BANK OF LITHUANIA
FINANCIAL SERVICES AND MARKETS SUPERVISION DEPARTMENT

Attn.: Managers of banks, credit unions, electronic money and payment institutions

16-11-2023 No S 2023/(34.55.E-3900)-12-4559

Copy to:
Associations on the list

RE: IMPROVING THE PROVISION OF PAYMENT SERVICES AND THE EXPERIENCE OF PAYMENT SERVICE USERS

Dear Head of Financial Institution,

We are writing to you to improve the quality of payment services provided by the bank, credit union, e-money and payment institution managed by you. One of the strategic directions in the activities of the Bank of Lithuania is the financial sector that creates value for the consumer, which aims to improve the quality and accessibility of financial services, the inclusion of different social groups and the integrity of the financial services market. In supervising financial institutions that provide payment services (hereinafter – **FIs**), we would like to draw the attention of FIs to certain requirements that they must comply with in their day-to-day activities and whose implementation will be the focus of the supervision of FIs. We would also like to draw attention to certain shortcomings in the activities of FIs, to make recommendations that, in the opinion of the Bank of Lithuania, would help to improve the smooth provision and quality of payment services, and propose specific measures in line with the best market practices.

It should be noted that the expectations set out in the Bank of Lithuania's letter No S 2022/(34.55.E-3900)-12-4749 *Re: Improving the provision of payment services and the experience of payment service users* of 4 October 2022 (hereinafter – the **2022 Dear CEO Letter**) remain relevant. The results of the implementation of the 2022 Dear CEO Letter are available here: Financial institutions improve service quality in line with the Bank of Lithuania's expectations, but there is room for improvement | Bank of Lithuania (lb.lt).

The terms used in this Letter have the same meanings as those defined in the Republic of Lithuania Law on Payments (hereinafter – the **Law on Payments**), the Republic of Lithuania Law on the Prevention of Money Laundering and Terrorist Financing (hereinafter – the **LPMLTF**) and other legal acts regulating the financial market. A payment service user (hereinafter – the **PSU**) is defined as a natural or legal person, another organisation or any division thereof making use of a payment service in the capacity of either payer or payee, or both (Article 2(31) of the Law on Payments).

It should be noted that FIs are obliged to comply with all the requirements of the legal acts regulating the activities of FIs, to continuously strive for the improvement of payment services, increasing their compliance with the expectations of PSUs, and not to limit themselves to the issues mentioned in the present Letter and/or to the proposals made by the Bank of Lithuania regarding them.

1. On the handling of complaints filed by PSUs

The Bank of Lithuania, which receives complaints from PSUs, has noticed that there are cases when payment service providers (hereinafter – **PSPs**) refer PSUs to the Bank of Lithuania without thoroughly investigating the PSU's complaint.

It should be noted that Article 90 of the Law on Payments obliges PSPs to investigate PSUs' complaints and requests related to the payment services provided. The PSP must examine a written complaint of the payment service user and, no later than within fifteen business days of the day of receipt of the complaint, provide on paper or, if agreed between the payment service provider and the payment service user, on another durable medium **a detailed, reasoned and documented response** to the complaint.

In the light of the established legal regulation, it is intolerable that a complaint or request submitted by a PSU is treated casually, that the response to the PSU contains only general phrases, that it does not draw conclusions on the factual circumstances set out in the PSU's request or complaint, that the PSP relies not on the provisions of the legislation or the agreements, but on its subjective assessment or on the general conclusion that the PSP's actions do not violate anything. It should be noted that the response of the PSP after examining the PSU's complaint or request is not only intended to explain the reasons for the PSP's actions, to understand the established legal regulation, to recall the provisions of the contracts entered into, but also to allow the PSU to decide whether the PSP's actions can be considered by the PSU to be reasonable and lawful and to take a decision on whether to challenge the PSP's actions in the event of a decision to disagree with the response. Failure to comply with the requirements of the PSP's response not only violates the provisions of the Law on Payments, but also forces the PSU to file a complaint with the Bank of Lithuania, the content of which is often not related to disagreement with the PSP's response, but to its incompleteness, failure to support it with evidence, and the failure to provide the grounds for the negative response towards the PSU. Therefore, the Bank of Lithuania reminds FIs of the necessity to ensure that the handling of PSUs' complaints complies with the requirements set out in the Law on Payments and the Rules for the Handling of Complaints Received by the Financial Market Participants approved by Resolution No 03-105 of 6 June 2013 of the Board of the Bank of Lithuania (hereinafter – the **Rules for the Handling of Complaints Received by the FMPs**).

It should be noted that the increasing number of complaints to the Bank of Lithuania indicates that FIs do not deal with customer complaints, do not handle complaints (requests) by PSUs in accordance with the requirements set out in the legislation. We note that the Bank of Lithuania constantly monitors the number of complaints and in case the number of complaints against the actions of a particular FI increases, more intensive supervisory actions, including inspections, may be carried out in respect of such FI.

It should also be noted that according to the Rules for the Handling of Complaints Received by the FRDs, FIs provide the Bank of Lithuania with data on complaints received in the relevant calendar year. The Bank of Lithuania informs that there are plans to change the procedure and conditions for submission of data to the Bank of Lithuania in order to improve the accuracy and usability of the information provided for supervisory purposes.

2. On the information to be provided in the terms of provision of payment services and/or framework contracts for payment services

2.1. On the provision of information in a clear and comprehensible manner

The Bank of Lithuania, having analysed the information contained in the FI terms of provision of payment services, framework contracts for payment services, their annexes, other documents which are an integral part of the agreements, information published on the FIs' websites, including fees and their names, has observed that often PSUs face challenges in understanding complex legal language, confusing texts, and inconsistent provisions.

