

# MFSA

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## MALTA FINANCIAL SERVICES AUTHORITY

### **Circular to institutions offering account servicing, payment initiation and account information services as defined in the PSD2**

According to the revised Payment Services Directive<sup>1</sup> (the “[PSD2](#)”) payment initiation service providers (PISPs)<sup>2</sup> and account information service providers (AISPs)<sup>3</sup>, when exclusively providing those services, do not hold client funds and it would be disproportionate to impose own funds requirements on these new market participants. Nevertheless, it is important that they are able to meet their liabilities in relation to their activities. They should therefore be required to hold either professional indemnity insurance (PII) or a comparable guarantee.

The EBA is working on the development of EBA Guidelines under Article 5(4) of the PSD2 on the criteria to be used by Member States to establish the minimum monetary amount of PII or comparable guarantee<sup>4</sup> to be held by:

- PISPs to ensure that they can cover their liabilities as specified in Articles 73 (Payment service provider's liability for unauthorised payment transactions), 89 (Payment service providers' liability for non-execution, defective or late execution of payment transactions) and 92 (Right of recourse); and
- AISPs against their liability vis-à-vis the account servicing payment service provider (ASPSP)<sup>5</sup> or the payment service user resulting from non-authorised or fraudulent access to or non-authorised or fraudulent use of payment account information.

The EBA's proposal on these criteria, in the form of a consultation paper, will be published in summer 2016 and publicly consulted on for three months. The final criteria, which are likely to be published by January 2017, will then have to be used by national authorities to determine the minimum monetary amount of the PII or comparable guarantee, which in turn will be applicable in the respective national jurisdictions from January 2018.

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<sup>1</sup> 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 200/64/EC.

<sup>2</sup> 'Payment initiation service providers' refer to payment service providers which provide a service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider.

<sup>3</sup> 'Account information service providers' refer to payment service providers which provide an online service to provide consolidated information on one or more payment accounts held by the payment service user with either another payment service provider or with more than one payment service provider.

<sup>4</sup> In developing these Guidelines, the EBA is required to take account of, *inter alia*, the specific characteristics of comparable guarantees and the criteria for their implementation.

<sup>5</sup> An 'account servicing payment service provider' is defined as a payment service provider providing and maintaining a payment account for a payer.

In preparation of said consultation paper, the EBA is in the process of carrying out some fact finding and evidence gathering and would be grateful if, from the perspective of an ASPSP, a PISP and/or an AISP, you could share your views on the questions provided in the below questionnaires:

- [Questionnaire for ASPSPs](#)
- [Questionnaire for PISPs and/or AISPs](#)

The questions being asked to ASPSPs refer to their interaction with PISPs and AISPs and their experience with unauthorized payments and IT-risks and how these ASPSPs address such risks within their organisation.

This information will assist the EBA in developing appropriate criteria to be covered by the Guidelines. You and your organisation will not be identifiable in the EBA's work, as all information will be anonymised before handed over to the EBA, and the EBA will then also aggregate it across all 28 Member States.

Please provide your feedback by the 29<sup>th</sup> of January 2016 to Dr. Glenna Montefort at the following email address: [gmontefort@mfsa.com.mt](mailto:gmontefort@mfsa.com.mt).

**Communications Unit**

**Malta Financial Services Authority**

**14<sup>th</sup> January 2016**