

Regulation of the activities of payment institutions (PIs) and electronic money institutions (EMIs) licensed in the Republic of Lithuania through third parties, including agents, distributors, outsourcing, and white labelling

BEST PRACTICE AND RECOMMENDATIONS

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Purpose of the presentation

To present the regulation of the activities of PIs and EMIs through third parties, including agents, outsourcing, and white labelling, and to review best practices and share recommendations.

Plan of the presentation

- I. Legal regulation through cooperation between PIs/EMIs with third parties.
- II. Issues related to the activities of PIs/EMIs through third parties.
- III. Examples of best and bad practices when operating through third parties.
- IV. Agent control of money laundering and terrorist financing prevention (AML/CTF).

I. LEGAL REGULATION OF PIs/EMIs IN COOPERATION WITH THIRD PARTIES

Types of cooperation between Pls/EMIs and third parties

Execution of PI/EMI activities through:

- Agents
- Distributors
- Outsourcing
- While labelling

Legal regulation

EU legislation

1. Directive (EU) 2015/2366 – PSD2
2. Directive (EU) 2009/110/ EC – EMD2

Republic of Lithuania laws

1. [Law](#) on Electronic Money and Electronic Money Institutions
2. [Law](#) on Payment Institutions
3. [Law](#) on Payments
4. [Law](#) on the Prevention of Money Laundering and Terrorist Financing

Resolutions of the Board of Lietuvos bankas

1. [Rules](#) for Managing the Public List of Electronic Money and Payment Institutions, approved by the Board of Lietuvos bankas (LBV) by Resolution No. 246 of 30 December 2009
2. [Description](#) of the procedure for submitting and reviewing notifications of intent to issue, distribute, and redeem electronic money, and provide payment services in other member states, approved by the Board of Lietuvos bankas (LBV) by Resolution No. 245 of 30 December 2009
3. [Description](#) of requirements for electronic money institutions and payment institutions regarding internal control, risk management, and safeguarding of received funds approved by Resolution No 03-106 of the LBV of 23 July 2020
4. [Rules](#) on the outsourcing of operational functions of financial market participants approved by Resolution No 03-166 of the Board of Lietuvos bankas of 10 November 2020
5. [Guidelines](#) on the prevention of money laundering and/or terrorist financing for financial market participants approved by Resolution of the Board of Lietuvos bankas No 03-17 of 12 February 2015

EBA guidelines

- 1) [EBA Guidelines](#) on outsourcing arrangements
- 2) EBA [Guidelines on ML/TF risk factors](#)

Other

- 1) LB letters of expectations
- 2) Information on www.lb.lt (messages, FAQs, [recommendations section](#), etc.)

Use of agents

- **Agents** are used in cases where a payment institution intends to **provide payment services through an agent** (Article 18 of the Law on Payment Services).

- *Payment services are listed in Annex I to the PSD2.*

- The agent acts **on behalf of the PI/EMI**.

- Agent involvement: **acceptance of customer funds**, initiation of payment.

Preamble to the PSD3 proposal

“<...>marketplaces and platforms supported by payment service providers that provide services to those marketplaces and platforms so that they do not have control or possession of funds for third parties, should not be considered to be by default agents of the payment service providers.”

Example where a third party does not meet the definition of an agent

Where a PI or an EMI uses third parties only to direct customers to the PI/EMI and **all payment service activities are performed by the PI/EMI** (i.e. the third party only “brings in” the customer), such third parties are not classified as agents.

Outsourcing

- **Outsourcing** is used when the **performance of the operational functions** of payment services is delegated, i.e. to perform a part of the payment service to the payment institution (Article 19 of the Law on Payment Services).
- The external entity shall act **on its own behalf**.
- **Only licensed entities may provide payment services.**
- The institution must have an organisational structure and not **become an empty shell** (Board Resolution 03-166, p. 25).

Distributor definition

- The current legislation does not provide a clear definition of the term “distributor.”
- According to the EBA Opinion on agents and distributors of April 2019, **a distributor used by an EMI is a person who distributes or redeems e-money on behalf of an EMI.**
- To revise PSD2, the European Commission proposes a definition of a distributor that is identical to the approach taken by the EBA. In negotiations, there is a tendency to merge the concepts of intermediary and distributor.