Article 13(1) of the Law on Payments obliges PSPs to set out the terms of provision of payment services in such a way that they are understandable and clear. It is noteworthy that this Law transposes into national law the provisions of 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. According to recital 54 of the preamble to this Directive, the purpose of the obligation of PSPs as regards the provision of information to PSUs is to ensure that PSUs receive the high level of clear information about payment services in order to make well-informed choices and be able to choose freely within the Union. This interpretation is fully in line with the case law of the Supreme Court of Lithuania (hereinafter – the **SCL**) that ensuring the implementation of the right to information is one of the main objectives of not only the European Union, but also of national consumer protection legislation. Only having sufficient information is the consumer in a position to make an informed decision on the purchase of goods or services.[1] The SCL has emphasised[2] that the consumer's right to information is one of the essential guarantees of a high level of consumer protection. The implementation of this consumer right is ensured by the legal regulation imposing an obligation on the entrepreneur to provide the consumer with information (the duty of disclosure of information). Adequate consumer information not only enables the consumer to make an informed decision – to consider his or her decision to purchase the goods and services concerned, to compare the goods and services available on the market and their prices – but also creates the conditions for the market to operate efficiently. According to the interpretation of the SCL, the provision of information in a "clear and comprehensible manner" means, inter alia, that the information must be presented in such a way and in such a manner that it is easily understandable to the consumer (the consumer can easily grasp its meaning, the characteristics and risks of the product) and not misleading. The question of whether the information has been presented in a clear and comprehensible manner in the context of a contractual consumer relationship is to be determined in the light of all the factual circumstances and the level of attention that can be expected of the average consumer, i.e. the standard of the average consumer is applied to the perception of the information. It should be noted that the standard of the average consumer relates **to the perception of the information received and not to the ability to receive it**. Thus, the FIs must not only ensure that certain information is provided to the PSU, but also that it is presented in such a way that the PSU can easily perceive the substance of the information provided and avoid any misleading implications.

It has also been noted that information explaining or supplementing the provisions of the terms of provision of payment services and/or framework contracts for payment services is often provided on the websites of PSPs separately from the general terms and conditions of PSPs. In the opinion of the Bank of Lithuania, essential information relevant to PSUs must be indicated in the terms of provision of payment services and/or framework contracts for payment services themselves or be easily found in the relevant links to the website pages provided in these documents.

1.2. On the provision of information in compliance with the requirements laid down in Article 13 and other articles of the Law on Payments

In all cases, the information specified in Article 13 of the Law on Payments must be provided in the terms of provision of payment services and/or in the framework contracts for payment services (except for cases where the PSP and the PSU (except for natural PSUs) may agree on the exemption from all or part of the provisions of Chapter III of this Law (including Article 13) in the procedure set out in this Law). In addition, the terms of provision of payment services and/or the framework contracts for payment services must comply not only with Article 13 of the Law on Payments **but also with other provisions of this Law**.

In certain cases, the information contained in the FIs' terms of provision of payment services and/or framework contracts for payment services complies with Article 13 of the Law on Payments, but does not comply with other provisions of this Law (e.g., the maximum duration of the execution of the provided payment service, as required by Article 13(3)(5) of the Law on Payments, does not comply with other provisions of this Law on the time limits for the execution of payment transactions). It is also quite common for FIs to limit their liability for unauthorised payment transactions and the proper execution of payment transactions in the terms of provision of payment services and/or in the framework contracts for payment services. Given

[1] Ruling of the Supreme Court of Lithuania of 27 June 2016 in Civil Case No e3K-3-332-687/2016.
[2] Ruling of the Supreme Court of Lithuania of 13 October 2021 in Civil Case No 3K-3-246-1075/2021.

that the liability of FIs in such cases is regulated in detail by the Law on Payments, the terms of provision of payment services and/or framework contracts for payment services may not deviate from the established legal regulation and thus unreasonably mislead PSUs and/or restrict their rights and legitimate interests.

It is also quite common for FIs to transfer their rights set out in the Law on Payments into the terms of provision of payment services and/or framework contracts for payment services, but not to transfer the obligations and rights of PSUs (e.g. an FI refers to its right to block a payment instrument, but does not specify the obligations related thereto in Article 33(3) and (4) of the Law on Payments). Thus, the FI must consistently specify, in addition to its rights, the corresponding obligations and the related rights of PSUs in the terms of provision of payment services and/or in the framework contracts for payment services.

3. On the time limits and their calculation, and the enforcement of the requirements for written information on paper or other durable medium

3.1. On the calculation of time limits

During the examination of the complaints, the Bank of Lithuania noted that the FIs have questions about the proper calculation of the time limits set out in the Law on Payments. It should be noted that the time limits set out in the Law on Payments are calculated in terms of working days (e.g. Article 90 of the Law on Payments), calendar days (e.g. Article 15 of the Law on Payments) and months (e.g. Article 36 of the Law on Payments).

According to the standard rules for the calculation of time limits, the start of the time limit is the day after 0:00 a.m. on the day following the calendar date or event that determines the start of the time limit, unless otherwise provided. The end of the time limit is 24:00 on the last day of the month (where the time limit is calculated in days), the corresponding day of the last month or the last day of that month (where the time limit is calculated in months), or the next working day (where the time limit is not a working day). For more information on time limits and their calculation, see Part IV "Time Limits" of Book I of the Civil Code of the Republic of Lithuania.[3]

It should be noted that a time limit is understood as a period of time with certain legal consequences. If the time limit is calculated incorrectly, the FI is obliged to compensate for the loss caused by the incorrect calculation of the time limit. For example, according to Article 15(1) of the Law on Payments, the PSP should propose amendments to the framework contract and/or to the terms and conditions referred to in Article 13 of this Law in writing on paper or on another durable medium at least 60 days prior to the date of entry into force of the amendments. Therefore, if the increase of the commission for the provision of the relevant payment service results in the application of the new commission on the 60th day, the FI is obliged to compensate the losses related to the application of the commission before the expiry of the period of notification of the amendments.

3.2. On the provision of information in writing, on paper or using another durable medium

The Bank of Lithuania receives complaints that important information related to the provision and/or limitation of payment services is provided to PSUs only through the Internet Bank without additional information via another communication channel (e.g. SMS or e-mail). PSUs complain that they did not have the opportunity to get acquainted with the information provided in this way and, therefore, the actions of the FIs (e.g. To restrict the provision of payment services) were unexpected and caused negative experiences (e.g. not being able to pay with a payment card while abroad). It should be noted that this practice of the FIs does not comply with the requirements for the provision of information on durable media. The obligation for FIs to propose changes to the framework contract and/or to the terms and conditions referred to in Article 13 of the Law on Payments in writing or on another durable medium is laid down in

[3] Civil Code of the Republic of Lithuania, see Republic of Lithuania Law on the Approval, Entry into Force and Implementation of the Civil Code of the Republic of Lithuania, No VIII-1864. Civi... (e-tar.lt).

