



BANK ĊENTRALI TA' MALTA
EUROSISTEMA
CENTRAL BANK OF MALTA

**Post Consultation Report
on the amendments made to the
Central Bank of Malta Act
and
Directive No 15 on
'Supervision of Credit Reference Agencies'**

1. Introduction

On 21st January 2019, the Central Bank of Malta (hereinafter 'the Bank') issued a consultation document on the amendments made to the Central Bank of Malta Act (*Cap. 204 of the Laws of Malta*) (hereinafter 'the Act') and to the new Central Bank of Malta Directive No 15 on 'Supervision of Credit Reference Agencies' (hereinafter 'the Directive'). The scope of the consultation was to obtain the stakeholders' feedback with regards to the new provisions introduced in the Act and the draft Directive to be issued under the Act.

The first set of amendments to the Act relate to the addition of a new article by virtue of which the Bank will be empowered to act as a supervisory authority of credit reference agencies licenced under the Trading Licences Regulation (*S.L. 441.07*), and to issue directives imposing requirements on such agencies and to regulate their access to the Central Credit Register at the Bank.

The Directive lays down the rules concerning the supervision of licensed credit reference agencies, and lists a number of obligations on such credit reference agencies in relation to access to Central Credit Register data.

A second set of amendments to the Act address the need for a legal and regulatory framework that serves to promote the safety and efficiency of the Maltese payments landscape. Appropriate governance from the Bank to set rules, standards and procedures will aim to ensure a sound and enabling environment for all participants in the Maltese payments landscape.

The public consultation period closed on 4th February 2019, during which a number of interested stakeholders in the industry, professionals and associations submitted comments to the Bank.

This document summarises the feedback received by the Bank and sets out the Bank's response and position thereto.

2. Feedback Statement

An outline of the main comments received and the Bank's position in relation thereto is provided below:

2.1 Feedback received on provisions relating to the supervision of credit reference agencies.

2.1.1 Operating as a credit reference agency

Feedback Received

A respondent asked who can apply for a licence to operate as a credit reference agency.

Bank's Position

Only those institutions which fall within the definition of a credit reference agency shall apply for a licence. The Directive defines 'credit reference agency' as *"any undertaking licensed by the Trade Licensing Unit in terms of regulation 47A of the Trading Licences Regulations, the main business of which is to **prepare, assemble and evaluate credit information and related credit and risk management services on legal and natural persons for the purpose of issuing credit scores to be furnished to third parties, provided that a credit reference agency is not precluded from carrying out other related tasks.**"*

This means that no company or entity, other than a credit reference agency licensed in terms of regulation 47A of the Trading Licences Regulations, may use the term "credit reference agency" or other words as may indicate or purport to indicate the carrying on of the business of a credit reference agency in describing its business, or make any such use on any correspondence, notice or advertisement, or in any other similar manner.

In turn, for a company or entity to be able to issue a 'credit score' as defined under the Act, that is, a measure of creditworthiness derived from credit information and which must under pain of nullity include data derived from the Central Credit Register, it will need to be licensed as a credit reference agency.

Any companies or entities that are unsure as to whether they fall within the definition of the term 'credit reference agency', or simply wish to obtain more information about the licensing process, are invited to consult the Trade Licensing Unit and the Bank. The Bank would like to clarify that those companies or entities that provide creditworthiness assessments, but do not intend to make use of data derived from the Central Credit Register are not required to apply for a licence, provided that they do not make use of the term "credit score" in any correspondence, notice or advertisement, or in any other similar manner.

This question did not necessitate any amendments to the proposed Directive.

2.1.2 Consent for the issuance of a credit score

Feedback Received

One respondent sought clarification on who is empowered to request the issuance of a credit score.

Bank's Position

Paragraph 5(1) of the Directive provides that a request for the issuance of a credit score can only be made by a natural or legal person or a credit institution. Furthermore, paragraph 6(1) stipulates that when a request is made by a credit institution, the consent of a prospective natural or legal counterparty is also required¹.

This clarification did not necessitate any amendments the proposed Directive.

Feedback Received

Another respondent questioned the Bank's requirement of the consent of a legal person for the issuance of a credit score.