What is the main difference between a PI/EMI agent and an EMI distributor?

- According to the definition of “agent” in Article 2(5) of the Law on Electronic Money and Electronic Money Institutions, “EMI agent” means a natural or legal person, another organisation or its subdivision providing payment services on behalf of an electronic money institution.
- The main difference between these entities is that PI/EMI agents have the right to provide payment services on behalf of licensed PIs and EMIs, while distributors cannot provide payment services. They have the right to distribute and redeem e-money on behalf of the licensed EMI.

Peculiarities of cooperation of PIs and EMIs with third parties under the applicable legislation

	Operate in the name of a PI/EMI	Responsibility for compliance with regulatory requirements	Public register requirement	Scope of possible functions through third parties	Obligation to disclose the actual service provider to the customer
Agents	YES	NO, PIs/EMIs responsible	YES	Unlimited scope of the licence held by PIs/EMIs. PI/EMI manages internal control systems and carries out checks on agents.	YES
Distributors	YES	NO, PIs/EMIs responsible	Distributors NO	Distribute and redeem e-money. It is forbidden to issue e-money. EMI manages internal control systems and carries out inspections of distributors.	YES
Outsourced	NO	NO, PIs/EMIs responsible	NO	Restricted in the case of important functions, if this would significantly impair the quality of internal control of PIs/EMIs and Lietuvos bankas' ability to monitor and establish compliance of PIs/EMIs with all obligations laid down in legal acts.	NO

Judgment of the Court of Justice of the European Union (CJEU) in Case C-661/22, dated 22 February 2024

- In paragraph 47 of its judgment, the Court of Justice held that “... *it may be inferred from that definition of electronic money provided in Article 2(2) of Directive 2009/110 that the issuance of electronic money is distinct from the mere entry in a payment account in that, inter alia, before being used for the purposes of such a payment, such money must be electronically ‘stored’, which implies that it has been issued beforehand, that is to say, **converted into a monetary asset separate from the funds received**, and that its use as a means of payment is accepted by a natural or legal person other than the electronic money issuer.*”
- In paragraph 48 of the judgement, the CJEU clarifies that “...*within the meaning of Article 2(2) of that directive, it is at the very least necessary that there be a contractual agreement between the user and the electronic money issuer under which those parties expressly agree that that issuer will issue a separate monetary asset up to the monetary value of the funds paid by the user.*”
- *However, transferring and holding funds on a payment account without immediately mandating payment transactions up to the value of those funds does not mean that the user of the payment service has given his, her or its express or tacit consent to the issuance of electronic money.”*

II.

PROBLEM OF PI/EMI ACTIVITIES THROUGH THIRD PARTIES

Problems of activities through agents and distributors 1/3



Problems of activities through agents and distributors 2/3

PIs/EMIs **have not drawn up procedures** and policy descriptions, rules, etc. that detail the supervision of agents in line with the requirements of legal acts.



Agents **are not properly familiarised** with the **internal control** procedures of PIs/EMIs. **PIs/EMIs do not ensure** adequate **control** and evaluation of the agent's activities



PIs/EMIs' internal procedures **do not regulate** how the suitability, and **admissibility assessment** of the agent is to be carried out



PI/EMI **plans** – to expand their activities through agents, but for this, PIs/EMIs **are not adequately prepared**



Decisions are made by one person or at group level (*without taking into account differences in agent models in other jurisdictions – UK, Asia, USA, etc.*)



