



**EMERGING PAYMENTS**  
— ASSOCIATION —

# PASSPORT TO THE FUTURE

**Options for regulated  
companies if the UK loses  
passporting rights**

**A report for the EPA by**

Peter Howitt, Ramparts European Law Firm  
and David Parker, Polymath Consulting

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# Introduction from the **EPA'S DIRECTOR GENERAL**

## Payments matters

HM Treasury estimates the UK FinTech market employs 60,000 people and is worth £6bn to the UK economy. FinTech is part of the UK's financial services sector that employs 1.9 million people and contributes 10% of the UK's GDP. Payments represents over 40% of financial services in revenue terms and in 2016, 40% of all FinTech investments were in payments companies, amounting to £10bn globally. Payments is important to the UK economy.

And the UK's payments industry is world-leading. It delivers innovative products and services that are disrupting the incumbents by solving the payments problems of consumers, companies and institutions. These products and services are created by companies in the UK which, armed with passporting rights, can sell them across the other 27 EU countries.

## What happens if the UK leaves the EU?

Following the UK's referendum in June 2016, however, the UK is likely to leave the EU. When it does so it could lose its passporting rights to the European single market. Without such rights or something equivalent to them, many payments companies will be unable to deliver products and services across the European Economic Area (EEA).

## Does passporting matter?

The FCA reports that UK companies have 336,421 passports held by 5,500 UK registered companies.

The EPA's members believe the removal of passporting rights will have a significant negative impact on FinTech, payments and the UK economy. In a survey of members in late 2016, 94% of EPA members stated that the preservation of passporting rights should be a high or very high priority in the UK government's negotiations with the EU regarding Brexit. 88% of EPA members stated that

passporting rights were important or very important to their current businesses. And over 91% of EPA members believe that passporting is important or very important to the UK's FinTech sector and its continued growth.

The importance of the UK's access to the single market cannot be underestimated. So the EPA is actively supporting the government in making the case for why UK companies should receive the same, or equivalent, rights to do business across the EEA as they do at present.

## What happens if passporting rights are lost?

But once the UK has left the EU, what will happen if passporting rights are lost and it becomes impossible for UK regulated companies to deliver payment services across the EEA from the UK? First, these companies will seek to replace their EU trade with exports to non-EU countries. To assist with this, the EPA's Project International Trade sets out to create corridors of trade with non-EU markets. This project is endorsed by Boris Johnson, the UK's Secretary of State for Foreign and Commonwealth Affairs.

Second, if these companies want to continue doing business in Europe they will need to become authorised in another EEA country from which they can sell across the remaining 26 countries. This could see the flight of some or part of the 5,500 licensed companies abroad and have a significantly negative impact on the UK economy. But is this a real option for companies? And if so, where do they go?

## What are the options?

The EPA has carried out an in-depth analysis of European markets to assess the most viable options for companies seeking to become authorised in the EEA given that the UK may be outside it. Several countries are 'laying out their stalls' already, seeking to attract UK FinTech companies to their shores. But their recommendations are not objective and the stakes are high.



So this report sets out to answer this question: 'If it is necessary to set up a new regulated entity somewhere inside the EEA but outside the UK, which countries should UK- and Gibraltar-based companies consider?'

### Contributors

The report has been produced by Ramparts European Law Firm in association with Polymath Consulting. It has been funded by a syndicate of EPA Members including lead sponsor Railsbank and other sponsors Payment Cloud Technologies, Saxo Payments, Choice Bank, Stored Value Solutions, Wirecard Group and IDT Finance.

We are grateful for the input of many parties, including those in the 15 countries reviewed which has made this report possible. The project would also not have been possible without the support of the EPA Project Europe Team, led by Andrea Dunlop from Paysafe Group.

### A passport to the future

This report provides members of the EPA and the wider FinTech community with a guide to use if the UK's departure from the EU denies them passporting rights. While likely to have a negative impact on its economy, the report shows that there are alternatives that payments companies based in the UK can go to ensure Brexit's negative impact on payments companies is minimised.

Tony Craddock, Director General  
Emerging Payments Association

[www.emergingpayments.org](http://www.emergingpayments.org)

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# Report **AUTHORS**

## **RAMPARTS**

Ramparts is a European law firm based in Gibraltar and in the UK. It specialises in UK, Gibraltar and EU-wide legal, commercial and regulatory issues. Ramparts provides support in the financial services (e-payments & cryptocurrency, blockchain, finance & funds), electronic commerce (including for e-merchants and e-gambling operators) and technology sectors. Its clients include individual entrepreneurs, early stage and growth innovation companies as well as major publicly listed multinationals.

### **For more information, contact:**

[www.ramparts.eu](http://www.ramparts.eu)  
[peterhowitt@ramparts.eu](mailto:peterhowitt@ramparts.eu)  
Twitter: @ramparts\_law

## **POLYMATH CONSULTING LTD**

Polymath Consulting works across e-money and emerging payments supporting companies in Europe, Africa and the Middle East. It provides consulting support covering: proposition development, market entry strategy, risk and fraud review, project management and card implementation along with RFP management to BIN sponsors, processors and programme managers.

### **For more information, contact:**

[www.polymathconsulting.com](http://www.polymathconsulting.com)  
[davidparker@polymathconsulting.com](mailto:davidparker@polymathconsulting.com)  
Twitter: @davidpolymath



## **Report Disclaimer**

The information contained in this report has been gathered through desk research and interviews by the authors. It has been obtained in good faith and is the current understanding of the authors and the EPA. Information in this report may quickly become out of date as governments and regulators move to adapt to changing circumstances and opportunities. No information in this report should be used for investment or other financial transactions. The authors and the EPA do not warrant the accuracy of any information provided and anyone using the information in this report to make financial or other decisions should carry out their own independent research to verify any information provided in this report. The sponsors of the report have not imposed or requested any restrictions to the final report.

## THE EMERGING PAYMENTS ASSOCIATION

### Collaborate to Innovate

The Emerging Payments Association (EPA) is a commercial membership association of payments industry influencers. The EPA sets out to establish the UK as the global hub for payments innovation and to be the most influential trade body in payments.

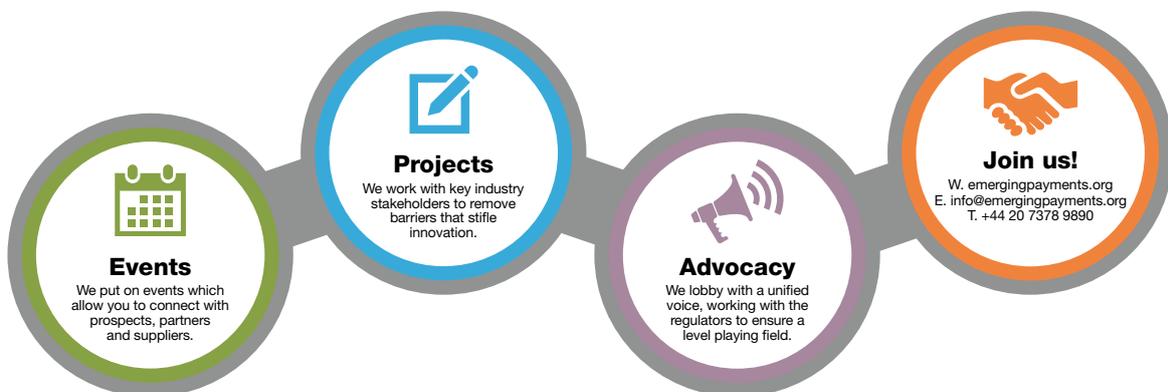
Since 2004 the EPA has been instrumental in connecting the payments eco-system, encouraging innovation and delivering profitable business growth for its 100+ member companies that transact over £100bn of payments annually. With help from its independent advisory board and member volunteers, the EPA delivers a comprehensive programme of activities including conferences, seminars, networking, award ceremonies, projects, reports, white papers and lobbying.

#### For more information, contact:

[www.emergingpayments.org](http://www.emergingpayments.org)  
[info@emergingpayments.org](mailto:info@emergingpayments.org)  
Twitter: @EPAssoc and @tonycraddock



## Collaborate to Innovate



#### Benefactors



# Welcome from **RAILSBANK**



I would like to warmly welcome you to this important report by the Emerging Payments Association on the options to be regulated outside the UK.

Feedback from many conversations with my colleagues and friends in the UK's FinTech and payments industry is that there is a high level of anxiety of the future of passporting financial services post Brexit.

The goal of this report is to hopefully reduce these levels of anxiety and give the industry some clear and pragmatic guidelines on the regulatory options available.

Finally, I would like to appeal to all participants in UK's FinTech and payments industries to engage in positive dialogue with the UK government to encourage those negotiating Brexit to do the right thing for our industry.