Bank's Position

Pursuant to Directive No 14, since the Bank is not the owner of the data held within the Central Credit Register, in order for a credit reference agency to issue a credit score, it requires "[...] *the specific consent of the natural or legal person*".² Therefore, the consent for the use of Central Credit Register data is a prerequisite for the issuance of a credit score.

This question did not necessitate any amendments to the proposed Directive.

Feedback Received

One of the respondents questioned whether the requirement of the consent for the issuance of a credit score will preclude a credit reference agency from carrying out "*credit risk assessments, due diligence exercise, KYC and AML investigations*".

Bank's Position

The Directive defines 'credit reference agency' as "*any undertaking licensed by the Trade Licensing Unit in terms of regulation 47A of the Trading Licences Regulations, the main business of which is to prepare, assemble and evaluate credit information and related credit and risk management services on legal and natural persons for the purpose of issuing credit scores to be furnished to third parties, provided that a credit reference agency is not precluded from carrying out other related tasks.*"

Hence, the consent for the issuance of a credit score will not preclude a credit reference agency from carrying out "*credit risk assessments, due diligence exercise, KYC and AML investigations*". Irrespective of the use or the need of a credit score, consent is always required for the issuance of such credit score.

¹ For the issuance of a credit score, the credit institutions need to follow the procedure found in Central Bank of Malta Directive No 14 on 'Central Credit Register'.

² Paragraph 6(1) of the Central Bank of Malta Directive No 15 on 'Supervision of Credit Reference Agencies'.

This question did not necessitate any amendments to the proposed Directive.

2.1.3 Definition of ‘credit score’

Feedback Received

A respondent requested clarifications over the definition of a ‘credit score’.

Bank’s Position

The Directive defines ‘credit score’ as a “measure of creditworthiness derived from credit information and which must under pain of nullity include data derived from the Central Credit Register.” This means that a credit reference agency will only be able to issue a credit score by including data derived from the Central Credit Register. Furthermore, unless a company or an entity applies for a licence to operate as a credit reference agency under the Trading Licences Regulations, it will not have access to the Bank’s Central Credit Register. As stated here-above, companies or entities that provide creditworthiness assessments, but do not intend to make use of data derived from the Central Credit Register are not required to apply for a licence, provided that they do not make use of the term “credit score” in any correspondence, notice or advertisement, or in any other similar manner.

This question did not necessitate any amendments to the proposed Directive.

2.1.4 Public and non-public information

Feedback Received

A respondent suggested that the terms ‘public’ and ‘non-public’ information should be defined in the Directive.

Bank’s Position

The Bank understands that this suggestion was made within the context of “credit information” as defined under the Act as a “means a collection of **public and non-public information** and other related information, including Central Credit Register data, which when assessed, assembled and evaluated indicates the creditworthiness of a legal or natural person”. The Bank finds that it is not necessary to define these terms in the Act, since such terms are self-explanatory. Public information is information within the public domain and which the general public can easily access without the consent of whom the information concerns. On the other hand, non-public information is information that is not accessible by the general public.

This suggestion did not necessitate any amendments to the proposed Directive.

2.1.5 Notification requirement

Feedback Received

A respondent requested clarification over part of paragraph 7(i) of the Directive: “an event that can affect the confidentiality, security or integrity of a credit score”.

Bank’s Position

The Bank, as supervisory authority, has to be informed within forty-eight hours of having become aware of an event that can affect the confidentiality, security or integrity of a credit score. For instances, cases of breach of confidentiality, security or integrity relating to a credit score or its component data are to be brought to the attention of the Bank within the stipulated timeframe.

This clarification did not necessitate any amendments to the proposed Directive.

2.1.6 Off-site Supervision

Feedback Received

One of the respondents remarked that the submission of the list of the reciprocity agreements that a credit reference agency has in place with other data providers is considered as sensitive data.

Bank’s Position

The information submitted in terms of paragraph 14 of the Directive will be treated in the strictest confidence. The Bank, as a supervisory authority, maintains that a list of the reciprocity agreements is only required for it to be cognizant of current information exchange relationships. The Bank needs to ensure that the credit reference agency relies both on positive and negative data. Reciprocity agreements would indicate the dataset accessible to the credit reference agency.

This remark did not necessitate any amendments to the proposed Directive.