Improper safeguarding of customer funds



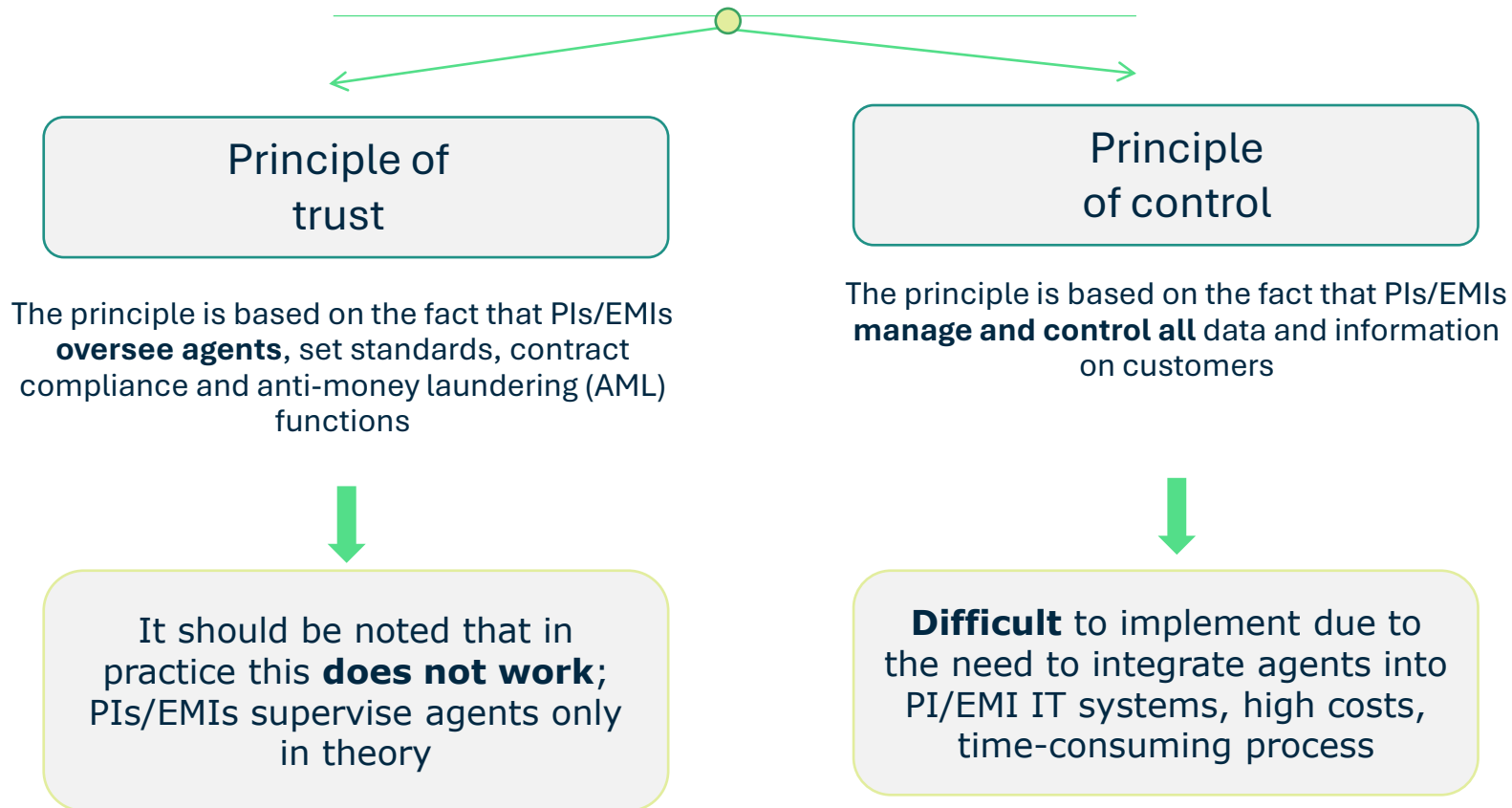
PIs/EMIs **do not have internal procedures in place** or they are incomplete (*lack of information on cooperation with agents, information exchange, dispute resolution*)



No assessment of the functions delegated by the agent to third parties

Problems of activities through agents and distributors 3/3

ACTIVITIES THROUGH AGENTS



In some cases, **PIs/EMIs consider** agents or distributors **as their customers** and actual customers – as end-users. This approach is incorrect as the customers attracted by the agent are PI/EMI customers and, in the case of activities through agents, end-users are **customers of PIs/EMIs**.

White label problem 1/2

This is a broad concept covering third-party cooperation with licensed PIs/EMIs.

Under this model, PIs/EMIs form a White-Label Partnership Agreement with a business partner, on the basis of which the business partner attracts a larger number of customers through its website, app, or other similar solutions.