Kindest regards,

**Nigel Verdon**

CEO and Co-Founder, Railsbank  
Chairman and Founder, Currency Cloud

# Report **SPONSORS**

Any project like this would not be possible without a number of key parties. The first is our syndicate sponsors and we would like to thank:

## **RAILSBANK**

Railsbank is a banking-as-a-service platform (BaaS) that brings together FinTech companies and a global network of small-mid sized banks to give FinTech companies "access to global banking in 5 lines of code". Railsbank solves the problem of excessive friction, cost and time of establishing, scaling and internationalizing a FinTech company. This issue is driven by three key factors:

- The time it takes to build banking relationship(s) operationally and technically can be up to 9 months;
- Banks, understandably, don't trust the compliance controls of FinTech start-ups and the banks bear the fines;
- Bank on-boarding economics, combined with compliance risk, make banking FinTech unappealing.

For FinTech companies, Railsbank solves the above by enabling a FinTech to open a banking relationship and technically connect to a bank in less than three months. Once connected to Railsbank, a FinTech can "switch-on" new countries/regions in under two months.

## **CHOICE BANK**

Founded in 2008, Choice Bank Ltd is a privately held, international bank chartered in Belize offering financial solutions for companies and associations consisting of two separate business units:

- Choice Global Payments
- Choice Commercial Banking

Choice Global Payments specializes in prepaid card issuance for corporate funded programs which issues corporate loaded prepaid cards throughout the world. These programs include payroll, incentives, pension payments, remittances, T&E expenses and more. Choice Global Payments is the largest corporate prepaid issuer for MasterCard within the LAC region.

Choice Commercial Banking offers a range of services to international client for example a full suite of banking and treasury management products. It focuses on international corporate and trust formations.

## **IDT FINANCE**

Founded in 2006, IDT Financial Services Ltd (IDT Finance) is an award winning, regulated issuing bank and market leader in providing European prepaid BIN Sponsorship Services.

IDT Finance has passported its banking license which permits it to provide payment services and issue electronic money across the whole of the European Economic Area (EEA). As a principal member of MasterCard® International Incorporated and Visa Europe Limited, IDT Finance is the ideal partner for providing innovative prepaid solutions combined with extensive knowledge of the European regulatory and compliance environment.

## **PCT (PAYMENT CLOUD TECHNOLOGIES)**

This cloud-based digital company is transforming the way banking and payments are served. A London-based FinTech company, PCT excels in digital banking and payment services, working with many of the world's leading businesses and government organisations.

PCT enables its B2B clients to deliver world-class digital and card based financial services to their customers. The proprietary digital platform combines both card based and banking payment services into customer accounts. These can be accessed via the web, mobile devices, ATM and in-branch. PCT is active in UK, Europe and Africa and continues to expand internationally, both directly and in partnership with leading global organisations.

## **RAMPARTS**

Ramparts is a European law firm based in Gibraltar and in the UK. It specialises in UK, Gibraltar and EU-wide legal, commercial and regulatory issues. Ramparts provides support for clients in the financial services (e-payments & cryptocurrency, blockchain, complex finance structures and investment funds), electronic commerce (including for e-merchants and e-gambling operators) and technology sectors. Its clients include individual entrepreneurs, early stage and growth innovation companies as well as major publicly listed multinationals.

## **SAXO PAYMENTS**

Saxo Payments provides the FinTech industry with faster, lower cost global banking. As members of the Banking Circle, payment solution providers, foreign exchange payment providers and acquirers can offer own-branded global banking services to their merchants – enabling them to perform immediate cross-border bank transfers and set up local settlement accounts worldwide for their customers at very low cost.

## **SVS**

SVS is the world's leading single-source provider of prepaid and stored value solutions, managing successful gift card programmes for top brands around the globe. A partnership with SVS means your gift cards are so much more than an additional form of payment. Backed by a 20-year history of consultative creativity and innovation, your stored value strategy becomes a key marketing tool for revenue generation, customer acquisition and omnichannel brand engagement.

SVS is your one-stop resource to maximize consumer and business-to-business opportunities in both physical and digital landscapes. With in-store, online and mobile expertise, SVS offers world class solutions to securely build, manage and maintain consumer relationships that drive bottom-line profitability.

## **WIRECARD**

Wirecard AG is one of the world's leading independent providers of outsourcing and white label solutions for electronic payment transactions. The Wirecard Group has been supporting companies in accepting electronic payments from all sales channels. A global multi-channel platform bundles international payment acceptances and methods, supplemented by fraud prevention solutions. When it comes to issuing their own payment instruments in the form of cards or mobile payment solutions, Wirecard provides companies with an end-to-end infrastructure, including the requisite licenses for card and account products.

## **INDIVIDUAL CONTRIBUTORS AND SUPPORTERS**

**Secondly it is the team of members within the EPA's Project Europe who have spent many hours of their own time providing guidance and support in getting this project completed:**

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Carta Worldwide	Salim Dhanani
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Optal	Vicky Lloyd
Payment Counsel	Nadja Van Der Veer
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Raphaels Bank	John Box
Valitor	Reynir Bjarni Egilsson

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## Section 2

# INTRODUCTION TO THE REPORT

The EPA set up a Project Europe working group to consider what the options for companies would be if a so called ‘hard Brexit’ occurs and UK regulated payments companies lose the right to passport into Europe.

### Report methodology

The report research was carried out through direct engagement with regulators, with a number of companies who were operationally regulated by regulators outside of the UK, and with local professionals.

Any report of this nature is based on making judgements so, wherever possible, we have tried to base final recommendations on decisions on data as well as the perception of sector operators. However, we acknowledge that our shortlist of European countries is a subjective decision by those involved.

Perceptions about the suitability of a jurisdiction cannot always be up to date. This means that we may well have omitted countries from our shortlist that are highly

suitable for payments companies considering their post-Brexit options. We trust that our omissions are not taken personally; they reflect in many cases the aggregate perception of EPA members. We would nevertheless welcome the opportunity to meet the regulator of any European country that believes our omission is a mistake that should be remedied in any future update of this report.

The initial consideration was of a long list of potential markets to consider. These were collated with input from the EPA Project Europe team. The purpose of this was to conduct an initial high-level review of a significant number of EEA territories to consider whether they were in principle suitable for a deeper analysis and possible recommendation to the payments sector. From the evaluation of this long list, a shortlist of six countries was then identified for the deep dive investigation.





We must also note the concern we have that the current political climate means that there is significant risk when choosing a new country in which to establish to benefit from EEA passport rights, in that the chosen territory may itself also re-consider its EU relationship.

### Definition of PSP

The term Payment Service Provider (PSP) was traditionally used to describe an organisation that offers shops online services for accepting electronic payments by a variety of payment methods including credit card, bank-based payments such as direct debit, bank transfer, and real-time bank transfer based on online banking.

In relation to this report, however, the term Payment Service Provider is used as defined within the EEA legislation, meaning those regulated companies that are conducting authorised payment service activities. This includes organisations regulated under Banking, Credit Union, Electronic Money and Payment Institution licences. Cryptocurrency and payment gateways are not currently normally deemed to be conducting authorised activities. The report does not include within its scope services offered under Money Transfer Licences.

The sorts of products and services typically covered by these regulated PSP companies will include:

- Managing e-wallets
- Mobile wallets
- Issuing prepaid cards, closed and open loop
- Issuing debit and credit cards
- Acquiring payment services
- Online payment account services (incl. FX)
- ATM services
- Money remittance

This report is thus primarily aimed at regulated PSPs as defined by the EEA that currently benefit from European financial services 'passporting rights' and therefore must carefully choose their Home State from which to conduct their activities and passport them into other EEA territories.

The report will also be of interest to unregulated PSPs, ecommerce merchants and platforms, social network platforms and FinTech companies interested in taking advantage of new payment technologies like bitcoin and new payment services permissions within the 2nd Payment Services Directive (namely direct initiation of funds from customer bank and payment accounts and financial account data aggregation services).



## SECTION 3

# REGULATORY REVIEW FOR THE EUROPEAN E-PAYMENTS SECTOR



### Political and legal background

The decision of the people of the United Kingdom to leave the European Union in the EU referendum of 23 June 2016 came as a surprise to many in the UK and the wider world. Since that time we have seen UK sterling (GBP) come under persistent selling pressure as the markets fret about the potential loss of common market rights for the UK given the complete lack of clarity from the UK political establishment about what happens next.

Despite the many economic benefits of largely unrestricted access to the European common market, the increasing tension between certain perceived core UK national interests and the continued drive for a closer European Union finally resulted in the rejection of the European Union project by the UK. The UK concerns centred on immigration, the primacy of European law over British law, a democratic deficit in European politics and more generally concern about the destination the European project is heading in.

We have since seen the UK political establishment struggle to find a way forward that gives effect to the desires of the UK people without severely damaging the UK's economic interests<sup>1</sup> – in the context of an overly confident and poorly constructed referendum process that provides no clarity on what the people of the UK might move towards whilst moving away from the European Union.



Whilst uncertainty is rightly regarded as an enemy to most long-term investment decisions, rushing into a certain loss of common market rights appears to be distinctly against the interest of the UK.<sup>2</sup> The UK now waits between a rock and a hard place and must plan its next move seeking to balance common market rights with curtailment of one of the four fundamental EU freedoms (see below).