Article 15(1) of the Law on Payments. In compliance with the Law on Payments, a durable medium means any medium which enables the PSU to store information addressed personally to him in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored (Article 2(47) of the Law on Payments). Although neither the Law on Payments nor any other legislation establishes an exhaustive list of durable media and allows PSPs to use various means of information, whatever the means chosen, they must in all cases comply with the requirements set for durable media. Based on the interpretations of the Court of Justice of the European Union, the Bank of Lithuania has set out detailed explanations on the requirements applicable to durable media in sub-paragraphs 4.1 and 4.2 of the Guidelines for the Provision of Payment Services approved by the Director of the Financial Market Supervision Service of the Bank of Lithuania by Decision No V 2021/ (34.3E-3400) 419 30 of 15 February 2021.[4]

Taking into account the aforesaid, we hereby ask FIs to ensure that PSUs are properly informed on durable media where required by law. In other cases, the provision of information to PSUs on durable media is considered as a good practice to reach PSUs more quickly in order to provide them with information at the current moment, i.e. without having to wait for the log-in to their online account. The provision of information on durable media is particularly important when an FI decides to impose restrictions on payment services (e.g. blocking a payment card, restricting payments via online banking, etc.). In such cases, the FI should comply with the requirements for the provision of information on durable media in order to reach the PSU as soon as possible and provide relevant information not only on the online account but also via another communication channel, such as SMS or email.

4. On the improvement of the experience of PSUs in the application of AML/CFT measures and the non-application of de-risking policies

The Bank of Lithuania considers one of the priority areas to be the improvement of the experience of PSUs in the area of prevention of money laundering and terrorist financing (hereinafter – **AML/CFT**), which, according to the enquiries filed by PSUs, still raises a number of uncertainties. We are grateful to the PSPs that are making every effort to improve the experience of PSUs in this area, by: improving and providing PSU-relevant information about AML/CFT requirements in plain and clear language on their websites; creating Frequently Asked Questions (FAQs); improving customer insight questionnaires, tailoring them as much as possible to individual user groups and allowing them to update information in the form of a previous questionnaire; introducing advisory tools (e.g. chatbots) and channels (dedicated email, telephone number) through which PSUs can access the information they need here and now; obtain as much information and data as possible on their own initiative from public systems and registers (without delegating this responsibility to the PSUs); etc.

The enquiries received indicate that the requirements for the provision of information/documents to clarify the purpose and nature of certain payment transactions and/or transactions still pose a number of challenges for PSUs: PSPs set too short time limits to provide such information (e.g. by the end of the working day, etc.), PSUs are not aware that they can negotiate with PSPs for a longer time limit for the provision of such information, and the documents which they are not able to provide (e.g. such documents are not submitted by a third party) objectively, as they are unavailable to the PSUs, etc. In this area, the Bank of Lithuania sees a need to further improve the communication processes between FIs and PSUs.

In order to make the requirements for PSUs under the LPMLTF clearer and easier to understand, the Bank of Lithuania has updated the Frequently Asked Questions (FAQ) section on the Bank of Lithuania's website and expanded it with relevant information on Know Your Customer, restriction of accounts and withholding of payments, and developed an information tool – the leaflet "Know Your Customer". The aim of this leaflet is to provide PSUs with essential information in simple terms on the requirements applied by FIs to customers in the context of

[4] https://www.lb.lt/lt/naujienos/lietuvos-bankas-patvirtino-mokejimo-paslaugu-teikimo-gaires (sub-paragraphs 4.1 and 4.2 of the Guidelines for the Provision of Payment Services approved by the Director of the Financial Market Supervision Service of the Bank of Lithuania by Decision No V 2021/ (34.3E-3400) 419 30 of 15 February 2021).

the implementation of AML/CFT measures. The leaflet can be downloaded in Lithuanian[5] and English[6] from the Bank of Lithuania website. We would like to thank the Association of Lithuanian Banks and Fintech HUB LT for their assistance in the preparation of this leaflet. We also encourage FIs to share this leaflet with PSUs when a FI approaches a PSU regarding the fulfilment of the FI requirements under the LPMLTF.

It should be noted that the recommendations made by the Bank of Lithuania to FIs in the 2022 CEO Letter in this area are still relevant, and their implementation in daily operations should become an aspiration of each FI in improving the practice of PSUs in the area of prevention of MLTF. In this Letter, we additionally draw the attention of FIs to the areas for improvement identified by the Bank of Lithuania in 2023.

4.1. Clear and accessible presentation of the requirements of the LPMLTF to PSUs

In order for a PSU to comply with the requirements imposed on him by the FI, the PSU first needs to understand what is required of him and why, and therefore proper provision of information to PSUs should remain a priority for FIs. FIs should focus on no more than the average consumer, who is not an expert in the legal acts regulating the financial market. Thus, the legal requirements should be presented in clear and user-friendly language, preferably in visual formats, etc.

Another important part of the presentation of the LPMLTF requirements to the PSUs is the availability and accessibility of information and the possibility of obtaining an advice here and now. It has been observed that internet banking, chat applications specific to the relationship between PSPs and PSUs, and/or email are generally not the means of communication that PSUs use on a daily basis to check the information provided. FIs need to assess the importance of the information provided to the PSUs and, in the case of an urgent matter (e.g. a payment transaction has been suspended due to the need for additional information from the PSU, etc.), look for ways to reach the PSU more quickly, rather than limiting themselves to providing a single message via an online bank. There are cases where PSUs do not respond to the PSP's requests for information because they simply do not notice such requests in the communication channel used by the FI (weekend, holidays, leave, etc. when the PSU is not connected to the online account) and are later accused of evasion or refusal to provide information. Also, FIs should address the issue of their availability at weekends or after working hours when PSUs wish to seek advice on the nature and/or scope of the LPMLTF requirements in urgent cases (e.g. waiting for a suspended payment to be executed, reporting a case of fraud, etc.).

