Position of Prepay Technologies Ltd on strengthening controls on non-banking payment products

I. CONTEXT

Prepay Technologies Ltd ("PPS") has been a UK authorised Electronic Money Institution since 2003. PPS issues and distributes e-money, both directly and through agents/distributors, to corporate clients (BtoB) and to consumers (BtoC) for approximately 200 programmes in 22 EU Member States under both freedom of establishment and freedom to provide services regimes. Given the diversity of these programmes, PPS is acutely aware of the need to understand the specific risks relating to each programme and to apply appropriate measures in order to prevent money laundering, terrorist financing and fraud.

PPS has been aware of the discussions taking place at the EU level regarding the strengthening of controls on non-banking payment products. **PPS would therefore like to take the opportunity to share its views and position on a potential strengthening of controls on non-banking payment products.**

II. EXECUTIVE SUMMARY

PPS supports a strengthening of controls for non-banking payment instruments that will be based on preliminary and robust risk assessment. As emphasized by the Financial Action Task Force ("FATF")[1], such risk-based approach is key to define an efficient framework countering the financing of terrorism, with proportionate measures to both mitigate the potential risks and to prevent from hampering the development of the low-risk activities. In this perspective, PPS especially draws attention to the risk that disproportionate measures may foster the use of cash, with the lowest level of traceability.

Such risk-based approach has been applied to design the 4th money laundering directive[2] ("4MLD"), which will significantly strengthen controls, reduce anonymity and enhance traceability for non-banking payment products, and especially for prepaid e-money cards. **PPS hence supports a quick and harmonized transposition of the 4MLD.**

If the 4MLD was considered as insufficiently addressing the potential risks of money laundering and financing of terrorism through e-money cards, **PPS would suggest the two following measures that will strengthen the framework for non-banking payment instruments in a proportionate manner**:

- (i) **A strengthening of the distribution framework**, with more robust analysis of the quality of the distributors by the local regulators and a formal registering of all distributors
- **(ii) A limitation of the exemption from due diligence requirements under 4MLD's article 12 to payment instruments that may be funded neither with anonymous e-money nor with cash**.

[1] http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

[2] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 may 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

III. DETAILED POSITION OF PREPAY TECHNOLOGIES LTD

1/ Applying a risk-based approach to design an efficient framework with proportionate measures

As emphasized by the FATF, the risk of money laundering and terrorist financing is strongly depending on the characteristics of each country, of each market and of each activity. **Countries should hence apply a risk-based approach** to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified.

The FATF's guidance on prepaid cards, mobile payments and internet-based payment services[3] specifically analyses the risks of non-banking payment instruments and point out that various risks factors can be identified for such products: for instance anonymity, inexistence of any record keeping, global geographical reach, ability to be funded in cash ("cash-in") and access to cash ("cash-out"), etc. **An efficient framework should hence try to mitigate these risks, whilst permitting the development of instruments for which these risks are low**.

On the contrary, disproportionate measures impacting traceable instruments may hamper their development, create competition distortions and contribute to foster the use of cash. PPS stresses that, whilst cash permits payments that are completely anonymous with no traceability, all card-based transactions (and e-money transactions) even under a simplified due diligence framework, maintain a level of traceability which significantly exceeds the one of cash transactions. **Disproportionate measures may hence lead *in fine* to a lower level of traceability.**

2/ Transposing and implementing the 4MLD to efficiently tighten controls on non-banking payment products

The 4MLD will significantly reduce the scope of exemptions from due diligence requirements and generally impose higher standards to both countries and obliged entities such as non-banking issuers (ie. Electronic Money Institutions and Payment Institutions). Hence, **under 4MLD, all payment instruments giving access to cash or allowing transactions exceeding 250 € will be subject to due diligence requirements, such as all traditional banking payments instruments.** In this perspective, instruments with higher risks as identified by the FATF will not be eligible for simplified due diligence regimes, and especially open-loop prepaid cards, such as those which seem to have been used to prepare the November attacks in Paris.

PPS emphasizes that **maintaining an exemption from due diligence requirements for some low-amount and low-risk instruments, as defined by the article 12 of the 4MLD, is essential to some activities,** such as the traditional multi-brand gift card issuance.

PPS hence supports a quick and harmonized transposition of the 4MLD, which will significantly reduce the scope of anonymity for payment instruments and generally imposes higher standards to all obliged entities, whilst still maintaining areas for exemption from due diligence requirements for low-risk instruments.

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[3] http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-RBA-NPPS.pdf

3/ Strengthening the 4MLD framework under a proportionate and risk-based approach

Although PPS is convinced that the 4MLD framework will efficiently both strengthen the controls of non-banking payment instruments and mitigate the risks of money laundering and financing of terrorism, **some additional measures may contribute to raise the market standards and to prevent money laundering or terrorism financing attempts**.

First, a more robust framework for distribution by third parties, with a formal registration process supervised by regulators for agents and distributors, should allow regulators to assess the legitimacy and relevance of distribution of non-banking payment instruments by third parties. Such authorization process could be based on their skills, their reputation and on the risk profile of the products that they intend to distribute. Such process should fall under the regulators' supervision and may not require additional legal framework.

Secondly, **the scope of exemption defined by article 12 of 4MLD could be further reduced to only allow instruments that may neither be funded with anonymous e-money, nor with cash to benefit from an exemption from due diligence requirements.** In this perspective, these low-amounts instruments benefiting from a simplified due diligence framework will have a robust traceability from loads to payment transactions (as such instruments cannot give access to cash).