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27 February 2019

Subject: Your letter dated 9 January 2019 regarding the e-money license for Google

Dear Mr Ferber,

Thank you for your letter dated 9 January 2019 regarding the e-money license for Google, in which you query the applicable procedures for granting authorisation as an e-money institution (EMI) to large technology companies and express concerns about the recent authorisation of Google as an e-money institution in Lithuania. You also seek clarity on the actions the European Banking Authority (EBA) has undertaken to ensure consistent application of the authorisation procedures for granting licenses to e-money institutions and credit institutions. Allow me to address each of these issues in turn.

Applicable procedures for granting authorisation as e-money institution

In response to the question regarding the applicable procedures for granting authorisation as an e-money institution to large technology companies, please note that Article 5 of the revised Payment Services Directive (PSD2) introduces detailed and harmonised requirements with which legal entities applying for authorisation as a payment institution (PI) have to comply. The same requirements apply *mutatis mutandis* to e-money institutions.

The same Article conferred a mandate on the EBA to develop Guidelines on authorisation and registration under PSD2 (EBA/GL/2017/09), which the EBA issued in July 2017, which apply since 13 January 2018, and which the EBA has an option to convert into draft technical standard at a later stage. In fulfilment of the mandate, the Guidelines set out detailed requirements across 90 pages pertaining to the information that legal entities are required to provide to a national competent authority (CA) when applying for authorisation as a PI or EMI. As of February 2019, all CAs have

submitted notifications that they comply with the Guidelines or intend to do so once the PSD2 has been transposed into their respective national law.

Authorisation of Google as an e-money institution in Lithuania

With regard to your concerns about CAs authorising legal entities that carry out, not only electronic money activities but also other activities, the requirements that apply in such a scenario are set out in the Directive itself. More specifically, Article 11(5) allows CAs to require a PI [and therefore also an EMI] that is also engaged in other business activities to establish a separate entity for the payment services business, where the non-payment services activities of the payment institution impair or are likely to impair the ability of the CAs to monitor the payment institution's compliance with all obligations laid down by PSD2.

However, the Article does not compel a competent authority to require such a separation but offers it as an option. In the specific case to which you refer in your letter, and based on the publicly available information on the register of the Central Bank of Lithuania, Google has established such a separate legal entity in Lithuania, Google Payment Lithuania UAB, for the provision of payment and e-money services.

Beyond said Article, PSD2 contains no other provisions that apply to the authorisation as an e-money institution and that would address issues that may arise from combining payment services information with other sensitive information obtained through another business activity. Furthermore, the relevant requirements under PSD2 apply to all providers, irrespective of their size or the extent to which they carry out other business activities, which appears to me to be conducive to the objective of PSD2 of opening the market to competition without discrimination.

As you will also be aware, there are other, non-sectoral requirements in the EU that apply in this particular case, most notably the General Data Protection Regulation (GDPR), which regulates the handling of personal data and which applies to a large number of legal entities, including Google. The GDPR does not fall into the scope of action of the EBA, which is why the EBA is not in a position to apply its powers to this particular regulation.

Your letter expresses further concerns that Google may have “shopped around for the national competent authority with the lightest approval regime”. In that regard, please note that legal entities affiliated with Google, such as ‘Google Payment Limited’ in the UK and ‘Google Payment Ireland Limited’, have been authorised in other EU Member States for several years and have been providing payment and e-money services across the EU during that time. The same applies to other big technology companies, subsidiaries of which have been authorised for several years in one or more jurisdictions in the EU.

Your observation is therefore not a recent phenomenon. However, we consider the lack of transparency in respect of the authorisation status of PIs and EMIs in the EU to be undesirable and therefore appreciate to have been mandated under PSD2 to develop two technical standards for the creation of a central electronic register. Once the register goes live, it will contain detailed information on the status of authorisation for approximately 3,000 PIs and EMIs as well as 150,000 agents operating in the EU, will be fed by national registers, updated daily, be machine-readable, publicly accessible, and free of charge. The establishment of the EBA register is a key component for achieving the objective of the PSD2 of creating a single EU payments market with consistent regulation and supervision.

As you may be aware, the EBA submitted the two technical standards 15 months ago and has since then been awaiting their publication as a delegated regulation in the Official Journal of the EU so that the standards obtain their legal force. In parallel, the EBA has been developing the necessary IT systems with a view to make the register publicly accessible soon.

Actions the EBA has undertaken

Your final question relates to the actions the EBA has undertaken to ensure a consistent application of the authorisation procedures for granting licenses to e-money institutions and credit institutions. By way of response, allow me to refer again to the EBA Guidelines under PSD2 on the information to be provided for the authorisation and registration of PIs and EMIs (EBA/GL/2017/09), which we issued in July 2017, which apply since January 2018, and which have been used by national CAs since then.

Separately, the EBA issued draft Regulatory Technical Standards under the Capital Requirements Directive (CRD IV) on the information to be provided for the authorisation of credit institutions (EBA/RTS/2017/08). These standards, were submitted by the EBA, in July 2017, and we have been awaiting their adoption and publication as a delegated regulation so that these standards, too, obtain their legal force.

The EBA has also extended its existing Q&A tool to PSD2, which allows external stakeholders to submit questions to the EBA regarding the application of the Directive and the EBA's mandates. The EBA has so far received 160 questions and has answered the first 35 of them. In the process, the EBA has been able to make further progress in fulfilling the objective of PSD2 of creating a single EU payments market, by achieving additional consistency across the 28 national CAs.

Going forward, the EBA will complement these measures by two additional initiatives. Firstly, the EBA will review its existing Guidelines on authorisations of PIs and EMIs, which Article 5(5) of PSD2 requires the EBA to do at least every three years. In the process of such a review, the EBA will assess how the Guidelines have been implemented across Member States, potentially amend them to address any issues that may emerge, and also propose to convert them into draft technical

standards for subsequent adoption and publication as a delegated act, as foreseen in the Directive. However, due to the late national transposition of the PSD2 in a number of Member States, national CAs and the EBA have currently insufficient experience and data available to arrive at any robust conclusions. As a result, such a review is unlikely to take place before the year 2020.

Secondly, and more imminently, the EBA is interested in better understanding the approaches taken across the Union to licensing and authorisation of financial institutions more generally. In the context of the March 2018 European Commission FinTech Action Plan and the EBA's FinTech Roadmap, the EBA is therefore currently assessing the practices of CAs in assessing applicants against the conditions for authorisation of CIs, PIs and EMIs set out in EU law and Level 2/3 requirements, including the application of proportionality. This will help inform the EBA's analysis of the extent to which CAs are acting consistently and, ultimately, the need for any further action. The EBA expects to complete this assessment in mid-2019.

We also note that in the future it is envisaged that the EBA will have a new mandate set out in CRDV, which is currently at the jurist linguist stage and which will require the EBA to issue guidelines addressed to the competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify a common assessment methodology for granting authorisations in accordance with that Directive.

When progressing the aforementioned initiatives at Level 2 & 3, the EBA will of course need to be mindful of the fact that Member States can transpose the underlying EU directives into national law in different ways, and that the EBA will not be able to address inconsistencies of this kind.

We hope these explanations will prove useful and remain available should you require any further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Adam Farkas', is positioned below the text 'Yours sincerely,'.

Adam Farkas