4.2. Suspension of payments – up to 3 working days as a standard

When payments are suspended, cooperation between FIs and PSUs is essential. It is equally important that the suspension of payments has a legitimate basis and lasts for as short a time as possible. Data from the survey of banks conducted by the Bank of Lithuania in 2023 showed that the time limit for verification of suspended payments agreed between the Bank of Lithuania and the Association of Lithuanian Banks a year ago has been reduced from 3 weeks to 3 days, and therefore the Bank of Lithuania has publicly recommended[7] that the typical time limit for verification of suspended payments should be no longer than 3 working days. The time limit for the suspension of payments may be longer if the customer delays in providing information, fails to communicate with the FI, the volume of documents submitted by the customer is large, the documents are in foreign languages, or there are any other objective reasons. Please be reminded that if for objective reasons the verification would take longer than 3 working days, the FI must inform the customer properly about the process and the time limits for the suspension of payments.

The Bank of Lithuania receives complaints that FIs, having suspended an outgoing or incoming payment, do not immediately provide information about this fact to the PSU. In this case, the

[5] See the leaflet "Know Your Customer" in Lithuanian (Pazink savo klienta Deriskingas 2023 A4 (lb.lt)).
[6] See the leaflet "Know Your Customer" in English Pazink savo klienta Deriskingas 2023 A4 EN (lb.lt).
[7] See https://www.lb.lt/lt/naujienos/lietuvos-bankas-mokejimu-patikrinimu-del-sankciju-terminas-trumpeja-nuo-3-savaiciu-iki-3-dienu.

PSU often only learns that a payment initiated by the PSU has been suspended or not credited and returned to the sender when the payee does not receive the payment and starts looking for it. It should be noted that such situations should not occur. Once a payment has been suspended, the FI must immediately inform the PSU that initiated the payment (where permitted by law) or the PSU to whom the payment is to be credited of the fact of the suspension, the legal basis for it, the steps to be taken by the PSU (if applicable), and the time limits for verification of the payment. The PSU has the right to know what is happening on his account at the initiative of the FI, including when a decision is taken on the further treatment of the suspended payment (to set off, to reject, or to freeze).

Attention should be paid to cases where payments get lost or stuck not only due to the requirements of the LPMLTF, but also due to technical errors by FIs, intermediaries' actions, etc. In such cases, the fact that the FI has handed over to its intermediary to return or execute the payment does not mean that its responsibility has ended, but that the FI has **to follow up on its own initiative to make sure that the payment has reached the payee's PSP**, i.e. not to wait for the PSU to contact the FI to ask for the whereabouts of his payment, and, if the PSU has already contacted the FI, not to limit itself to the response that it has sent the payment. The FI has to take real actions to trace the payment, provide the PSU with the relevant evidence and instructions on what to do in the specific case, how and where to look for the payment, if the PSU has to take such actions. In such cases, it is essential that the FI cooperates with and fully assists the PSU which submitted the payment order to it.

It should be noted that in the case of suspension of a payment due to international sanctions, the FI is obliged to indicate to the PSU the legal basis, i.e. the clause of the relevant regulation under which such payment is suspended.

4.3. Termination or not starting of a business relationship is a last resort for managing the MLTF risk. Unreasonable non-application of de-risking policies

As mentioned in the 2022 CEO Letter, the Bank of Lithuania pays particular attention to monitoring the situation of de-risking in Lithuania in order to ensure that the AML/CFT measures applied by supervised FIs do not restrict the availability of payment and other financial services to honest PSUs. De-risking[8] is understood in the EU as the refusal or decision by an FI to enter into or terminate business relationships with individual customers or categories of customers associated with a higher AML/CFT risk or to refuse to execute transactions with a higher AML/CFT risk. Therefore, FIs should not unreasonably apply de-risking policies by refusing to enter into and/or terminating business relationships, i.e. by limiting the availability of financial services, but should instead look for solutions and tools to manage the risks involved. In the opinion of the Bank of Lithuania, termination of business relationships with customers in accordance with the LPMLTF should be considered as a last resort measure for the management of the AML/CFT risk, and should therefore only be applied in cases where the FI does not have the possibility to manage the risk through other means.

On 31 March 2023, the European Banking Authority (EBA) adopted the Guidelines on policies and controls for the effective management of money laundering and terrorist financing (ML/TF) risks when providing access to financial services (hereinafter – the **EBA Guidelines**).[9] The Bank of Lithuania plans to transpose the EBA Guidelines into national law in Q2 2024. It is important to note that these Guidelines enshrine the obligation for FIs to consider all possible de-risking measures that could reasonably be applied in a particular case, taking into account the AML/CFT risks in relation to the existing or future business relationship, before deciding to refuse to enter into or to terminate a business relationship. Such future regulation will further strengthen the Bank of Lithuania's position that the termination and/or non-establishment of business relationships should only be used as a last resort after exhausting other risk management measures.

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[8] European Banking Authority Guidelines on policies and controls for the effective management of money laundering and terrorist financing (ML/TF) risks when providing access to financial services (GLs on MLTF risk management (EBA GL 2023 04)_LT_COR.pdf (europa.eu).

[9] See GLs on MLTF risk management (EBA GL 2023 04)_LT_COR.pdf (europa.eu).

In view of the complaints received about refusals to enter into business relationships or unilateral decisions to terminate them, attention should be drawn to the obligation of FIs to keep PSUs duly informed of their decisions. It is important that the procedure and time limits for such decisions are clear, i.e. PSUs which have requested the opening of business relationship should be informed of the provisional time limits for such a decision. There are cases where PSUs contact the Bank of Lithuania because a decision on the business relationship is pending for 4-6 months. It should be noted that FIs should not leave PSUs in the dark as access to financial services is an inevitable necessity of everyday life. The FI, as a professional in its field, should help the weaker party, the PSU, i.e. to take the initiative in the relationship with the prospective customer and to help him to meet the requirements set by the FI to start the business relationship (providing the necessary documents, advice). There are cases where the FI formally provides the requirements without explaining them in detail, although it is clear that the PSU does not understand what is required of him. For example, after the PSU has provided what he considers to be all the information required, the FI repeats its requests for information again (this may even happen several times), without explaining why the previous information is not adequate, what else is missing etc. There should be no such cases where the PSU is left alone and the FI only provides instructions but does not advise the PSU on the proper fulfilment of such instructions.

