

EPIF RESPONSE TO ESAs CONSULTATION TO PREVENT TERRORIST FINANCING AND MONEY LAUNDERING IN ELECTRONIC FUND TRANSFERS

ABOUT EPIF (EUROPEAN PAYMENT INSTITUTIONS FEDERATION)

EPIF, founded in 2011, represents the interests of the non-bank payment sector at the European level. We currently have over 190 authorised payment institutions and other non-bank payment providers as our members offering services in every part of Europe. EPIF thus represents roughly one third of all authorized Payment Institutions in Europe. Our diverse membership includes a broad range of business models, including:

- 3-party Card Network Schemes
- Acquirers
- Money Transfer Operators
- FX Payment Providers
- Mobile Payments
- Payment Processing Service Providers
- Card Issuers
- Third Party Providers
- Digital Wallets

EPIF seeks to represent the voice of the PI industry and the non-bank payment sector with EU institutions, policy-makers and stakeholders. We aim to play a constructive role in shaping and developing market conditions for payments in a modern and constantly evolving environment. It is our desire to promote a single EU payments market via the removal of excessive regulatory obstacles.

We wish to be seen as a provider for efficient payments in that single market and it is our aim to increase payment product diversification and innovation tailored to the needs of payment users (e.g. via mobile and internet).

GENERAL COMMENTS

EPIF wants to emphasise the need to ensure that the legislation in practice works also when non-bank PSPs are involved in the payment chain.

More specifically, EPIF believes the following two principles have to be made very clear:

- 1) The bank where the Payer initiates a payment transaction needs to provide a sufficient amount of input fields/templates to allow it to obtain sufficient information about the Payee also when non-bank PSPs act as intermediary PSPs or PSPs of the Payee.
- 2) Banks that take receipt of payments (intermediary PSP) need to provide or make available to the holder of the account (the PSP of the Payee) where the transfer is received the same information about the identity of the Payer that the bank has received from the Payer's bank (PSP of the Payer), so as to allow non-bank PSPs to act as PSP of the Payee.

The Payer's PSP needs to know the Payee when executing the payment. As such, the Payer's PSP needs to provide a number of input fields to allow the further transmission of all relevant information on each party in the "chain" including (if applicable) intermediary PSPs and ultimate Payee (e.g. "primary recipient", "second recipient", "third recipient", "fourth recipient" etc).

As an example, a payment may go through one or several intermediary PSPs; in an e-commerce context the end-recipient of the payment, the Payee, may take advantage of a collecting PSP that collects the Payee's funds from different payment sources. In this example, the flow of funds would be Payer's bank (ASPSP) -> PSP of the Payee holding a bank account in a bank which would be an intermediary PSP [collecting PSP acting on behalf of the e-commerce merchant] -> E-commerce Merchant (Payee).

Another example is a remittance company using the services of a collecting PSP. The flow of funds will in this case be: Payer's bank (ASPSP) -> intermediary PSP [collecting PSP acting on behalf of the a remittance company, holding a bank account in a bank which would also be an intermediary PSP] -> PSP of the Payee [remittance company holding a bank account in a bank which would be an intermediary PSP] -> Payee [individual].

In order for the payment to properly be accompanied with relevant information on the payee, the ASPSP needs to provide a sufficient number of "input fields" allowing the Payer to, if applicable, enter information about:

- a. the immediate receiving party (PSP),
- b. potential additional parties in the payment chain (intermediary PSP(s)), and the ultimate beneficiary (e.g. an individual).

The Joint Guidelines produced by the ESA's need to take into account current payment infrastructure that international payments currently operate in.

EPIS sees two separate challenges to the implementation of the regulations.

Firstly, on the pay-in side (funds we receive from the sender), in some cases (Nordic countries) we do not receive the sender details, meaning we are unable to pass these on. Therefore where the previous party in the chain does not pass on the data, there has to be a caveat that we are therefore not obliged to send it on as we cannot send on data which we do not receive.

Secondly, on the pay-out side (funds we send to recipients), in some cases our pay-out partners cannot receive the data on the sender. Therefore we want to send on the data of the sender, but are unable to due to technical limitations of the file format or payment infrastructure. We cannot send on data if the receiving party is unable to receive it.

In both scenarios, we would ask that some thought is given to how we can comply, can we use a unique reference in lieu of details we do not receive or cannot send.

CONSULTATION RESPONSE

Q1. Do you agree with the general considerations in Chapter 1? In particular, do you agree that these are necessary to ensure an effective, risk-based and proportionate approach to complying with Regulation (EU) 2015/847? If you do not agree, clearly set out your rationale and provide supporting evidence where available. Please also set out what you consider to be the common principles that apply to both, the PSP of the payee and the intermediary PSP, and why.

When a (non-bank) PSP acts as PSP of the Payer (e.g. a merchant doing a refund to a customer) and executes a transfer from its client funds account held with an ASPSP (typically a bank) to the account of the payee (customer), our interpretation is that the non-bank PSP would be considered the PSP of the Payer. In order for the non-bank PSP to pass along ultimate Payer information at the time of the transfer, the PSP must be able to technically forward this information to the sending bank/intermediary PSP (e.g. through a payment instruction template in the online bank interface or an API).

Also, the non-bank PSP if acting in capacity as Payee PSP or intermediary PSP needs to have access to the information about the Payer that is transmitted by the Payer's PSP. To take a concrete example: a non-bank PSP acts as collecting PSP of an e-commerce merchant. An individual (Payer) makes a purchase from the e-commerce merchant and the payment is made to the benefit of the non-bank collecting PSP (cPSP), acting on behalf of the e-commerce merchant. In this case, the Payer's bank will have transmitted information about the payer to the bank where the cPSP holds its receiving account and the cPSP in its role as intermediary PSP needs access to this information

This can be achieved by means of the bank providing or making available to the holder of the bank account (the cPSP) the same information about the Payer that the bank has received from the Payer's bank.

Q2. Do you agree that the expectations on intermediary PSPs and PSPs of the payee in Chapter II are proportionate and necessary to both comply with Regulation (EU) 2015/847 and ensure a level playing field? In particular, do you agree with:

- **The steps PSPs should take to detect and manage transfers of funds with missing information of inadmissible characters or inputs?**
- **The steps PSPs should take to detect and manage PSPs that are repeatedly failing to provide the required information?**

If you do not agree, clearly set out your rationale and provide supporting evidence where available. Please also set out at what you believe PSPs should do instead, and why.

Q3. Do you agree with the provisions for intermediary PSPs in Chapter III? If you do not agree, clearly set out your rationale and provide supporting evidence where available. Please also set out how you think intermediary PSPs can meet their obligations in Article 10 of Regulation (EU) 2015/847 instead.

Q4: Do you agree with the provisions for PSPs of the payee in Chapter IV? If you do not agree, clearly set out your rationale and provide supporting evidence where available. Please also set out how you think PSPs of the payee can meet their obligations instead.