The rejection of the EU comes at a time when the EU political and fiscal structures appear to be failing and there is a concern that the EU is not doing enough to secure an obviously better economic future for many citizens of the EU. This is all taking place within an apparent worldwide backlash against the negative aspects of globalisation, concern about significant differences in treatment in law and tax of the powerful and wealthy from 'normal' people, a loss of trust in long-standing institutions (including the political establishment and major banks) and a pervading suspicion that people are facing a future with the burdens of 'austerity' measures when things go wrong but less expected proportionate share of any increases in aggregate income and wealth.<sup>3</sup>

In short, the UK's EU referendum could not have come at a worse time given the mood of the (wo)man in the street and the risk of it becoming a wider protest vote against the current economy and the political establishment in the UK and the EU.

### **European common market vs the EU political establishment**

A rejection of the EU political structures and establishment is by no means a rejection of the European common market.

In the current fragile economic climate, a loss of the economic advantages of Europe seems a very high price for all Europeans to pay because of the UK's rejection of the EU establishment. Many people are hopeful a middle-ground between the current EU political system and the European common market can be found. Supporting this hope is the obvious conclusion that it would be in the economic interests of all within the EEA.

The European Economic Area (EEA) includes all EU members (28 States plus additional territories such as Gibraltar) in addition to three EFTA countries, being Iceland, Norway and Lichtenstein.<sup>4</sup> It is home to over 500 million people and represents the largest common market in the world.

The European common market or internal market, is the economic union that was gradually put in place by the European Communities and then by the European Union. Goods, services, capital and people are supposed to circulate freely (known as the "four freedoms") until there is no difference between the European market and the national markets of the member states of the EU.

<sup>1</sup> The Recent UK High Court Decision that requires an action of Parliament (the elected politicians) - probably by way of a new UK law - to trigger Article 50 of the Treaty on European Union (Lisbon Treaty) rather than a decision of the UK Government likely represents a delay only in the process of the UK leaving the EU.

<sup>2</sup> A so-called 'Hard Brexit' could cost the UK £66bn per annum and GDP decline of 10%: <http://www.independent.co.uk/news/uk/politics/brexit-latest-hard-brexit-uk-economy-66bn-cost-leaving-eu-a7354996.html>.

<sup>3</sup> A suspicion that appears justified to this author given increasing capital concentration and technologically driven service supply economies.

<sup>4</sup> Switzerland is the 4th EFTA country but, in the interests of simplicity and brevity, I will omit from this overview any reference to Switzerland's rather unique relationship with the EEA whilst being outside the EEA.

The EEA is governed by the 'EEA agreement' that is significantly more limited than EU membership. Article 126 of the EEA Agreement on the EEA makes it clear that the EEA Agreement only applies to the territories of the EU, in addition to Iceland, Liechtenstein and Norway. Currently, it is therefore impossible to be a party to the EEA Agreement without being a member of either the EU or EFTA.

The EEA agreement differs from EU membership in that it does not include the following core EU components:

- The EU Customs Union
- International Trade agreements with third countries. In World Trade Organisation negotiations, the European Commission only represents EU member states
- The Common Agricultural Policy
- The Common Fisheries Policy
- Monetary Union – Euro membership (though the UK opted out of this in any event)
- Justice & Home Affairs
- Co-ordinated taxation in certain fields
- Common Foreign and Security Policy

It remains to be seen whether the UK will wish to (and be permitted to be) an EFTA member and whether the EEA Agreement is, or can be, sufficiently flexible to enable the UK to have continued access to the common market with some allowance made for a degree of restriction on the four fundamental freedoms. Alternatively, like Switzerland, the UK may seek a more bespoke relationship allowing partial access to the common market outside of the EEA Agreement – yet this still begs the question about the degree of latitude that would be permitted the UK in respect of the four fundamental freedoms.<sup>5</sup>

In addition, it must be noted, that the UK may be the first EU Member State to break ranks and reject the EU project but it may not be the last – over the next 12 months we are likely to see the EU come under increased and intense pressure to reform or face the risk of a more catastrophic failure. We have a failed referendum in Italy (that will now likely lead to increased stress on the vulnerable Italian banking sector and possibly a new anti-EU government), and elections in the Netherlands, Germany and France that are likely to severely test the current EU architecture. This changing backdrop will dictate the terms under which the EU will be willing to negotiate with the UK, and it appears likely that no negotiation will take place until Article 50 is triggered by the UK. In the current circumstances, it is difficult to see why the UK would wish to trigger Article 50 rather than wait for a better negotiating position dealing with whomever is leading the European Union project once the dust settles.

The current EU interpretation of the four freedoms appears to be a European 'sacred cow' and unless other EU members threaten to trigger Article 50 themselves, it seems unlikely (based on Switzerland's experience) that the UK will be able to secure access to the common market whilst also maintaining some meaningful sovereignty over UK immigration controls.

This report is therefore issued in a context of a level of legal, political and economic uncertainty for the EU and the UK not seen for generations. The election of Donald Trump in the USA merely adds to the new anti-globalisation anti-political establishment trend that cuts across much of the recent developments with the EU project.

We can wish it were otherwise and we must hope that strong pragmatic pro-European leaders step forward in the UK and the continent to work on solutions that mitigate against the worst of national populist revolt whilst taking account of genuine and valid concerns about the current European project.

Willingness to compromise can keep us all together and keep the European dream alive for another day<sup>6</sup> – unless these various tensions are resolved with practical politics rather than dogma and theory, the current EU trajectory will ultimately result in severe damage to the UK and the potential destruction of the EU. This will mean a much more severe degradation of all four freedoms for all of us in Europe and must be avoided. Brexit must therefore be seen in a wider European and world context and not just as a distinctly British affair.

<sup>5</sup> In 2014 a Swiss referendum voted to restrict EU immigration rights - contrary to one of the four fundamental freedoms. The EU has consistently maintained that this would mean a loss of access to the common market that is enjoyed by Switzerland - Switzerland now appears to have modified its plans so as to prioritise jobs for Swiss people without restricting the freedom of movement of EU nationals.

<sup>6</sup> The demographic make-up of those UK persons voting to Remain in the EU and those voting to leave show that the future belongs to pro-Europeans. Plotting voting intention by age shows a near perfect correlation between age and attitude to the EU: <http://www.politico.eu/article/britains-youth-voted-remain-leave-eu-brexite-referendum-stats/>

## Taking advantage of the European Economic Area

The world electronic payments sector is highly diverse and innovative. It includes traditional banks as well as, inter alia: prepaid card providers, e-money wallet issuers, money remitters, payment acquirers, payment gateways and cryptocurrency operators.

**The implementation of a passporting right for many financial services activities means that these rights cannot be restricted when an enterprise is properly authorised within the EEA and uses the notification process to passport that authorisation to another EEA state.**

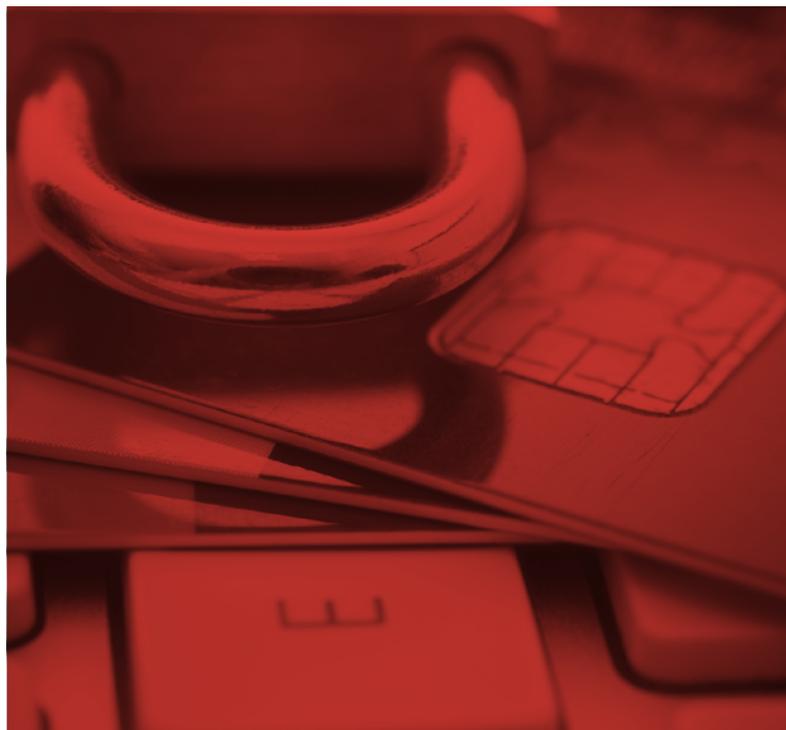
Passporting rights give effect to a number of core EU rights relating to freedom of Establishment (article 49 of the Treaty of the Functioning of the EU (TFEU)) and freedom of services (Article 56 – TFEU). These rights are intended to enable service providers to set up their businesses anywhere within the EEA and to conduct activities on a remote basis to customers based anywhere else within the EEA. These TFEU rights are, however, subject to certain limitations on public policy grounds including protection of consumers. The implementation of a passporting right for many financial services activities means that these rights cannot be restricted when an enterprise is properly authorised within the EEA and uses the notification process to passport that authorisation to another EEA state.<sup>7</sup>

Within the EEA, the UK and Gibraltar have taken a disproportionate lead as business friendly jurisdictions within the more innovative non-bank e-money and payment services sectors. This is due to many factors, some of which are historic advantages (English language, law and business culture) but also because both markets have openly encouraged new technology businesses to locate themselves within their jurisdictions and they have shown a desire for a pragmatic approach to regulation of PSPs that enables good businesses to flourish within the framework of sector specific European legislation (notably the Electronic Money Directives and the Payment Services Directives). Luxembourg has also taken a leading position in Europe as an experienced supporter of the e-payments sector. Other European jurisdictions also show great promise for the future, but as yet have limited experience.