In the case of unilateral decisions to terminate the business relationship, the reasons for such decisions (to the extent permitted by law) and the specific contractual and legal framework should be as precise and detailed as possible. It is intolerable that a decision to terminate a business relationship with an PSU refers to a contract which lists 20 possible grounds for termination, but does not specify which clause applies to the PSU. Therefore, FI must clearly and unambiguously state the specific legal basis for terminating the contractual relationship, the reasons for doing so (to demonstrate the existence of a ground for termination) and other circumstances. The exact grounds for termination of the contractual relationship (but not the legal basis) may be omitted only where prohibited by law. If the PSU provides evidence that refutes the legal basis or reasons for the termination of the contractual relationship as stated by the FI, it is necessary to react to the complaint – the FI has to reassess the legality and reasonableness of its decision and to submit a response to the PSU, which should, among other things, clarify the PSU's right to lodge a complaint and/or to apply for out-of-court settlement of the consumer dispute with the Bank of Lithuania (in case of a negative response to the PSU).

4.4. Provision of payment services with restrictions, informing PSUs and ensuring access to financial services

There have been cases where FIs enter into business relationships to manage their ML/TF risk, but at the same time impose certain restrictions on the services they provide. This is considered good practice as it is a choice to manage the risks rather than to avoid them. However, it is important that the PSU is informed about the scope of the payment services to be applied to him prior to the opening of the restricted account, as provided for in Article 13 of the Law on Payments, as the terms of provision of payment services are essential for the PSU to choose the FI to which it should apply for the provision of these services. The proper exercise of the PSU's right to fair and full information during the pre-contractual and contractual relationship determines whether the payment service is in line with its legitimate and reasonable expectations as a customer. The FI must in such a case provide adequate information on the terms of the framework contract before the contractual relationship starts, i.e. disclose in as much detail as possible the scope of the applicable payment services, including whether the restrictions will apply for the entire contractual relationship, whether the PSU will have the possibility and in what cases to apply for the lifting of the restrictions, etc. The burden of proving that the PSU has been duly informed of the terms of the payment services lies with the FI.

We urge FIs to pay more attention to the accessibility of financial services: restrictions on payment services imposed on PSUs must be proportionate to the risk posed and must be communicated in a durable medium. It is intolerable that PSUs are unjustifiably denied access to payment services, even though they are the basis of everyday economic life. For example, the failure of an PSU to update the customer's identification information must not be allowed to restrict, without sufficient justification, all possible payment methods, i.e. removing the PSU's ability to make payments not only by using an online account but also by using a payment

card, withdrawing money from ATMs, if this is not necessary to comply with the requirements of the LPMLTF. In cases where the legislation does not prohibit FIs from providing payment services in full, restrictions should be applied gradually (e.g. initially only for online banking), in a **proportionate** assessment of the risks posed by PSUs and the actions that led to their application. Similarly, it should not be tolerated that the application of certain restrictions prevents PSUs from accessing their online account. Irrespective of the extent of the restrictions, the PSU should retain this right throughout the contractual relationship, i.e. to be able to log in to the online bank, **to view the information available there**, including the balance of his/her account(s), the applicable commission (e.g. service basket fee), the communication with the FI etc., **to contact the FI via the online account** (e.g. for payments that may have been improperly executed or unauthorised within 13 months from the date of the withdrawal of the funds in accordance with Article 36 of the Law on Payments, etc.), especially as the online account is often used as an identification tool for accessing other important portals, such as esveikata.lt, Sodra, the State Tax Inspectorate, etc.

4.5. On reporting to the Bank of Lithuania on termination or refusal to enter into a business relationship

Please be reminded that in accordance with Resolution No 03-10 of the Board of the Bank of Lithuania of 21 January 2019 "On Approval of the Rules on Operational or Security Incident Reporting to the Bank of Lithuania and Information Submission Templates"[10] (hereinafter – the **Resolution**) credit institutions are obliged to submit to the Bank of Lithuania a notification (REJECT form) of a decision to refuse to open a payment account for a payment and electronic money institution, to restrict the use thereof or to close it. This information must be provided to the Bank of Lithuania no later than 5 working days before the date of taking such a decision by completing the REJECT template and also attaching additional information, should it be relevant or important.

Although under the current regulation this information obligation is only imposed on credit institutions in the cases provided for in the Resolution, the Bank of Lithuania considers as a good practice cases when not only credit institutions, but also other FIs on their own initiative voluntarily provide the Bank of Lithuania with information on the decisions taken not to enter into a business relationship with a PSU and/or to terminate it due to the ML/TF risk unacceptable to the FI. It should be noted that the EBA Guidelines impose an obligation on all FIs (not only credit institutions) to document any decision to refuse to enter into a business relationship or to terminate such a relationship, including the reasons for such decision, and to be prepared to provide such decisions to the Bank of Lithuania upon request. Given that the Bank of Lithuania plans to transpose the above-mentioned EBA Guidelines in Q2 2024, FIs should prepare in advance for a review of their internal processes to ensure that such decisions are properly taken and documented.

5. On the change of the spending limit for payment transactions

The Bank of Lithuania receives complaints about the delay of the PSPs in taking a decision on the increase of the spending limit for payment transactions. The material of such complaints shows that in almost all cases of negative decisions, the PSPs did not explain the reasons for its decision, and in cases of delays in taking a decision, when the PSPs requested additional documents or information, it did not specify the time limits within which the decision would be taken after the submission of such documents or information. It should be noted that PSUs tend to apply for an increase in the spending limit **in cases of extreme urgency**, when they intend to carry out transactions that are larger than they could have done under the contracts concluded with the PSPs, and that the issue of an increase in the limit should therefore be dealt with in a rather expeditious manner.

We remind you that according to Article 33(1) of the Law on Payments, the PSP has the right to agree with the payer on a spending limit for payment transactions, provided that the consent to execute those transactions is given by means of a payment instrument for which a spending

[10] See https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/0e705c901e8111e9bd28d9a28a9e9ad9?jfwid=1azz9b1d0q.

limit can be set. Thus, the terms of provision of payment services must specify whether a spending limit can be agreed for payment transactions executed with a payment instrument (Article 13(3)(6) of the Law on Payments). In this context, the procedure for setting and changing the spending limit (e.g. when to apply, what must be submitted with the request, in which cases the PSP may refuse to change the limit, etc.) must be laid down in the framework contract for payment services between the PSU and the PSP. Although the legislation does not regulate the procedure for setting and changing spending limits, in the opinion of the Bank of Lithuania, if additional documents or information are required to make such a decision, the PSP must immediately inform the PSU thereof and specify the time limit for the submission of the requested documents or information and the period from the date of submission of the requested documents or information for the adoption of a decision. In cases where cost limits are set in accordance with the LPMLTF, clear information must be provided to the PSU (to the extent permitted by law) on the reasons for refusing to increase the cost limit. We recommend that information on the procedure for modifying the spending limit and the time limits for taking a decision be made available to the PSU not only in the contract but also on the PSP's website, in a clearly visible place.

