



BANK ĊENTRALI TA' MALTA
EUROSISTEMA
CENTRAL BANK OF MALTA

**Post Consultation Report on the
implementation of
the revised CBM Directive No 1
on the Provision and Use of Payment Services***

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* Repealing CBM Directive No 1 *Ref: CBM 01/2009* and modelled on the requisites of the Directive (EU) 2015/2366 on payment services in the internal market.

Introduction

On 9 June 2017, the Central Bank of Malta (the Bank) issued a consultation document on the implementation of the revised Payment Services Directive: Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (PSD2).

PSD2 came into force on 13 January 2016 and both the Bank and the Malta Financial Services Authority (MFSA) have been designated as competent authorities for the national transposition of such Directive.

The revised CBM Directive No 1 on the Provision and Use of Payment Services (CBM Directive No 1), which was published in draft as part of the public consultation, has the purpose of transposing the provisions of PSD2 falling under the remit of the Bank. The provisions of CBM Directive No 1 shall apply as from 13 January 2018.

Feedback submitted by the market

The public consultation period closed on 7 July 2017, during which various stakeholders provided relevant comments to the Bank. Feedback was received from the following entities:

- APS Bank Ltd.
- Bank of Valletta p.l.c.
- Electronic Money Association
- Global Payments Ltd.
- HSBC Bank Malta p.l.c.
- KPMG Malta
- MFSA
- Mastercard
- Mediterranean Bank p.l.c.
- Sparkasse Bank Malta p.l.c.

An outline of the main comments received and the Bank's position in relation thereto is provided below.

1) Classification of payment service providers

One respondent suggested that a clearer distinction should be made between payment service providers (PSPs) to which CBM Directive No 1 applies and PSPs which are in scope of the provisions of PSD2 in general. The Bank took note of this comment and decided to keep the definition of 'payment service provider' in Paragraph 7(51) of CBM Directive No 1 aligned to the same definition of 'payment service provider' as specified in Article 4(11) of PSD2. In this way, PSPs referenced in the CBM Directive No 1 are subject to the provisions of PSD2, while PSPs falling within the scope of Paragraph 2(2) (PSPs licensed in Malta and agents or branches in Malta of PSPs which have their head offices established in another Member State) are subject to the provisions laid out in CBM Directive No 1.

2) Competent authorities

A number of meetings were held with the MFSA to discuss the competencies of the Bank and the MFSA for the provisions laid down in CBM Directive No 1. Revisions were made throughout the Directive to specify more clearly which competent authority is responsible for these provisions.

3) Termination

The provisions of Paragraph 31(3) laid down in CBM Directive No 1 as drafted in the consultation document put an obligation on the PSP to provide the payment service user (PSU) with information on the transactions of the payment account being terminated, for the last 18 months, free of charge and on paper or on another durable medium. This will enable the PSU to have full traceability of his/her transactions and prevents the PSP from charging the PSU if the latter makes a request for such information after the relationship with the PSP has been terminated. One respondent noted that this additional provision will subject PSPs to additional technical challenges to adjust their information systems in order to be able to produce such statements. Having assessed this comment, the Bank made some minor changes to the provisions of Paragraph 31(3), whereby a PSP is now obliged to provide to the PSU upon termination of the framework contract the latest available annual statement of the payment account together with an interim statement covering the period from the last date of the annual statement until the date of termination, free of charge.

4) Charges applicable

The provisions of CBM Directive No 1 as drafted in the consultation document prohibit surcharging on payment instruments for which interchange fees are regulated under Chapter II of Regulation (EU) 2015/751 and for those payment services to which Regulation (EU) No 260/2012 applies. Furthermore, the payee is allowed to offer a discount to steer the payer towards using electronic payments. A small number of respondents found this wording unclear and requested clarification whether surcharging is being prohibited on card and other electronic payments. One respondent suggested that surcharging should be allowed on payment cards which are not subject to the interchange caps under Regulation (EU) 2015/751 to allow the merchants to recover any extra costs. In principle, the Bank is of the opinion that surcharging should be prohibited on all electronic payment transactions to reduce the use of cash and cheques, which is still prevalent in Malta, and to promote an effective migration towards a more efficient means of payment. Thus, Paragraph 38(4) of CBM Directive No 1 has been reworded to indicate clearly that payees are prohibited from surcharging for all electronic payment transactions.

5) Information for the payer/payee on individual payment transactions

The provisions of Paragraphs 33 and 34 laid down in CBM Directive No 1 put an obligation on the PSPs to provide information to the payer and/or the payee, free of charge, on individual payment transactions, at least once a month and on paper or on another durable medium. One respondent suggested that the above provisions should also take into consideration instances where the PSU might require less frequent statements. The Bank considered this suggestion and extended the provisions of Paragraphs 33 and 34 for framework contracts to include the following:

- a) The PSP shall provide to the PSU, free of charge, information on individual payment transactions, at least once a month and on paper or on another durable medium;
- b) Without prejudice to (a), the PSP shall provide to the PSU, free of charge, information on individual payment transactions, at least once a year and on paper or on another durable medium;
- c) The PSU may request to receive a less frequent statement to the one referred to in (a), free of charge and on paper or on another durable medium. However, the PSU shall be allowed to revert back to the same statement frequency referred to in (a), at any point during the framework contract, at no additional cost.

