European Payment Institutions Federation aisbl

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EPIF Position Paper

"Supervisory Cooperation Protocol between Home and Host Supervisors of Agents & Branches of Payment Institutions in Host Member States"

EPIF welcomes that the European Supervisory Authorities (ESA) have recently started to provide specific guidance to the financial industry regarding the supervisory, passporting and reporting regime applicable to Payment Institutions (PI) and their agent network. The new supervisory protocol (the 'Protocol') provides helpful clarifications, in particular from an Anti-Money Laundering and Counter-Terrorism Financing (AML/CFT) perspective. On the other hand, the Protocol contains various proposals which are a matter of concern to EPIF due to their unnecessary restrictive nature and potential severe impact on the business models of non-bank remittance service providers in Europe.

Consultation of the PI industry as part of the 'better regulation' approach

Unlike similar supervisory guidance applicable to the EU banking sector provided by EBA, the PI industry has not been consulted regarding this Protocol which we would have considered part of the established 'better regulation' principle in the EU. We hope that the PI industry will be systematically consulted regarding future related ESA guidance papers.

Blanket discreditation of retail agents regarding their suitability to provide payment services (Paragraphs 18) or to perform AML/CFT duties (Paragraph 30) not in line with underlying EU regulatory framework

The Protocol makes reference to the *EC Staff Working Paper* seemingly accepting that the PSD provides host competent authorities with the powers to categorically reject certain types or all agents in certain classes of trade due to a perceived general increase of the risk of ML or TF based on Art. 17 (6) PSD. In our view, such an interpretation clearly deviates from the spirit and letter of the PSD, and furthermore is disproportional and not necessary. The PSD provides host Member States competent authorities with powers to evaluate individual proposed PI agents on a case-by-case basis.[1] During the negoations of the PSD, no specific classes of trade were meant to be 'out of scope' to serve as PI agents, further underlined by the definition of agent in Art. 4 (22) PSD which even allows natural persons to serve as an agent. If a natural person can serve as an agent under the PSD, then clearly a legal person or merchant/retailer can do so also. Any other interpretation would constitute an unlawful restriction of the powers provided to Payment Institutions under the PSD and clearly undermine the PSD's market liberalization objective.

Retail agents have been providing payment services on behalf of authorized principals in several EU Member States for many years before the adoption of the PSD (e.g. Italy, UK) in a lawful and compliant manner. This further clarifies that a blanket restriction of entire agent classes of trade would not be a proportionate nor necessary measure and thus not be in line with the overriding principles of EU law.

In the last years, and in reliance on the new regulatory framework provided by the PSD, the PI industry has made substantial capital and other resource investments into the expansion of their agent network across Europe, including in related AML controls and trainings. A properly trained retail agent will help improve the overall level of efficiency of a national AML/CFT framework, also in light of the existing sizeable informal money transfer sector in all EU Member States which escapes any supervision, control or reporting requirement.

[1] SeeArt. 17 (6) PSD, which refers to 'the' agent or 'the' branch, and not 'agents' or agent classes of trade. Also, Art. 4 (22) PSD defines agents as all natural and legal persons.

Proposed cooperation between competent authorities and the PI sector to address the issue

Various other, more proportionate steps are available for competent authorities in host countries to address suspected increased AML/CFT risks: specific PSD (retail) agent supervisory guidelines could be developed in cooperation with the PI industry. Various AML/CFT "best practice" standards for PI and their agent network could be developed jointly, covering for instance:

- (i) Agent enrolment, -due diligence, and -onboarding process
- (ii) Agent oversight and – training
- (iii) Regulatory monitoring and reporting
- (iv) Sanctions and Interdictions
- (v) PI Employee trainings
- (vi) Treatment of agents offering payment services on behalf of multiple PI

EPIF would be happy to serve as the coordinating body for the Payment Institution sector in that initiative, working together with experts from ESA/EBA and from other competent authorities to draft such 'best practice standards'.

"Preventative powers" of competent authorities (Paragraph 16-17)

In light of the above, the role of the competent authorities in both the home and host Member State should not primarily be presented and characterized as '*preventative'*. We could recommend characterizing it as being "*supportive and providing guidance*" for the non-bank financial industry working in this new regulatory environment. Payment Institutions should not be discouraged from engaging agents (including cross-border) in a certain category of trade – they instead should be appropriately guided and supervised in doing so, thereby fulfilling the PSD's objective, which is to strengthen competition in the EU payment services sector to the benefit of the consumer and society overall.

Delegated supervision as default cooperation mechanism

The Protocol currently lacks a clear commitment to the principle of *delegated supervision*, which could help overcome disparities between competent authorities' supervisory approaches. Arguably, the lack of trust currently in place between some competent supervisory authorities has negative consequences for the financial industry trying to apply the new PSD regulatory framework in practice. If the concept of 'delegated supervision' would be the default method of supervisory cooperation under the PSD, more communication between competent supervisory authorities would take place naturally, thereby increasing the level of trust and the level of supervisory effectiveness across Europe.

ABOUT EPIF

EPIF represents the interests of the payment institution sector at European level. Its members represent the broad range of business models covered by the Payment Services Directive (PSD) and include companies and national associations from every part of Europe. EPIF seeks to represent the voice of this industry with EU institutions, policy makers and stakeholders. It aims to play a constructive role in shaping and developing market conditions for payments in a modern and constantly evolving environment.

For more information about EPIF, please visit www.paymentinstitutions.eu