6. On the application of the fee for enhanced monitoring of business relationships

The Bank of Lithuania has received complaints from PSUs regarding the practice of some FIs, which, in the opinion of the Bank of Lithuania, is flawed, i.e. the payment of a fee for the fulfilment of the obligation set out in the LPMLTF, i.e. the enhanced monitoring of business relationships. Such fees typically ranged from EUR 50 to EUR 150 for credit transfers to countries or crediting of payments received from relevant countries where there is a risk of sanctions or where the payment requires an enhanced screening procedure.

It should be noted that the LPMLTF establishes an obligation for FIs to put in place appropriate internal policies and internal controls relating to the implementation of international financial sanctions and restrictive measures (Article 29(1)(4) of the LPMLTF). FIs must ensure, through internal policies and internal controls, that the measures taken by them are in line with the requirements of legal acts and are proportionate for managing the risks associated with, *inter alia*, violations of international sanctions.

In accordance with paragraph 71 of the Money Laundering and/or Terrorist Financing Prevention Guidelines for Financial Market Participants approved by Resolution No 03-17 On the Approval of Money Laundering and/or Terrorist Financing Prevention Guidelines for Financial Market Participants of the Board of the Bank of Lithuania of 12 February 2015, financial market participants must ensure that designated staff responsible for the proper implementation of international financial sanctions, restrictive measures within the institution are adequately briefed on international sanctions legislation and its application, and that financial market participants have sufficient resources to identify possible breaches of international sanctions. Examples of bad practice are where FIs try to compensate for their statutory obligations by charging fees to PSUs for actions that the PSUs have not additionally ordered. According to the Bank of Lithuania, such fees do not comply with the definition of commission established in Article 2(15) of the Law on Payments, according to which the commission is the remuneration to be paid by the PSU to the PSP for the payment transaction and/or services related to it, or for the services related to the payment account, or related to these services. In the opinion of the Bank of Lithuania, such a fee is not directly related to the provision of payment services, but rather to the performance of mandatory statutory duties in the relevant licensed activity, and should therefore be included in the general costs of the provision of licensed services to FIs, rather than being separately distinguished and passed on to the PSU directly.

7. On the authenticity of possibly unauthorised payment transactions or the submission of evidence of payment transactions that have not been executed or executed properly

In the course of the examination of complaints from PSUs, it has been observed that the FIs are confused as to the interpretation of the obligations laid down in the Law on Payments with regard to the treatment of situations involving payment transactions that may have been

improperly executed or not authorised, and the taxation of the provision of certain evidence.

According to Article 51(5) of the Law on Payments, if a payment transaction is not executed or is executed incorrectly as a result of a payment order initiated directly by the payer, the payer's PSP must, in all cases, at the payer's request, **immediately take measures to trace the payment transaction and notify the payer of its results. The payer may not be charged a commission for this.** Thus, pursuant to Article 51 of the Law on Payments, the PSP, upon receipt of a payment order, is responsible for the proper execution of the payment transaction, unless the payer's PSP is aware of, and is able to confirm to both the payer and the payee's PSP, that the amount of the payment transaction has been received by the payee's PSP as provided for in Article 46 of the said Law.

Talking about the authorisation of a payment transaction, Article 37(1) of the Law on Payments stipulates that **where the payer denies having authorised an executed payment transaction or claims that the payment transaction was not correctly executed, it is for their PSP to prove** that the payment transaction was authenticated, accurately recorded, entered in the accounts and not affected by a technical breakdown or some other deficiency of the service provided by the PSP. Article 37(3) of the Law on Payments lays down that where a payer denies having authorised an executed payment transaction, the use of a payment instrument recorded by the payer's PSP or the payment initiation service provider as appropriate, is not in itself necessarily sufficient to prove either that the payment transaction was authorised by the payer or that the payer acted fraudulently or failed with intent or gross negligence to fulfil one or more of his obligations under Article 34 of this Law. The payer's PSP, including, where appropriate, the payment initiation service provider, **must provide supporting evidence** to prove fraud or gross negligence on part of the payer.

In light of these provisions, in cases where a PSU approaches an FI regarding a payment transaction that may not have been executed or authorised, the FI must investigate the situation and provide evidence, if any, of the proper execution of the payment transaction, or confirm the authenticity of the payment transaction, and prove the fraud or gross negligence of the PSU. If, in order to establish the circumstances of the authorisation or proper execution of the payment, the payer's PSP needs to obtain data from the payment initiation service provider, the payee's and/or the payee's PSP, etc., it should contact the persons indicated in order to obtain the relevant data. **No commission may be charged** for the examination of the situation itself and the provision of evidence to the PSU. It should be noted that PSUs, given the nature of the provision of payment services themselves, usually do not have any means to ascertain whether a payment transaction has been properly executed by the FI or whether the authenticity of the payment transaction has been confirmed. For this reason, the legislator has placed **the burden of proof** that a payment transaction has been improperly executed, not executed or not authorised **on the stronger party in this relationship**, i.e. the FI. It should be noted that the burden of proof mechanism in favour of the PSU in case the payer denies the authorisation of the payment transaction has also been emphasised by the SCL.[11] The Court of Cassation has recognised the shifting of the burden of proof to the PSU (payer) as a violation of the rule of allocation of the burden of proof for the authorisation of payment transactions and the provision of evidence of their execution. It is understandable that the FI incurs costs in carrying out investigations and collecting evidence, but it is not allowed to charge a commission for the performance of its statutory duties.