**The manner in which the regulator deals with and communicates with the payments sector is the most significant factor in choosing a suitable Home State.**

Some obvious potentially strong jurisdictions for this sector within Europe (such as Germany) have meanwhile managed to implement and interpret key legislative measures in this sector a manner that has given rise to significant concerns by market participants (see further below).

The manner in which the regulator deals with and communicates with the payments sector is the most significant factor in choosing a suitable Home State. Preferred countries must demonstrate a willingness to genuinely understand and encourage innovation in the payments sector, a collaborative approach to relations between regulated operators and the financial services regulator and fairness in ensuring that the interests of domestic banks are not protected in a manner that prejudices innovation and competition.



<sup>7</sup> Contrast this with, for example, remote gambling operators that benefit from Article 49 and 56 rights in principle but that are not currently able to always rely on their Home State authorisation in another EEA territory given that there is no harmonised Directive for online gaming governing key issues such as authorisation, capital requirements, insolvency risks etc

## Choosing a Home State

The Home State is the place where a regulated company is primarily authorised and regulated within the EEA – much rests on the choice in terms of operational advantages or the difficulty in doing good business for the following main reasons:

- A regulated company's direct day-to-day relationship is with their Home State regulator
- Issues regarding capital adequacy, risk management, appropriate methods of commerce and conduct of business are generally managed by the Home State regulator
- Within the EEA each Member State must implement, interpret and transpose many relevant European laws within local law – this gives rise to a wide degree of difference in the applicable rules and permitted custom within each Member State
- Decisions about how to deal with boundary issues and managing regulatory uncertainty in the gaps between law and practice are determined in consultation with your Home State regulator
- The Home State regulator is primarily responsible for passporting your authorisation and also managing potential issues with other regulators within the EEA
- A regulated company must always conform with the anti-money laundering requirements of its Home State (in addition to sometimes also being required to comply with the rules of another EEA territory)

Given the above, it is easy to see why it is essential that you choose a Home State that supports and understands your business sector and your business model and works with you to manage risks effectively whilst allowing you to use your authorisation to grow your business. The manner in which a European law is implemented can have significant benefit or detriment to a regulated company's business model. The process for dealing with boundary issues and other areas of legal and regulatory uncertainty (of which there are very many) is by its nature a collaborative approach, if done correctly, since it requires the regulator and good operators to work together in good faith to solve problems whilst encouraging good market practice and good operators. Good regulation is ultimately in the best interests of good regulated operators, regulators and countries.

**Good regulation is ultimately in the best interests of good regulated operators, regulators and countries.**

## Decision for PSPs authorised in the UK and Gibraltar

Authorised PSPs established and primarily authorised in the UK & Gibraltar may be faced with a critical investment and operational decision if they are to ensure continued access to the European common market.

**PSPs in the UK and Gibraltar markets have a choice between (i) wait and see and (ii) preparing for the worst.**

The Brexit process is not likely to be completed until 2019 at the earliest<sup>8</sup> and at this stage we have no clarity over whether regulated companies' will continue to benefit from their passporting rights though we would expect that self-interest on all sides means that access to the common market for financial services will continue.

PSPs in the UK and Gibraltar markets therefore have a choice between (i) wait and see and (ii) preparing for the worst.

Understandably, sensible and prudent regulated companies are not prepared to simply wait and see what happens and then undertake the work necessary to find a new regulatory home within the EEA if that proves necessary.

On the other hand, PSPs have consistently expressed their desire to remain authorised and to be primarily regulated in Europe from these markets, this means that we are unlikely to see many PSPs make a final decision about setting up in another EU territory (in order to benefit from passport rights) until the framework for the new UK relationship with the EEA is much clearer.

There are also other significant potential consequent effects of the both markets falling outside of the EEA that will require further clarity including: the impact on current MasterCard and Visa principal membership rights and licence requirements, whether the UK & Gibraltar will be within or outside of the SEPA area, whether the markets will have equivalent status for AML, data protection etc.

In addition, a loss of passporting rights from the UK and Gibraltar will also mean a loss of passporting rights to the UK and Gibraltar. Given the size and importance of the UK market, and in the event that the both markets are no longer within the EEA from 2019-2020, many PSPs will therefore decide that they should set up or remain in the these two markets in addition to setting up in another European territory within the EEA.

**A loss of passporting rights from the UK and Gibraltar will also mean a loss of passporting rights to the UK and Gibraltar.**

A major concern these two markets is that the current degree of uncertainty makes it less likely that new entrants to the European market (from Asia, North America, Israel etc.) will choose to locate their new European operations in the UK & Gibraltar. Whilst it is understandable that companies do not wish to have any more establishments than necessary within Europe, for regulatory purposes only, the above point regarding the potential need to access the UK market post-Brexit is highly significant for any such investment decision. In addition, some companies take the view that the benefits of setting up in these markets can still be obtained for a number of years whilst they are building their core business operations, customers and revenue and they will take a decision further down the line (given that the shortlist territories we have referenced have expected authorisation timelines of 3-6 months the decision can be deferred a little longer). This need, by many PSPs, for continued access to the UK market post-Brexit means that PSPs elsewhere in Europe and further afield will also be researching their options to become established in the UK or Gibraltar in order to ensure access to the UK market if the is necessary post-Brexit.<sup>9</sup>

That said, the uncertainty surrounding Brexit must have already led to increased interest and potential investment in other European territories that are business friendly for the emerging payments sectors.

<sup>8</sup> Article 50 provides for a minimum 2 year period in which existing Treaty rights continue in full force for an exiting EU member.

<sup>9</sup> Whatever the result of Brexit negotiations, Gibraltar will retain its existing ability to access the UK market on a freedom of services 'passporting' basis since that is not dependent upon EU law.

## Section 4

# ALTERNATIVES TO UK/GIBRALTAR REGULATION



### LONG LIST OF COUNTRIES CONSIDERED

The authorisation of PSPs derives from European law and so any country in Europe can in theory be a Home State for PSPs to establish and passport their permissions from. In practice, the UK, Gibraltar and Luxembourg have so far led the way in terms of their attractiveness and level of expertise in authorising and supervising successful e-money and payments companies (and the passporting of these rights around Europe).

The report has therefore considered a long list of countries which could be considered as possible alternatives to UK/Gibraltar regulation based on input from the EPA Project Europe team and other expert parties.

The UK, Gibraltar and Luxembourg have so far led the way in terms of their attractiveness and level of expertise in authorising and supervising successful e-money and payments companies (and the passporting of these rights around Europe).

#### Countries considered

Cyprus	Italy
Czech Republic	Luxembourg
Denmark	Malta
Estonia	Netherlands
France	Romania
Germany	Spain
Iceland	Sweden
Ireland	

The criteria used for filtering the long list of countries to the shortlist of territories for deep dive analysis was as follows:

- Issuing of licences to a range of PSPs
- Supportive regulatory environment
- Estimated timeline for authorisation from application date - reasonable timeline & SLAs
- Reasonable local establishment requirements (incl. corporate structure, minimum local presence for staff, compliance/technology)
- Practical anti-money laundering regulatory environment that supports remote customers and electronic transactions
- Ease of opening a local bank account
- Jurisdictional reputation and fiscal strength

Based on these criteria, six markets were identified as being the most likely to offer a viable and effective regulatory regime and a deeper dive analysis was carried out on them. Within this report we refer to the shortlisted countries as deep dive markets.



### Shortlist (deep dive markets)

In order to provide a robust analysis of each deep dive market, other legal, regulatory, corporate, employment and tax issues were investigated. In addition, personal interviews with the relevant regulators of these shortlist territories were undertaken wherever possible and advice was also sought from operators and professional advisors in those areas.