In some cases, PIs/EMIs operate using different models, e.g.:

- 1) marketing through the partner, where the customer only reaches the PI/EMI environment and receives payment/e-money services from the partner's environment;
- 2) PIs/EMIs are provided with certain technical (IT) solutions that help other PIs/EMIs to provide payment services;
- 3) PIs/EMIs operate through agents and/or distributors and an agent and/or provides payment services and/or distributes e-money.



It is noted that these three options overlap in the activities of PIs/EMIs; therefore, Lietuvos bankas assesses each case individually, as different compliance problems (passporting, outsourcing, activities through agents) may be created.

Lietuvos bankas notes that certain models, which, according to Lietuvos bankas' assessment, should be considered as mediation relations, are not declared.



Differences between white-label and agent activities

- The PI/EMI partner does not provide payment services and/or e-money services on behalf of the PI/EMI.
- The PI/EMI partner does not have access to customer accounts, payment transactions, and to the on-line banking system of the PI/EMI (the customer interface) at any stage of the provision of the service.

The following actions cannot be performed by the PI/EMI partner

- Conclude a contract for the provision of payment services with customers – **the agreement for the provision of payment services is concluded only between PIs, EMIs and the customer.**
- Establishing business relations with clients, opening payment accounts for customers, and making related decisions (**decisions are taken by the PI/EMI**), the partner participates only in the stage of collection of information from the client and its transmission to the PI/EMI.
- Perform customer knowledge, risk assessment, other customer due diligence actions, and make decisions related to this or any other compliance issues, including decisions on the execution of payment transactions, suspension, investigation, etc. (*those decisions are made by the PI/EMI*),⁹

III.

BEST AND BAD PRACTICE EXAMPLES FOR ACTIVITIES THROUGH THIRD PERSONS

Best practices through agents and distributors

PIs/EMIs **before the start** of operations through agents

Prepare internal procedures for the control of agents and ensure their effective implementation

Understand the risks and liabilities, assess and manage them

Applying to Lietuvos bankas for a change in the business model

Assess AML/CTF and other compliance risks, design appropriately tailored controls (e.g. appropriate organisational structure, internal control framework or assessment of financial impact on institutions, risk assessment)



Accept responsibility, possible consequences, and apply the necessary control measures

Address Lietuvos bankas regarding the inclusion of an agent on public lists

Bad practices through agents and distributors

PIs/EMIs start operating through agents without having entered them on public lists

PIs/EMIs operate through agents, although this was not foreseen in the original business model

PIs/EMIs start their activities through agents in other Member States without having completed the notification procedure

PIs/EMIs treat agents as their customers, not end-users

PIs/EMIs do not control data/information, such as: number of end-users, names, amount of funds to be protected, liabilities

PIs/EMIs have not established the liability of agents for non-performance or improper performance of contractual obligations

PIs/EMIs outsource most of the functions to the parent company or other group companies and do not control the process themselves

PIs/EMIs do not have a wind-down plan

PIs/EMIs publish inaccurate or misleading information on their website regarding their activities through agents (there are cases where such information is also published on the agent's website)



PIs/EMIs do not have a customer complaint handling process in place

Examples of activities through agents and distributors 1/2

I. A PI/EMI licence
“leasing” model in which an agent or distributor actually acts as an PI/EMI, falls within the definition of an agent or distributor.

II. II. Commercial partners or trading platforms that only attract customers but do not receive funds do not fall under the definition of an agent.

III. PIs/EMIs at points of sale accept cash from customers through agents or customers pay for utilities

Agents collect client funds into their accounts and then transfer them to PIs/EMIs

Included in the definition of mediation

Client funds are collected directly to a PI/EMI account

The technological solution does not fall within the framework of mediation

IV. IV. PI/EMI brokerage funds (advance, reserve, deposit) intended for future client payments are kept in client funds safekeeping accounts

These agent funds are intended to manage the risks associated with the agent’s activities and cannot be held as client funds and held in a client funds safekeeping account*

* The institution held in the same account not only the funds of the clients, but also the funds of the agents, which were intended for the execution of future payment card payments of the customers of the institution. At the request of the institution, the partners held these funds to reduce settlement risk.. These funds did not yet have the characteristics of e-money, i.e. they were not intended for payment transactions.