6) Visibility and access of account information service providers (AISPs)

A number of participants queried the Bank's intention to extend the visibility and access of AISPs to other accounts beside payment accounts. The Bank's rationale behind this provision was that this will allow AISPs to provide a more consolidated view of the PSU's wealth, leading to a better customer experience. One respondent argued that this extension will introduce new liabilities on PSPs whilst another stated that an uneven playing field will be created for investment companies which are not PSPs. Another respondent advised against this extension since they believed that this amounts to gold-plating. Following a meeting with the MFSA, the latter noted that this extension could lead to a number of implications for the licensing procedure of AISPs. Furthermore, PSPs licensed in Malta cannot offer such extended visibility to other Member States through passporting. In view of the above, the Bank decided to limit the visibility and access of AISPs to payment accounts only.

7) Payer's liability for unauthorised payment transactions

Several respondents did not support the Bank's proposal to set the payer's liability amount to EUR 25 in the case of losses relating to any unauthorised payment transactions, resulting from the use of a lost or stolen payment instrument, or from the misappropriation of a payment instrument. One respondent argued that this might promote increased carelessness by the PSUs, leading to more frequent cases of unauthorised payment transactions. Another respondent noted that a maximum liability of EUR 25 does not cover investigation charges with most correspondent banks. After having assessed these concerns, the Bank decided to revise Paragraph 50 of CBM Directive No 1 and keep the payer's liability for unauthorised payment transactions to EUR 50 in line with the provisions of PSD2.

8) Strong Customer Authentication (SCA)

The provisions on SCA as laid out in Article 97 and as elaborated in the Regulatory Technical Standards (RTS) on Strong Customer Authentication and Common and Secure Communication shall apply from 18 months after the date of entry into force of the said RTS. In the resulting transitional period, between the entry into force of CBM Directive No 1 on 13 January 2018 and the date of entry into force of the RTS, the Bank expects that SCA will remain being governed by the provisions established in the Financial Institutions Rules on Security of Internet Payments of Credit, Payment and Electronic Money Institutions (FIR/04/2015) which implements the Guidelines on the security of

internet payments issued by the European Banking Authority on the 19th of December 2014. Following discussions with the MFSA on this matter, it is the intention of both regulators to withdraw in the very near future the exemptions given to local debit cards from the implementation of SCA. This will ensure that the migration of local debit cards to EMV is accelerated.

To this effect the Bank took the position that provisions related with SCA for access of payment accounts online and initiation of electronic payment transactions, as well as security measures to protect the confidentiality and integrity of a PSU's personalised security credentials, should become applicable as from 13 January 2018 in line with FIR/04/2015. In view of this, the provisions of Paragraphs 71(1) and (3) were excluded from the derogation in Paragraph 78.

9) Dispute resolution, complaints and alternative dispute resolution (ADR) procedures

Article 99 of PSD2 mandates that national competent authorities provide a complaints channel to PSUs and other interested parties, including consumer associations, regarding alleged infringements of provisions emanating from PSD2 by PSPs. Given that the Office of the Arbiter for Financial Services (OAFS) already has a similar mandate through the Arbiter for Financial Services Act (*Cap. 555 of the Laws of Malta*), the Bank and the OAFS are in the process of signing a Memorandum of Understanding so that they can work together on this matter.

However, since the Arbiter for Financial Services Act (*Cap. 555 of the Laws of Malta*) enables the OAFS to receive complaints from natural persons and micro-enterprises only and the PSD2 has a wider scope, the Bank decided to amend the provisions laid down in Paragraph 73. Thus, any complaints relating to an alleged infringement of provisions emanating from CBM Directive No 1 by PSPs may be submitted by PSUs directly to the OAFS, where such PSUs are natural persons or micro-enterprises. Alternatively, legal persons or an interested third party, including consumer associations may submit their complaints directly to the Bank.

The Bank also decided to transpose the provisions of Article 102 (Paragraph 74) on ADR procedures so that CBM Directive No 1 will clearly identify the channels available for the settlement of disputes between a PSU and a PSP with regard to the PSP's alleged infringement of such Directive. However the Bank has applied the derogation of Article 61(2), thus limiting the provisions of Article 102 to natural persons and micro-enterprises only.

10) Additional transposed articles

Following a meeting with MFSA, the Bank decided to transpose the provisions laid down in Articles 27, 29, 30, 31, 107 and 115. The provisions of Article 27 (Paragraph 11) deal with the settlement of disagreements between the Bank and competent authorities of different Member States, while the provisions of Articles 29, 30 and 31 (Paragraph 8) deal with the supervision, exchange of information and measures in case of non-compliance, between the agents and branches in Malta or in another Member State, the Bank and the competent authorities of the home or host Member State. The provisions of Article 107 (Paragraph 77) deal with the harmonisation of PSD2 across Member States and prevent PSPs from derogating to the detriment of PSUs any provisions laid down in CBM Directive No 1. Finally, the provisions of Article 115 (Paragraph 78) deal with the derogation of those provisions related with the security measures which shall apply after 18 months from the date of entry into force of the RTS, referred to in Article 98 of PSD2. Furthermore, Article 115 also outlines that account servicing payment service providers (ASPSPs) shall not block or obstruct the use of payment initiation service providers (PISPs) and AISPs from the accounts they are servicing until the ASPSPs comply with the RTS.

Furthermore, Paragraph 76 of CBM Directive No 1 included in the consultation document which transposes the provisions of Article 109 of PSD2 about the operation of payment institutions during the transitional period was removed from the final text of CBM Directive No 1 and will be solely transposed by MFSA.

11) Minor editorial changes

a) Changes to Articles 5, 14 and 32

The provisions laid down in Paragraph 5 were repeated in Paragraphs 14(2) and 37(2). To this effect, the Bank decided to delete Paragraphs 14(2) and 37(2).

b) Additional definitions

Paragraph 7 has been extended to include a number of additional definitions.