expired documentation” is not fully and adequately resolved by the relevant authorities, the same problems will be encountered by such prospective bank clients.

Based on the feedback submitted, there were a number of overlapping areas, which mainly revolved around the following:

- The PAD offers member states the option to require that consumers who wish to open a payment account with basic features in Malta show “a genuine interest” in doing so, provided demonstration of that genuine interest is not made too burdensome or difficult. The draft regulations do not include a requirement to demonstrate a genuine interest. Respondents stated that the “genuine interest” requirement should be included in these regulations for the credit institutions to retain the right to refuse to open accounts for persons who do not genuinely demonstrate a sufficient connection with Malta, such as, residing, studying, or working in Malta. It has also been indicated that such requirement being excluded imposes higher burden on credit institutions as this would require more monitoring due to financial crime issues which may arise. The lack of direction given in the PAD as to what could be deemed as a “genuine interest” is rather unhelpful. At this stage, the MFSA is of the view that creating such a list *at this stage* could lead to unjustified or unnecessary barriers to entry. On this basis, no changes have been made to the regulations in this regard. However, regulation 45 allows the Authority to issue rules to payment service providers for the purpose of these regulations. Therefore, it is not excluded that in future, the Authority may issue regulations to give effect to the discretion given to Member States for banks to open basic accounts only on “genuine interest” grounds.
- As it has been previously referred to, Malta is required to transpose the PAD by 18 September 2016. The majority of the submissions made by the banks noted the fact that meeting this implementation deadline is difficult. Requests have been made for the Authority to consider implementing the required changes necessitated from the PAD together with the implementation of the Payment Services Directive II (“PSD II”) at the same time. The banks claimed that, apart from the huge costs involved, such approach will be easier on customers. The regulations provide that provisions relating to the Statement of Fees, the Fee Information Document, Branding, and Comparison Websites shall enter into force on 18 June 2017. However, banks argued

that since the technical standards setting out the EU standardised terminology have not yet been issued, the deadline of 18 June 2017 is also difficult to meet. To this end, requests have been made to extend such date by at least 12 months from the date when these regulations come into force. Regrettably, the Directive does not allow Member States any discretion to extend deadlines as has been suggested by respondents.

- These regulations make it obligatory for payment service providers to make the glossary, fee information document, and statement of fees available to consumers in Maltese and English. Many respondents emphasised on the fact that for all such documents, particularly the statement of fees, to be issued in both languages is highly problematic since such statements are core-system generated. In this respect, one of the main requests by banks was that the requirement to provide information in Maltese should be only limited to the Glossary. The MFSA, however, believes that the PAD is the ideal vehicle for banking to be made closer to consumers. Language is a potential barrier for consumers to understand terminology and processes of banking and, in this regard, the MFSA believes that the provision of such information in dual-currency serves legitimate consumer expectations.

Based on the submissions received, the following amendments to the proposed regulations have been made:

- One of the main respondents noted that a particular provision in the Directive with regards to the offering of services as part of a payment account with basic features had not been transposed in the regulations. This relates to whether a credit institution will be obliged to offer particular services as part of a payment account with basic features, should these services are not offered by the same credit institution. As a result, a further provision has been included in the regulations under the *Payment account with basic features* section, which clearly indicates that the services offered as part of a payment account with basic features, will only be offered to the extent that credit institutions which do not offer the same services for any type of payment account (e.g. savings or current) would not be obliged to offer them as part of a payment account with basic features.
- The refusal of application provision in the proposed regulations made express reference to the Prevention of Money Laundering and Funding of Terrorism Regulations (“PMLFTR”). One of the submissions noted that it is always possible that additional AML/FT requirements be introduced through further secondary legislation which would not be included in the PMLFTR or, that the latter will be repealed and be substituted by secondary legislation bearing a different name. In this regard and so as to avoid either of these situations, amendments have been made. Furthermore, references to the Civil Code (Cap. 16) and the Immigrations Act (Cap. 217) listed under the same provisions have been eliminated as there is already a general clause which encompasses such other applicable and enforceable provisions as laid out in Maltese law.

- The proposed regulations determine a number of situations which allow a credit institution to unilaterally terminate a framework contract for the provision of a payment account with basic features. However, so to avoid any conflict between these regulations and the PMLFTR, amendments have been made so to reflect the fact that, the termination of a framework contract by a credit institution, in the event that one of the mentioned conditions is met, would be without prejudice to any other law.
- Furthermore, in relation to instances where a credit institution may terminate a framework contract, the Directive allows Member States to identify additional cases where a framework contract for a payment account with basic features may be unilaterally terminated by the credit institution. Consequently, a further provision has been added which allows a credit institution to terminate the said framework when the consumer fails to abide by the terms and conditions of the payment account.
- Further amendments have been made to the eligibility criteria section of the proposed regulations to ensure that unnecessary exclusions do not take place. The amended working seeks to clarify what categories of migrants are covered and who may or may not open a payment account with basic features. This is intended to close the gap in terms of discrimination or exclusion of any class of migrants. Also related to the non-discrimination in the provision of payment accounts, in addition to the Charter of Fundamental Rights of the European Union, further amendments have been made to include reference to the anti-discrimination grounds found in the Equality for Men and Women Act (Cap. 456).

Communications Unit

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