The shortlist of potential jurisdictions for consideration by regulated companies when looking to establish and be authorised within the EEA is as follows:

- Cyprus
- Luxembourg
- Denmark
- Malta
- Ireland
- Sweden

All shortlist countries have a suggested timeline of 3-6 months from the date of submission of a completed application to obtaining a licence. In addition, all of our shortlist countries have a readily available pool of local talent in the ecommerce sector and the payments sector.

Each market will likely require a number of local managers, with the number depending on the size of the business. The business will have to demonstrate that it has adequate governance procedures in relation to the size of the business; typically such entities would have 2-3 Directors. The Managing Director will be expected to spend sufficient time in the market, whereas the remaining Directors will not necessarily have to reside in the state but will be available to attend board meetings in the state as required.

The head office requirement (i.e. local presence) for control and compliance (including AML Officer) and key management generally needs to be within the market where the company are authorised, but many of the regulators are sympathetic to group structures whereby significant roles are also undertaken elsewhere.

### Countries not included for deep dive analysis

Based on the above process and filtering some notable major territories did not qualify for the deep dive analysis on the shortlist. Germany, the Netherlands and France are the most obvious omissions (see below).

Other territories that scored positively on many aspects, such as the Czech Republic, did not make it into the shortlist due to the perception that they were overly supportive of domestic banks at the expense of innovative new payments operators and technologies. In addition, territories like Romania appeared to be making positive steps forward to improving the market's perception of their appropriateness as a jurisdiction for reputable cross-border PSPs but they are less suitable for many in the wider audience this paper is aimed at.



## GERMANY

Germany has built an impressive reputation for being antagonistic to the innovative European payments sector.

In nearly every aspect of interpretation of the key EU laws in this sector, Germany has often excelled at taking the hardest and narrowest interpretation. Indeed, this has led to what appears to many (including the authors) almost as a climate of fear. German regulatory advisors too often seem compelled to advise that BaFIN (the Federal Financial Supervisory Authority of Germany) must be notified, and that their opinion should be sought, on any matter of interpretation of EU law to avoid sanction or offence. There also appears to be an assumption that the German interpretation is the only valid interpretation of European law matters in this field.

The hard-line implementation of the liberalising 2nd E-money Directive in 2009<sup>10</sup> was a prime example of how Germany confirmed its poor reputation in the emerging payments sector. In short, Germany gives the impression of fearing the use of alternative regulated payments and particularly fearing a loss of control over its domestic finance market that is currently dominated by numerous local banks.<sup>11</sup>

That said, in recent years, Germany appears to have started to soften its approach to the sector and there are encouraging signs that BaFIN may now be seeking a more supportive approach to new technologies and operators.<sup>12</sup> However, it will take time before the damage done to the UK e-money and payments sector, by their hard-line implementation of the 2nd E-Money Directive, is forgotten.

## FRANCE

The major issues with France are the perception that it is generally a very difficult place to do business, concerns about unfair discrimination in favour of local banks and concerns that the local authorities are fearful about the use of new innovative payment methods.

The Paris terrorist attacks have only increased concerns about the extent to which France will support innovation in this sector, and have led to increased restrictions in France on the use of regulated e-money and a push to limit the use of cryptocurrency. Whilst regulated PSPs are already in scope for EU anti-money laundering requirements (and high quality cryptocurrency operators welcome inclusion in the same), there appears to be a highly reactionary and uninformed approach by France to dealing with the benefits and risks of emerging payments technologies and operators.

Despite these issues, since the Brexit vote, France has been notable in its attempts to encourage FinTech companies to relocate to France and has promised a fast-track authorisation process. It must be said that France currently lacks credibility for serious operators that must decide where to invest their capital and time.

## NETHERLANDS

The Netherlands has nearly all of the necessary conditions to be a great home for the regulated PSP sector and could become a leader in this sector.

It has a strong culture of innovation in finance and technology including within the FinTech sector, business is conducted in English and it has a friendly welcoming environment and lifestyle for international workers (that are an important component of most FinTech companies). However, despite this, the Netherlands is seen as a jurisdiction that is not yet fully supportive of FinTech operators from a regulatory perspective and this led to them not being included in this shortlist.<sup>13</sup>

## LITHUANIA

Lithuania was not considered for the initial long list at time report was prepared, although it has since made a clear play to become the home market of PSPs post Brexit.<sup>14</sup> Lithuania would not have been included in the shortlist of countries for deep dive analysis either, given the local nature of all current EMI licences.

The country is proposing a new regulatory regime, easing access to official authorisation for FinTech start-ups. Lithuania is stating that they will be able to offer one-week pre-approval for FCA authorised firms, and a three-month wait for receipt of a full license. They are also offering regulator-run API access to SEPA payments for non-banks.

The Central Bank of the Republic of Lithuania states that EMI licences are currently held by the following companies:<sup>15</sup>

- Akcine bendrove Lietuvos paštas
- International Fintech UAB
- "Paysera LT", UAB
- UAB "Argentum mobile"
- UAB "Libera exosculatio"
- UAB "Perlo paslaugos"

But a press release also names Contis and Revolut. The authors have been able to confirm that Contis is in the process of obtaining its EMI.<sup>16</sup>

<sup>10</sup> Whereby Germany AML rules were changed and used to apply new restrictions on local agents and distributors of e-money institutions to limit the use of e-money when the 2nd E-money Directive was intended to encourage greater adoption of e-money. As a result, many regulated and EU AML compliant operators in UK and Gibraltar operators were forced to close their German-focused activities.

<sup>11</sup> An irony being that some regulated companies had to leave Germany to become authorised in the UK and then passport back into Germany due to a lack of support from BaFIN for this sector.

<sup>12</sup> For example, BaFIN have advised that the use of camera/video ID (such as Skype screen capture) could be relied upon as a form of remote ID for AML purposes: [https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Rundschreiben/rs\\_1401\\_gw\\_verwaltungspraxis\\_vm\\_en.html](https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Rundschreiben/rs_1401_gw_verwaltungspraxis_vm_en.html)

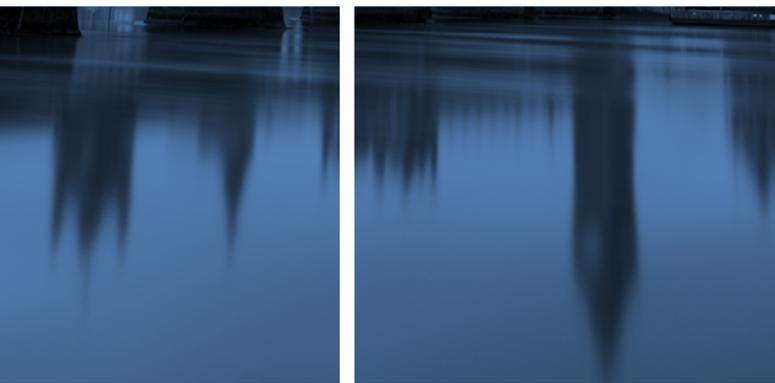
<sup>13</sup> This is apparent from the small number (two) of E-Money Institution licences granted in the Netherlands.

<sup>14</sup> <https://www.finextra.com/newsarticle/29855/lithuania-makes-a-pitch-for-post-brexit-uk-fintech-firms>

<sup>15</sup> [https://www.lb.lt/electronic\\_money\\_institutions](https://www.lb.lt/electronic_money_institutions)

<sup>16</sup> Direct communication through telephone conversation with Contis.





## Section 5

# DEEP DIVE MARKETS

The first thing that springs to mind when considering a PSP's Home State is a country's financial strength. And our 'deep dive' list includes countries that are fiscally strong. But these will not necessarily be the ones that PSPs choose to make their Home State. Other criteria may be more important and a degree of pragmatism will come into play when selecting a Home State.



Experienced PSPs able to accommodate a degree of risk will put a greater deal of emphasis on the tax rates (both corporate and personal) of the country in which they are setting up the PI or EMI. They will also focus on the ease of transferring contracts across borders and the availability of experienced executives to take the role of registered officers. For such PSPs, Sweden and Denmark may not be considered the ideal solution with high personal and investor tax rates, different legal systems and a relatively thin pool of experienced payments executives will exclude them from being seriously considered.



# CYPRUS



## Overview

A country like Cyprus, with its 12.5% tax rate, favourable and experienced banking talent pool, open and cooperative regulator and UK-derived legal structure, will be on the list of alternatives to the UK for some operators.

It is relatively quick, inexpensive and easy to become regulated as an EMI or PI in Cyprus. Despite the low rating of the country on the fiscal rating scale, its recent challenges with banking in 2013, and the active presence of Russian money and investors, makes Cyprus is worth considering.

It will allow staff and investors to earn healthy post-tax rewards from basing a company and its staff there, albeit with some risks attached. The main challenge in Cyprus, as with many other potential Home States, is the availability of local banking support. An EMI can, however, seek to open accounts with any other banking institution within the EU as the local law does not preclude it from doing so.