2.1.7 Directive No 14

Feedback Received

One respondent questioned whether Directive No 14 will be amended.

Bank’s Position

The Bank would like to explain that Directive No 14, which is available on Bank’s website, is being amended to include the procedure to be followed by credit reference agencies to access the information held in the Central Credit Register. The amended Directive No 14 will be uploaded on the Bank’s website once the amendments to Act are approved by Parliament.

2.2 Feedback received on provisions relating to the oversight powers of the Bank over payments systems

2.2.1 Notification by credit institutions and financial institutions

Feedback Received

One respondent suggested that the notification to the Bank by a credit or financial institution providing one of the services mentioned in article 34A(1) of the Act, should be carried out by the Malta Financial Services Authority (hereinafter 'the MFSA') during the licensing process and not by the credit institution or financial institution.

Bank's Position

The Bank would like to affirm that such notification procedure by the MFSA is already being adhered to during the licensing stage. However, the Bank has noted that when a credit institution or a financial institution is licenced by the MFSA, these are generally licensed to operate in a substantial number of services, most of which will come into operation several years after the initial licensing process. In fact, through experience, the Bank recognised that it is often the case that several payment solutions are issued much later in the lifetime of the payment service provider.

The main reasoning behind the introduction of article 34A(2) of the Act, is that a payment service provider shall keep the Bank, as the competent authority responsible for oversight and regulation of the operation and the participation in the domestic payment system, notified on any plans regarding the launch of any new payment service.

This will allow the Bank to assess the impact of such payment services on the market, including compliance with the current regulatory framework.

This suggestion did not necessitate any amendments to the proposed Directive.

2.2.2 The right of the Bank to publicise the fact that *"a credit or a financial institution is failing to comply with an order or requirement."*

Feedback Received

One respondent submitted that the fact that *'a credit or a financial institution is failing to comply with an order or requirement'* should only be made public once the period to file an appeal has lapsed.

Bank's Position

It must be noted that such procedure is already being applied by the MFSA, wherein Article 6(8) of the Financial Institutions Act (*Cap. 376 of the Laws of Malta*), states that "[W]here the competent authority is satisfied that the circumstances so warrant, it may at any time **make public any action it has taken under this article.**" Furthermore, Article 21(g) states that *'[A]ny person who is aggrieved by a decision of the competent authority to a public statement, under the provision of article 6(8), may appeal against the decision to the Tribunal [..].'*

Moreover, a similar procedure is also followed under the Virtual Financial Assets Act (*Cap. 890 of the Laws of Malta*) whereby “[..] the competent authority shall also have the power to [..] make public the fact that an issuer is failing to comply with his obligations under any provision of the Act [..]”³ without a recourse to an appeal.⁴

The Bank decided not to take up this suggestion. It must be noted that it is not the intention of the Bank to discredit a credit or a financial institution, and every decision to apply the provisions of article 34A(4) of the Act will be taken following a thorough assessment on a case by case basis.

Although the suggestion was not taken up, a new proviso to article 34A(4) of the Act is going to be introduced, whereby it will be stipulated that, information published in terms of this sub-article shall remain on the official website of the Bank for only for a stipulated period.

2.2.3 The right of the Bank to impose “an administrative penalty, recoverable [..]without a recourse a court hearing, up to 2% of the total value of transactions transacted [..]”

Feedback Received

One respondent suggested that the imposition of “an administrative penalty, recoverable [..], up to 2% of the total value of transactions transacted [..] in the proceeding business year, and where such sum cannot be determined up to 1 million euro [..]” does not provide for any clear and specific criteria which the Bank ought to take into consideration when imposing such penalty.

Bank’s Position

The Bank, as a competent authority, remarks that it does not intend to impose such administrative penalty without undue consideration and after having exhausted the provisions of article 34A(4). The imposition of an administrative penalty will only be a measure of last resort. The current administrative penalties that can be imposed by the Bank on credit and financial institutions are ineffective when applied to article 34A(4).

The Bank decided not to take up this suggestion.

3. Contact

Any comments or queries in relation to this post consultation document should be directed to: info@centralbankofmalta.org

³ Article 12(e) of the Virtual Financial Assets Act (Cap. 590 of the Laws of Malta).

⁴ Ibid Art. 51.