Moreover, the commission for conducting an internal investigation or providing evidence has a direct impact on the PSU's own decision to contact the FI in case of suspicion of an unauthorised payment transaction or doubts about its proper execution, especially where the amounts of the payment transaction are not large. Such taxation has a deterrent effect, preventing PSUs from defending their violated rights and legitimate interests, applying for reimbursement of the amounts of payment transactions that may have been unfulfilled, improperly executed or unauthorised, or for compensation for other losses. The relevant internal investigation is also important for the FI itself, as its results help to identify practices to be improved, potential errors, strengthen communication, and in the case of unauthorised payment transactions, to take timely action, additional security measures, to prevent possible unauthorised payment

[11] Ruling of the Supreme Court of Lithuania of 12 September 2023 in Civil Case No e3K-3-182-1075/2023.

transactions in the future, to implement additional fraud prevention measures, etc.

Sometimes it is not clear from the content of the PSU's request whether the request is a complaint about an unaccomplished payment transaction, a request for confirmation of a payment transaction or a request for clarification on the status or progress of a payment transaction. In such a case, the FI has to take the initiative to seek clarification of the PSU's objectives and to provide relevant information. Often, the provision of additional information, detailed explanations on the procedures for the execution of the payment transaction, especially in the case of cross-border payment transactions, helps to remove doubts about a payment transaction that may have been executed or not executed properly.

It is intolerable that the FI only takes the necessary actions (e.g. to investigate the situation and provide evidence to support the proper execution or authentication of the payment transaction, the payer's dishonesty or gross negligence) when the PSU approaches the Bank of Lithuania with a complaint or a request for dispute resolution. It should be noted that the legal acts regulating the activities of the Bank of Lithuania[12] oblige the PSU approaching the Bank of Lithuania to first submit a complaint to the FI – the PSU must attach to the complaint submitted to the Bank of Lithuania the response to the complaint received from the FI. The Law on Payments sets clear requirements for the content of the FI's response to the PSU's complaint – the response must be complete, reasoned and documented. Thus, the reasons for granting or denying the claims raised in the complaint and the provisions of the legislation on which the FI relied in its decision-making process must be fully clear not only to the PSU submitting the complaint, but also to the Bank of Lithuania which examines and assesses the documents submitted. However, there are still cases when not only the response submitted by the FI does not comply with the requirements laid down in the Law on Payments (more on this in paragraph 1 of this Letter), but also the situation is opened for investigation and evidence is collected only after the Bank of Lithuania informs the FI of the complaint received and asks for explanations on the facts stated therein. When informing the PSU of one or other of his decisions on these matters, the PSP must have ascertained all the circumstances, have evidence to support its decisions and submit it together with its decisions. In addition, FIs often adopt a strict defensive stance when providing explanations to the Bank of Lithuania, despite the fact that the PSU's claims are clearly justified. We encourage FIs to try to reach an amicable settlement, to address in good faith any possible breaches of legislation or shortcomings in their operations, even during the examination of a complaint at the Bank of Lithuania.

8. On the cancellation of payment orders or tracing procedures in cases of fraud[13]

Financial fraud has become one of the most pressing problems in the financial sector (payment services) in recent years and its proper management and prevention is one of the biggest challenges for PSPs. Therefore, procedures for cancelling or tracing payment transactions are becoming a matter of particular importance. In such cases, not only the prompt action of the payer's PSP to stop the fraudulent payment, i.e. to reverse it, but also the prompt response of the PSPs involved in the whole chain of the payment transaction, i.e. the payment initiation service providers, the payee's PSP, etc. are crucial.

The Bank of Lithuania has received information that the payer's PSPs are facing situations where, when they contact the FI involved in the payment chain, including the payee's FI, a response is received after several days or not at all. This results in a loss of opportunity to prevent a criminal offence and a loss to the individual. In the opinion of the Bank of Lithuania, financial fraud should be one of the priority areas to which each FI should pay due attention, continuously analyse the procedures in place, modify them and improve them. This is the only way to ensure the confidence of PSUs in payment services and PSPs, the security of consumer funds, and the security of the provision of payment services themselves. The Bank of Lithuania recommends to all FIs providing payment services to:

[12] Republic of Lithuania Law on the Bank of Lithuania, paragraph 15 of the Rules on the Processing of Requests and Complaints from Individuals and Provision of Services at the Bank of Lithuania, approved by Resolution No 03-76 of the Board of the Bank of Lithuania of 8 May 2014 (see https://www.e-tar.lt/portal/lt/legalAct/c17640d0d9d911e3bb00c40fca124f97/asr).

[13] The revocation or tracing of payment transactions is regulated in Articles 44 and 51 of the Law on Payments.

1) Ensure the availability of PSPs, including providers of payment initiation services, outside working hours, including weekends, allowing PSUs to inform PSPs about cases of fraud, the possibility to block not only the payment card, but also the access to the payment account, to initiate the procedure of cancellation of a payment order, etc.;

2) The PSP should indicate to the PSU how it can report fraud and/or request cancellation/recovery of a disputed payment transaction in the framework contract and/or in other ways that are easily accessible and clearly visible to the PSU;

3) Ensure that PSUs are able to contact the PSP promptly, by creating a separate channel and/or a clear and quick way for PSUs to contact the PSP in cases of fraud and/or to request the reversal of a disputed payment transaction (e.g. a separate telephone number, a call function, etc.);

4) all PSPs to cooperate expeditiously, including the exchange of best practices, to prevent fraud, including stopping or cancelling a payment transaction, seeking to recover or trace funds to a PSU;

5) Not to limit themselves only to standard processes, and look for all possible ways to assist PSUs in recovering the funds, i.e. to immediately inform the interested parties through all possible channels of the information provided by the PSU on a potentially fraudulent payment, irrespective of the expiry of the time limit of the irrevocability of the payment order, etc.

9. On the status of funds of a payment transaction made by payment card as "reserved funds"

In the course of handling complaints from individuals and disputes between consumers and PSPs, it has been observed that PSUs lack information on the part of the execution process of payment transactions initiated by payment card, where the funds of such payment transactions are displayed as reserved in the PSP's system. When a PSU sees the status of an ongoing payment transaction as "reserved funds", he has the expectation that the payment can still be stopped or cancelled, despite the fact that the PSP's system is already displaying a reduced balance. This is particularly important in the event of fraud against the PSU. When a PSU, who has found himself in such a sensitive situation, receives a response from the PSP that the funds cannot be recovered, there is a great deal of dissatisfaction with the PSP. The PSU feels that the PSP is acting unfairly and illegally because the status of the funds in the PSP's system at the time of contacting the PSP was "reserved funds". In view of this, the Bank of Lithuania recommends the following:

1) To provide an explanation of the term "reserved funds", including information on whether it is possible to recover these funds, as clearly, comprehensibly and prominently as possible (e.g. in an internet bank, at a specific payment transaction or other easily visible place; on the PSP's website, etc.);

2) To provide an explanation of the concept of "reserved funds" when providing answers on the absence of the possibility to suspend or cancel a payment transaction made by payment card;

3) the payer's PSP must provide the PSU with clear information on how a payment transaction made by payment card is executed, i.e. when such payment is deemed to have been made, confirmed or settled, what actions the PSU can take to suspend or cancel a payment transaction made by payment card and when.