## Details

The island is divided into two parts; the larger southern part is controlled by the Republic of Cyprus and the smaller northern part by the Turkish Republic of Northern Cyprus. References to Cyprus within this report relate to the Republic of Cyprus, where responsibility for payment regulation and authorisation sits with the Central Bank of Cyprus. Cyprus takes a risk-based approach to AML and local law and guidance is currently being updated for 4MLD compliance purposes.

Cyprus is currently negative towards any kind of virtual currency and has issued relevant warnings in the past informing the public about the risks and dangers inherent in virtual currencies. For many regulated payments companies this is not relevant, in the near term but it is worth noting for those payment companies that wish to explore the cryptocurrency sector.

The regulator has advised of potential difficulties for EMIs and PIs to obtain a local bank account.

### Notable non-bank PSPs authorised in the territory:

- Atlas Pay Ltd
- Cardpay Ltd
- CSC24seven.com Ltd
- eZeeWallet Ltd
- OKPAY CY Ltd
- Powercash21 Ltd
- Safecharge Ltd
- Sepaga E.M.I Ltd
- Sibilla Solutions Ltd
- G.S. Cash Line Ltd
- JCC Payment Systems Ltd
- JET Money Services Ltd
- Masari Payment Services Ltd
- Mediterranean Finance Ltd
- TFI Markets Ltd
- Unistream Cyprus Ltd

There are no application fees for e-money or payment institution licences. The annual licence fee for EMIs & PIs is currently circa €5,000, but the annual fees will vary depending on the value of the payment transactions and is reviewed annually.

## Key Facts

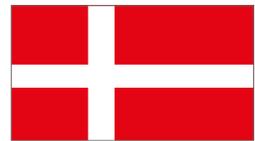
Corporation tax	12.5%
VAT	19%
Income tax	20-35% for amounts over €19,500 – highly-paid foreign executives can benefit from a 50% reduction. <sup>17</sup>
Social insurance contributions	Low-medium (7.8% to be increased to 8.3%)
Cost of living	Low (<75% of UK)
Crime and corruption	Low & medium
World Bank 'Doing Business' 2017 world rankings	45th out of 190
Ease of opening a bank account	Negative (although local banking institutions are warming up towards accepting regulated PSP applications)
Cost of registering a company	Approximately £800 with no online application option

## Regulator's Attitude

The Central Bank of Cyprus is supportive of new entrants from the emerging payments sector. When we met with the regulator, we were assured that for PSPs already authorised and regulated by the FCA, immediate approval of the

applicant's business model is likely to be provided. This means that the only hurdle to overcome relates to the due diligence of the shareholders, directors and regulated officers.

<sup>17</sup> It should be noted that only 50% of remuneration from any employment exercised in Cyprus by an individual who was resident outside Cyprus before the commencement of his employment in Cyprus will be taxed assuming that the annual remuneration exceeds €100,000.



## DENMARK

Whilst Denmark has limited experience in regulation of e-payment companies outside of the banking sector, it has shown a very strong desire to encourage FinTech and e-payments companies to locate in Denmark.

Responsibility for payment regulation in Denmark is split between the Danish Central Bank and the Financial Services Authority (Finanstilsynet) who are responsible for the authorisation of EMI's and the day to day supervision. The Danish Consumer Ombudsman is responsible for the supervision of certain provisions in the Danish Payment Act. The Danish Ombudsman may bring legal actions against PSP companies on behalf of a consumer if the company does not comply with local law.

The Chamber of Commerce of Denmark has proposed to allow most retailers (except for essential services like

hospitals, post offices, etc.) to make all money transactions electronically. Denmark has a very high level of use of electronic forms of payment. The Danish regulatory environment is 'open' to developments in the payments sector.

Denmark has a pragmatic and technologically neutral anti-money laundering compliance environment which is similar to the UK (and which is currently being updated for 4AMLD compliance purposes). In addition, the verification of identity papers for Danish residents can be done with NemID, which is a common secure login on the Internet. Due to the application of NemID, many companies subject to AML regulation find the verification process easier than in most other countries.

### Notable non-bank PSPs authorised in the territory:

- ClearHaus (Acquirer)
- NETS A/S
- November First
- Coop Betalinger A/S
- Inpay A/S
- Flex Funding A/S

There are no application fees for e-money or payment institution licences, however the annual licence fee for EMI's & PIs is currently circa €17,500. Annual fees will vary depending on the value of the payment transactions and is reviewed annually.

## Key Facts

Corporation tax	22%
VAT	25%
Income tax	Marginal rate is 56%, effective rate is 35-48% (lower flat tax rates of 26% for relocating staff may be possible).
Social insurance contributions	Low (2%)
Cost of living	High (equivalent to UK)
Crime and corruption	Low & very low
World Bank 'Doing Business' 2017 world rankings	3rd out of 190
Ease of opening a bank account	Very positive
Cost of registering a company	Low (less than £200) and easy to do online

## Regulatory Attitude

The Danish regulator has established an internal force task to deal with all FinTech enquiries at the earliest point of contact / enquiry. The team is led by Louise Buchter who is responsible for payments and AML policy. The team is very pragmatic, approachable and supportive of new entrants and innovative businesses. They are willing to have preliminary meetings to assist applicants and to ensure they fully understand their business model and needs. Louise and her team are supportive of FinTech (including cryptocurrency companies looking to explore the payment sector whilst currently being outside of scope of EMD2 and PSD2) and also RegTech companies that offer new electronic solutions to the wider payments sector.

One final point of note is that Denmark currently operates with a nominal interest rate of only 0.05% (and some banks have moved to negative rates for commercial deposits) and its own currency (Krone). PSPs might therefore choose to

have their safeguarded liabilities stored with European banks outside of Denmark as is permitted under the relevant EU law (and reconcile for regulated liability purposes on an estimated currency converted basis rather than an actual local currency basis).

Another item of note is that, like the Bank of England, the governor of the Danish Central Bank, Lars Rohde, has stated that the bank is now looking into the possibilities of having a Danish digital currency (Krone) issued on a blockchain or similar technology. To our knowledge, the Danish Central Bank is working towards a Danish digital currency, however, several questions (e.g. questions about anonymity and risk management during a financial crisis) will need to be resolved before such currency is issued in Denmark. For more information, please see this article from Bloomberg: <https://www.bloomberg.com/news/articles/2016-12-11/blockchain-lures-central-banks-as-danes-consider-minting-e-krone>

# IRELAND



Facebook had previously been rumoured in the media to be seeking authorisation as an EMI in Ireland. Facebook finally became authorised in November and this will do more than anything else to bolster Ireland's reputation as a major new e-payments hub to be reckoned with in Europe.

Ireland is an obvious choice for international payments companies. Ireland's proximity and strong relationship with the UK make it very attractive for UK businesses. The ability to do business in the English language as standard, its English law base and its long-standing good reputation with North America are also strong factors when making an investment decisions.

Ireland also has limited experience in regulation of e-payments companies outside of the banking sector

however it has also shown a strong desire to encourage FinTech and e-payments companies to locate in Ireland. The payments regulatory team recently changed their service levels to ensure that good applications could be processed more quickly and within a 6 month window assuming the application was well prepared and presented.

Responsibility for PSP authorisation and regulation is with the Central Bank of Ireland. Ireland has a hybrid rule and principle based approach to AML which is considered to be workable but could benefit from the update to the more risk-based approach specified in the 4th Money Laundering Directive.

### Notable non-bank PSPs authorised in the territory:

- American Express
- Facebook
- CurrencyFair
- PerfectCard

There are no application fees for e-money licences however the annual licence fee this will vary depending on the category and risk score of the payment transactions and is reviewed annually. Ongoing annual fees can be significant (>€100,000).

### Key Facts

Corporation tax	12.5%
VAT	23%
Income tax	20-40%
Social insurance contributions	Medium (8-11%)
Cost of living	High (equivalent or > UK)
Crime and corruption	Medium & very low
World Bank 'Doing Business' 2017 world rankings	18th out of 190
Ease of opening a bank account	Positive
Cost of registering a company	Low (less than £200)

### Regulatory Attitude

Raoul and his team have been welcoming towards new entrants to Ireland. They are resourced to receive more applications in the future. They stressed that it would obviously be easier for an existing authorised payments company to demonstrate they are suitable to be an authorised PSP and this would help with ensuring the application can be completed quickly. Their focus is on welcoming high-quality operators to Ireland and learning more about the e-money and e-payments sector in the process. The addition of Facebook to their stable of operators will put them at the heart of the regulation of innovation in global e-payments.

New SLAs for the licence approval process through the Central Bank of Ireland's application process and is the same for both PI and EMI licenses are as follows:

- Acknowledgement – within 3 working days
- Key information check – within 10 working days (incomplete applications are rejected)
- Assessment – within 90 working days (excluding the time taken for the applicant to reply to queries)



# LUXEMBOURG

“ The UK is our second largest EU partner for exports of services and first for imports of services, the first EU investor in Luxembourg as well as our top destination for investment flows. In addition, the UK accounts for 16.4% of all net assets under management in Luxembourg and is sixth in terms of bank representation.<sup>19</sup>

Luxembourg has worked hard to secure a good reputation for supporting innovation and payments. PayPal’s decision to re-locate to Luxembourg from London in 2007 and obtain a banking licence for Europe (due to inherent defects in the EU e-money laws then in force) is a major factor in Luxembourg’s early success in this sector. Luxembourg has made the best of its opportunities to be respected as the continental e-payments leader.