Examples of activities through agents and distributors 2/2

V. The various AML procedures provided by an “agent” to assist PIs/EMIs in carrying out their activities fall outside the definition of “agent” and are treated as outsourcing.

VI. Card distribution (now part of distribution) definition, which will most likely later fall within the definition of mediation).

“<...> marketplaces and platforms supported by payment service providers that provide services to those marketplaces and platforms so that they do not have control or possession of funds for third parties, should not be considered to be by default agents of the payment service providers.”



VII. agents’ access certain PIs’/EMIs’ data or perform certain actions via APIs



e.g. see turnover for the purpose of calculating commission, but only attract (bring in) the client – not treated as an agent



e.g. payment initiation that takes place in an e-commerce environment for the execution of payments (when an agent acquires funds, then falls under the definition of intermediation, if it does not acquire – does not)

Best practices and recommendations 1/3

- *PIs/EMIs **should be** fully **self-assessed** and have a justification **for assigning their intended business model** to activities through agents, activities through distributors, outsourcing, and white labelling, and **be able to provide a schematic (visual)** representation of the intended business model.*
- *Before engaging a new business partner (agent or distributor), PIs/EMIs **should carry out** an in-depth analysis of the potential agent, distributor, assess its organisational structure (employees, actual place of business), internal control system, as well as carry out an internal **assessment of the reputation of the** agent or distributor's **managers** and assess **the potential risks** to the PIs/EMIs and their reputation arising from the use of agents or distributors.*

Best practices and recommendations 2/3

- *PIs/EMIs **should have anticipated** actions, an **action plan**, to be taken **in case** the agent or distributor used does not **act in accordance with** the statutory **requirements** and the internal procedures or rules applied by the institution, in relation to the activities of the agent and distributor on behalf of the institution.*
- *PIs/EMIs, through new agents or distributors, **should assess** whether and what changes will be required in the **organisational structure** of the institution by allocating functions to existing employees, **whether the existing employees of the institution will be sufficient** to ensure adequate internal control of activities through agents and distributors, as well as **how many and what posts** are planned to be allocated with a view to increasing the number of agents or distributors used.*

Best practices and recommendations 3/3

- *PIs/EMIs intending to act through agents or distributors **should be prepared for internal procedures** or processes related to the selection of agents or distributors, cooperation processes, which should include **how and according to which criteria** agents or distributors will be **selected**, **how cooperation will take place**, **how information will be exchanged**, **how disputes** would be **resolved**, **how consumer interests** would be **enforced** in case of **termination** of the **business relationship** between the institution and the agent or distributor, etc.*
- *PIs/EMIs, through agents, **should be prepared** to provide a **description of the training process** for mediators, clearly indicate the frequency with which the institution plans to organise training for mediators, **how many human resources** are planned to be allocated, if necessary, to the provision of training and advice for mediators, etc.*

IV.

CONTROL OF AGENT ACTIVITIES IN THE FIELD OF AML/CTF

Control of the activities of agents: Instructions and EBA Risk Factors Guidelines

Requirements relating to the control of agents' activities in the context of AML/CTF