10. On problems related to ATMs

The Bank of Lithuania has received complaints from PSUs related to ATM operations. The most frequent complaint from PSUs was about funds not being dispensed at the ATM, even though they had been debited from the account. It should be noted that FIs are obliged to ensure smooth and clear procedures for dealing with such cases, which sometimes affect PSUs. There have been cases where the FI had reasonable evidence that funds had been debited from the PSU's account but not dispensed at the ATM, but delayed for a month in returning them. There should be no such cases. The issue of funds not dispensed at the ATM (but debited from the account) should be dealt with as quickly as possible and, if the PSU's claim of non-dispensing is found to be justified, the funds should be returned to the PSU immediately, i.e. without being withheld. Similarly, PSUs should not be left in the dark as to when they will be able to recover funds that have been withdrawn but not dispensed by an ATM. The FI must

fully inform the PSU, i.e. To specify the time limit, the duration of the case, the steps to be taken if the ATM has not dispensed the funds, etc.

11. On the control of the activities of electronic money institutions and intermediaries of payment institutions and e-money distributors

The Bank of Lithuania receives applications from PSUs regarding the legal relationships related to the services provided by FIs – electronic money institutions and payment institutions – through intermediaries and/or e-money distributors (hereinafter collectively or individually – the **partners**). It has been observed that complainants about certain actions of FIs are often confused as to which FI is providing the payment services or to whom the FI partner is intermediating.

Often the partners themselves provide contradictory or even misleading information when responding to PSUs' queries or complaints (e.g. not up-to-date contact details, if they represent several FIs, giving the wrong name of the FI, providing untrue information about the competent supervisory authority). Responses provided by partners are often unreasoned, incomplete and undocumented. As a result, not only is the PSU unclear about the circumstances, their assessment and the reasons for not satisfying the PSU's claims or satisfying them only partially, but also the Bank of Lithuania, having received a complaint from a PSU regarding the FI's actions, has to contact the FI in order to find out about the services provided by the FI, the scope and the content of those services, the role of the partners, the cooperation, and the allocation of responsibilities.

Please note that the Bank of Lithuania has warned FIs in a public message[14] about the responsibilities, possible consequences and necessary control measures when partners or electronic money distributors are used in their activities. The FI must ensure that information on the terms of provision of payment services is provided in such a way that the PSU easily understands to whom he is bound by the legal relationship with regard to the provision of payment or other services and is not misled (especially in cases where the FI provides some services on its own behalf and others through intermediaries). A clear understanding of the entity providing certain payment services, the scope and content of the services, and the role of the entities involved in the provision of the services is essential for PSUs in exercising their right to complain about the actions of a particular entity. A PSU who does not understand the legal relationship with the entity to which he is bound is prevented from effectively exercising his right of defence by properly identifying the name of the person whose actions he wishes to challenge, the party to the dispute, and even the competent authority that can handle his complaint or dispute.

As FI partners are usually used as the first line of customers support for an existing or potential customer requesting services, communications with PSUs, including pre-contractual communications, should focus on the entity providing the specific payment services. It is equally important that the responses of the FI's partners to the PSU make it clear on whose behalf the partners are acting. **It is the responsibility of the FI itself to ensure that the communication with customers, the content and the timing of the responses to them comply with the requirements laid down in the legislation**, including the requirements of Article 90(1) of the Law on Payments for a detailed, reasoned and documented response within 15 working days.

It was noted that the terms of provision of payment services and/or the framework contracts for payment services contain not only the contact details of the FIs but also of the partners. It happens that the PSU may additionally contact the FI itself if he does not agree with the partner's reply. Situations where the PSU, having received a reply from a partner acting on behalf of the FI, has to contact the FI to review and/or appeal the response should be avoided. The responsibility for the response provided, as well as for the situation arising from the possible incorrect resolution of a payment service provision issue and the resulting damages, lies with

[14] See for more details: https://www.lb.lt/lt/naujienos/lietuvos-bankas-atsakomybe-uz-pasirinktu-tarpininku-ir-el-pinigu-platintoju-veikla-tenka-paciai-finansu-istaigai.

the FI itself.

It should be noted that the Bank of Lithuania is authorised to deal with complaints from PSUs and consumer disputes out-of-court only in relation to financial services provided by financial market participants under its supervision. In addition, the services provided by FIs and/or their partners to PSUs that are not considered financial services (e.g. premiums, bonuses granted by FIs, etc.) are not supervised or assessed by the Bank of Lithuania. Therefore, FIs should not mislead PSUs and offer them to contact the Bank of Lithuania for services which are not supervised by the Bank of Lithuania and for which the Bank of Lithuania is not empowered to deal with complaints and consumer disputes.

It should be noted that disagreements between FIs and partners or the termination of contractual legal relationships also affect the relationship with the final recipients of the services, i.e. the PSUs. In order to avoid potential damage to PSUs and their legitimate expectations and interests in the provision and quality of payment services, we recommend that FIs choose their partners responsibly, prepare scenarios for possible situations that could affect PSUs, and actively communicate and cooperate with their partners in order to find solutions that mitigate the potential negative impact on the interests of PSUs. In the event of failure by partners to fulfil the obligations under the cooperation and/or partnership agreements, the FI assumes liability for the PSU of its customers.

Please note the requirements of the above-mentioned legal acts, the recommendations of the Bank of Lithuania and take measures to ensure that the expectations set out in this letter are met, and that FIs comply with the requirements of the legal acts governing their activities and the best practice examples.

FIs are always solely responsible for their full compliance with the requirements laid down in the legal acts governing the activities of FIs.

There is no need to reply to this letter from the Bank of Lithuania.

Vaidas Cibas Director