Luxembourg is well located at the heart of many major Northern European economies (adjacent to Germany, Belgium and France and close to the Netherlands and Switzerland). It sees itself as a natural partner to businesses in the UK. It is very pro-EU and (being a founding member) and therefore very unlikely to wish to leave. It has a strong multi-national work-force (foreign workers account for no

less than 72% of its total workforce). Whilst being nominally French speaking, people do business in English.

Luxembourg has the most experience in regulation of e-payments companies outside of the banking sector of any of our shortlist countries. It has proven itself to be hospitable and engaged in looking at new business models and new technologies. In 2016 it authorised Bitstamp (a bitcoin exchange) as a payment institution for the fiat aspects of its operations and this really furthered the perception that Luxembourg wants to remain as leading e-payment hub in Europe.

Responsibility for PSP authorisation and regulation is with the Commission de Surveillance du Secteur Financier (CSSF). Luxembourg implement AML requirements on a risk-based approach, in accordance with 4MLD.

“ Luxembourg has a long-standing history as an international leader in innovation. That Bitstamp has chosen Luxembourg as its European hub only strengthens that reputation... Bitstamp is a most welcome addition to Luxembourg’s FinTech ecosystem.<sup>20</sup>

Pierre Gramegna, Minister of Finance, Luxembourg

### Notable non-bank PSPs authorised in the territory:

- Amazon
- Bitstamp
- DigiCash
- Mangopay
- PayPal

Their application fees for PSP licences are currently under review. An EMI application costs €20,000 and this may rise to €30,000-40,000. Annual licence fees are €10,000 and may rise to €20,000.

## Key Facts

Corporation tax	29%
VAT	17%
Income tax	8-40%
Social insurance contributions	Medium (8%)
Cost of living	Very high (> UK)
Crime and corruption	Low – very low/medium-low
World Bank ‘Doing Business’ 2017 world rankings	59th out of 190
Ease of opening a bank account	Positive
Cost of registering a company	Low (less than £200)

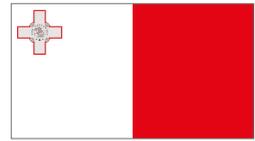
## Regulatory Attitude

Nadia Manzari heads the payments team and is very highly respected as the leader in a strong CSSF Innovation and Payments team. Nadia is knowledgeable about the macro issues facing payment companies and takes an interest in understanding each business model of the regulated sector. The CSSF take a collaborative approach to working with her regulated entities to ensure that the real risks are managed properly without unnecessarily impeding good business and new technologies and business models.

The CSSF is noted for being able to respond quickly and to address the needs of the financial sector due to its continuous

communication between the financial sector and the authorities. The work of the CSSF, together with the finance department, suggests that Luxembourg is in a strong position to support new entrants. They are also working hard to ensure that they have the ability to manage risk arising from use of new technologies (including cloud data storage) and seem highly advanced in their understanding of those risks and how to best manage them. This means that entrants should be aware of the likelihood that the CSSF will wish to be confident they can interact with key technology systems and data from Luxembourg. They have published in 2015 guidance on SDD which is similar to that offered in the UK.

<sup>19</sup> Carlo Thelen, DG & Chief Economist, Luxembourg Chamber of Commerce: <https://www.theguardian.com/commentisfree/2016/jun/03/luxembourg-britain-brexit-referendum-eu>  
<sup>20</sup> <http://coinjournal.net/bitstamp-payment-institution-license-luxembourg-eurbtc-trading/>



## MALTA

“ Malta has only been an independent country since 1964. Before then it had been ruled by the British, the last in a long line of foreign governors, including Napoleonic France, the Hospitaller Knights of St John, the Normans, the Arab empire and others. The result is a melting pot of cultures, mainly from Europe, but also the Middle East; geographically, Malta sits on the edge of the two worlds.<sup>21</sup>

Malta has worked hard to become an ecommerce hub in the centre of the Mediterranean and it has a long and fascinating history. A key part of this ecommerce activity has been in gambling and this has potentially tarnished its reputation as it is seen by many countries/organisations as a centre of gambling operations in Europe. This in turn has potentially led to other challenges.

Malta does not yet have a strong e-payments sector but it has a growing finance centre, experience of supporting the cross-border regulated online gaming (where some of the necessary skills and experience are highly transferable to the e-payments sector) and it shows a willingness to adapt and encourage new business models and legal structures.

Malta's geographic position means it is well suited to take advantage of opportunities in Europe, Middle East and Africa.

“ Malta has passed through various phases... It was once a military base, we then moved on to the industry sector, tourism, financial services, i-gaming and IT-related back office industries. Now the next phase is for Malta to become a service centre for the region.<sup>22</sup>

Malta is also pro-EU and therefore unlikely to wish to leave. Business is carried out in English.

Responsibility for PSP authorisation and regulation is with the Malta Financial Services Authority (MFSA). It is understood that opening local bank accounts can be challenging and this appears to be part of a larger issue involving international correspondent banking relationships.

Local application of AML requirements is more burdensome than required by EU rules. The FIAU published extensive guidelines on how to conduct CDD that are considered to be very prescriptive. FIAU has even indicated that after 4MLD implementation it intends to regard all non-face-to-face business as high risk requiring EDD. Original or certified copy utility bill required and will be checked during audits and fined if not available in paper files. This old-fashioned and technologically biased approach represents a significant weakness in Malta's offering to the e-payments sector.

### Notable non-bank PSPs authorised in the territory:

- Sendvalu
- Western Union
- SysPay

The application fees for PSP licences are low. Application fee is €3,500 and the ongoing costs for a licence in Malta are calculated as the higher of: €2,500 or 0.0002 x total items in the balance sheet.

## Key Facts

Corporation tax	35% (foreign shareholders receive 6/7 rebate bringing effective rate to 5%)
VAT	18%
Income tax	15-25%
Social insurance contributions	Medium (10% subject to maximum caps too)
Cost of living	Low (significantly < UK)
Crime and corruption	Low & medium
World Bank 'Doing Business' 2017 world rankings	76th out of 190
Ease of opening a bank account	Negative <sup>23</sup>
Cost of registering a company	High (> £1,000 excluding additional capital requirements)

## Regulatory Attitude

Dr Bannister was understanding and sympathetic about the situation faced by e-payments companies in the event of a loss of common market rights and expressed a strong interest in providing a suitable alternative EEA country for the sector. He was also open about the difficulties that are currently

faced by local banks in supporting local financial services companies. Whilst Malta does not have a strong track-record in e-payments, the regulator and his team seem willing to learn with the sector and it seemed that they would try to make the transition to Malta as easy as possible.

<sup>21</sup> <https://www.theguardian.com/commentisfree/2016/jun/01/eu-malta-european-union> <sup>22</sup> Edward Scicluna, Malta Finance Minister: <https://www.theguardian.com/the-report-company/2015/nov/20/financial-services-done-right> <sup>23</sup> Numerous operators and the MFSA themselves have expressed concern about the difficulty regulated entities on the island are facing in opening bank accounts. This is likely due to problems local banks are facing with clearing partners but the problem is a major one for e-payments companies and their clients.

## SWEDEN



Sweden has been a leader in use of e-payments due to banks and merchants investing and supporting a move to a more cashless society since the 1990s. The regulators have significant experience in regulating PSPs and the payments sector and are open to advancing technologies which will assist consumers.

The authorisation and regulation of PSPs in Sweden is undertaken by the Finansinspektionen.

The Swedish take a practical stance to AML, supporting a risk-based approach – major local compliance issues (including warnings and fines) have related to physical money exchanges that have implemented poor AML practices.

### Notable non-bank PSPs authorised in the territory:

- 24Money Payments
- 4T Sverige
- DIBS Payment Services
- iZettle
- SEQR Payments
- Trustly

The application fees for PSP licences are currently 150,000 SEK, with annual licence fees being 65,000 SEK, which is roughly £13,000 and £5,700 respectively.

### Key Facts

Corporation tax	22%
VAT	25%
Income tax	31-54%
Social insurance contributions	Very high (approximately 30% of gross salary)
Cost of living	High (equivalent to UK and Denmark)
Crime and corruption	Low
World Bank 'Doing Business' 2017 world rankings	9th out of 190
Ease of opening a bank account	Very positive
Cost of registering a company	Low (2,200SEK approximately £2000)

### Regulatory Attitude

Sweden was considered to have a business-friendly approach to managing regulatory compliance requirements and anti-money laundering obligations. Its AML regime follows a risk-based approach to money laundering and terrorist financing. The FSA requires PSPs to notify outsourcing arrangement but

the extent to which you need to notify is quite wide (e.g. when using an Amazon server). We spoke with a major payments company in Sweden who were generally very appreciative of the regulatory approach taken by the FSA and advised that the FSA was easy to work with, particularly once authorised.