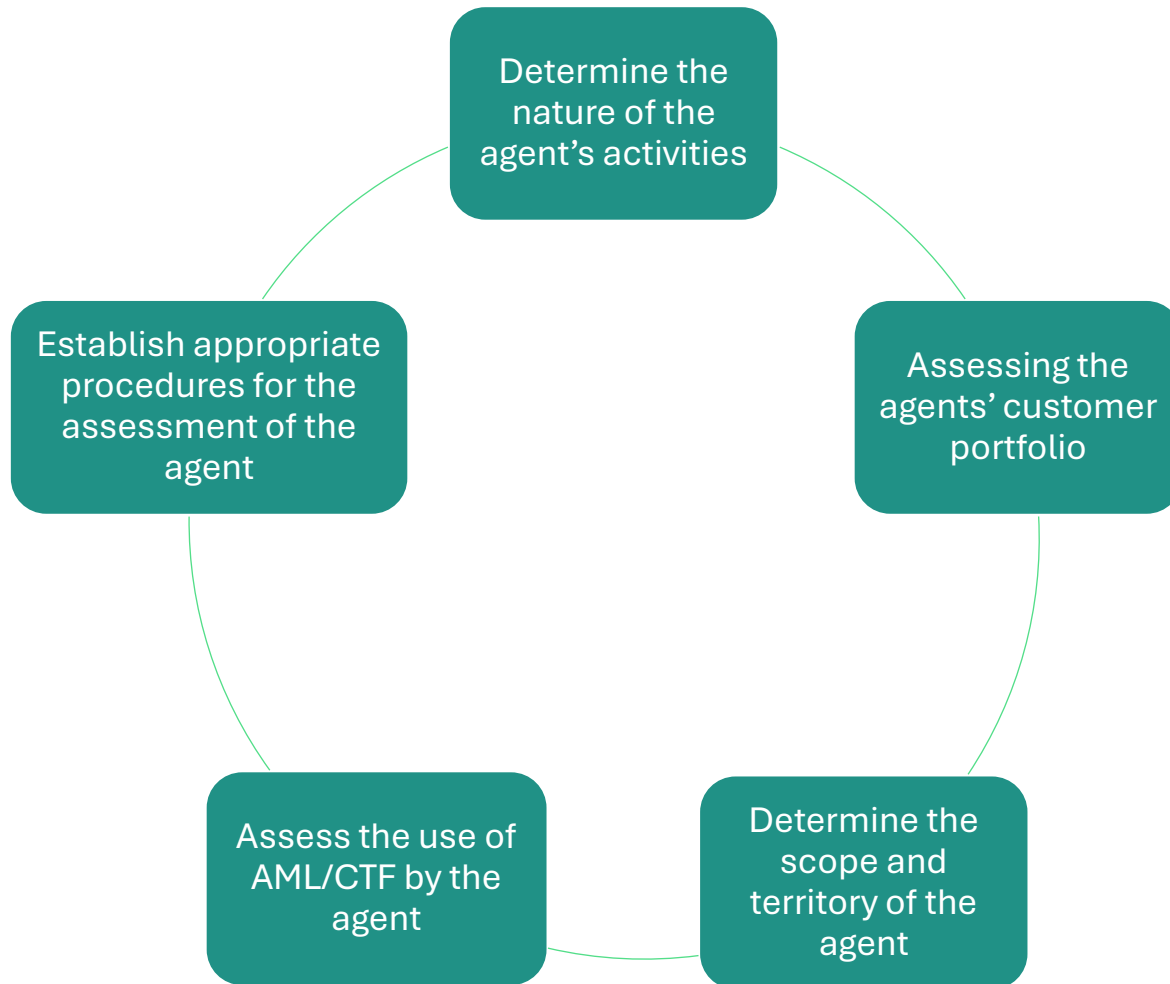
[Instructions](#) to financial market participants to prevent money laundering and/or terrorist financing

CHAPTER X
Control of agent activities

EBA Risk Factors [Guidelines](#)

Sub-paragraph 11.16

Appropriate assessment of the agent



A comprehensive and thorough agent AML/CFT risk assessment process has been established in the financial institution.

The internal control procedures of the financial institution shall be adequate and sufficient and shall clearly govern the assessment of the agent.

Other risk management measures apply when significant ML/TF risks are identified

Agent assessment: Examples of bad practices

- No sufficient assessment of the activities of agents.
- The agent's customer portfolio is not investigated.
- Incomplete assessment of the AML/CTF procedures and arrangements for agents.
- The agent's readiness to manage potential ML/TF risks that may arise from the specific nature of their own services is not assessed.
- The effectiveness of agent processes in practice is not assessed.
- The internal procedures do not specify how the assessment of the suitability and appropriateness of the agent is to be carried out.
- There is no comprehensive and continuous process for supervising the activities of agents.
- The weaknesses identified are not adequately addressed.
- If deficiencies are identified during the agent assessment, no immediate action is taken.

Thank you for your attention

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