# Summary of DEEP DIVE MARKETS

Comparing any two markets will always be hard as, whilst they might all be considered as fruit, one is in effect comparing apples with oranges. Decision-making will, of course, reflect the key priorities for a company looking to obtain regulation, such as:

1. Regulatory attitude
2. Ease and cost of staff
3. Reputation of the country/regulators
4. Corporate tax and governance
5. Access to banking

With its new SLAs in place, Ireland, for example, presents itself as a strong candidate against all these factors, but its potentially high fees could lessen its attractiveness.

MARKET	STRENGTHS	WEAKNESSES
<b>Cyprus</b>	<ul style="list-style-type: none"> <li>• UK-based legal system</li> <li>• Low tax rates</li> <li>• Strong pool of experienced staff</li> <li>• English language widely spoken</li> <li>• Large number of companies already regulated and ease of obtain licences</li> </ul>	<ul style="list-style-type: none"> <li>• Reputational issues from the bail-in 'haircut' in 2013 and still has legal cases outstanding with FINCEN</li> <li>• Difficulty in obtaining local bank accounts</li> </ul>
<b>Denmark</b>	<ul style="list-style-type: none"> <li>• 3rd in the 2017 'Doing Business' world rankings</li> <li>• Nationally high use of electronic payments</li> <li>• Open approach of regulator</li> <li>• Flat tax rates of 26% for relocating staff may be possible</li> <li>• Ease of opening a local bank account</li> <li>• Pragmatic and technologically neutral AML compliance environment</li> </ul>	<ul style="list-style-type: none"> <li>• Marginal rate is 56%, effective rate is 35-48%</li> <li>• Local currency is Krone</li> <li>• Nominal interest rate of only 0.05% (some banks negative rates)</li> <li>• High cost of living equal to UK</li> </ul>
<b>Ireland</b>	<ul style="list-style-type: none"> <li>• English language and English-based law</li> <li>• Low corporation tax of 12.5%</li> <li>• New SLAs for authorisation</li> <li>• Ease of opening a local bank account</li> </ul>	<ul style="list-style-type: none"> <li>• Hybrid rule and principle based approach to AML</li> <li>• Ongoing annual fees can be significant</li> <li>• High cost of living equal to UK</li> </ul>
<b>Luxembourg</b>	<ul style="list-style-type: none"> <li>• Multi-national work-force</li> <li>• Big names like PayPal/Amazon based there</li> <li>• Easy to open local bank accounts</li> <li>• Similar SDD policy to the UK</li> </ul>	<ul style="list-style-type: none"> <li>• Cost of doing business and living very high</li> </ul>
<b>Malta</b>	<ul style="list-style-type: none"> <li>• Low cost of living</li> <li>• Low corporation tax for foreign owners of 5%</li> </ul>	<ul style="list-style-type: none"> <li>• Reputation as centre of gambling</li> <li>• Difficulty in opening local bank accounts and correspondent USD bank accounts</li> <li>• Does not have a strong track-record in e-payments</li> <li>• CDD guidelines are very prescriptive and AML approach needs to be made ecommerce friendly</li> </ul>
<b>Sweden</b>	<ul style="list-style-type: none"> <li>• Leader in use of e-payments</li> <li>• Practical stance to AML, supporting a risk-based approach</li> <li>• Ease of opening a local bank account</li> </ul>	<ul style="list-style-type: none"> <li>• High cost of living equal to UK</li> <li>• Very high total personal taxation on earnings</li> <li>• Krona-based economy</li> </ul>





## Section 6

# SUPPORTING YOUR APPLICATION

During the course of investigations for this report, the EPA and the authors have come across a number of organisations that can support companies in applying for licences in various jurisdictions. The shaded boxes in the

following table highlight the markets that these organisations can support, with a short description of the EPA member companies in bold and their services below.

	CYPRUS	DENMARK	IRELAND	LUXEMBOURG	MALTA	SWEDEN
<b>FSCom</b>						
<b>K&amp;L Gates</b>						
Kammeradvokaten						
Meerkat City						
Neopay						
Polymath Consulting						
<b>Ramparts</b>						

Three of the EPA's members can support an application to become regulated in the above countries. They are listed below. Other EPA members that can support applications to become regulated in the UK are listed in the Appendix.

### FSCOM

FSCom is a specialist financial services compliance company which provides practical tailored solutions to businesses in the regulated sector. FSCom is now one of the leading best practice compliance specialists in the UK with offices in London and Belfast.

**Alison Donnelly**  
 alison.donnelly@fscm.com  
 +44 (0)7597 728 118

### K&L GATES

K&L Gates represents leading global corporations, growth and middle-market companies, capital markets participants and entrepreneurs in every major industry group as well as public sector entities, educational institutions, philanthropic organizations and individuals.

**Judith Rinearson**  
 judith.rinearson@klgates.com  
 +44 (0)20 7360 8225

### RAMPARTS

Ramparts is a European law firm based in Gibraltar and in the UK. Our team is qualified to provide legal advice on English, Gibraltar and European law – we support clients in the e-commerce and financial services sectors on a wide range of multi-national legal and corporate issues.

**Peter Howitt**  
 peterhowitt@ramparts.eu  
 +44 (0)7899 623 127

## Section 7

# CONCLUDING REMARKS

The UK payments industry is world-leading, and its Fintech sector is estimated by HM Treasury to be worth £6bn. The UK is likely to leave the EU in 2019 and when it does, it could potentially lose its passporting rights to the European single market. Without such rights, many regulated payments companies in the UK will be unable to deliver products and services across the European Economic Area (EEA). The Emerging Payments Association (EPA) believes restrictions of passporting rights will damage the emerging payments industry significantly.

Currently the UK is the best jurisdiction in which to be a regulated payments company as it is the only country that scores positively across all the selection criteria used. However, if push comes to a Brexit shove, which is definitely on the cards, then every regulated payments company will have to consider its options, of which there seem to be three:

- Wait and see
- Hedge your bets and investigate which of these deep dive markets are right for your particular sort of business
- Ignore the EU altogether and focus on the UK and non-EU markets

As the report outlines, there are some very good alternatives to the UK available to those who want to operate in the EU and some specialists to ease the path. If passporting is not addressed as part of the UK Government's Brexit negotiations, then these real and viable options could entice many of HM Treasury's estimated 60,000 FinTech employees to move their operations abroad.

Armed with the intelligence of this report, the journey will be smoother.

[www.emergingpayments.org](http://www.emergingpayments.org)



# Appendix

Bearing in mind the current level of uncertainty, companies may still want to become regulated payments companies in the UK. This could be under one or more of the following circumstances:

1. If the UK does not leave the EU
2. If the UK leaves the EU but does not lose passporting rights
3. If the company is only targeting UK users
4. If the company wants to use the UK as a launch pad for the non-EU countries
5. If the company is in the EU and wants access to the UK post-Brexit

If this is the case, there are several members of the EPA that would be able to support an application to become a Payment Institution or E-Money Institution in the UK. They are listed below.

## **BRYAN CAVE**

Bryan Cave LLP has a diversified international legal practice. The firm represents a wide variety of business, financial, institutional and individual clients, including publicly held multinational corporations, large and mid-sized privately held companies, partnerships and emerging companies.

### **Gohar Lputian**

gohar.lputian@bryancave.com  
+44 (0)7818 272061

## **FSCOM**

FSCOM is a specialist financial services compliance company which provides practical tailored solutions to businesses in the regulated sector. FSCOM is now one of the leading best practice compliance specialists in the UK with offices in London and Belfast.

### **Alison Donnelly**

alison.donnelly@fsc.com  
+44 (0)7597 728 118

## **K&L GATES**

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### **Judith Rinearson**

judith.rinearson@klgates.com  
+44 (0)20 7360 8225

## **LOCKE LORD (UK) LLP**

Locke Lord is a full-service, international law firm of more than 20 offices designed to meet clients' needs and advises clients across a broad spectrum of industries.

### **Robert Courtneidge**

rcourtneidge@lockelord.com  
+44 (0)7764 282 510

## **OURY CLARK**

Oury Clark has dedicated considerable time and resources since 1935 to build a unique package that pushes the boundaries of professional practice and makes it easier and more cost effective for international businesses setting up operations in the UK.

### **Tara Mellett**

tara.mellett@ouryclark.com  
+44 (0)7776 287 061

## **RAMPARTS**

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### **Peter Howitt**

peterhowitt@ramparts.eu  
+44 (0)7899 623 127





**Emerging Payments Association**

Colechurch House, 1 London Bridge Walk,  
London, SE1 2SX, UK

Tel: **+44 (0)20 7378 9890**

Web: **emergingpayments.org**

Email: **info@emergingpayments.org**

 **@EPAssoc #PayTech**