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EPIF POSITION PAPER ON ACCESS TO BANK SERVICES FOR PAYMENT INSTITUTIONS

ABOUT EPIF (EUROPEAN PAYMENT INSTITUTIONS FEDERATION)

EPIF was founded in 2011 to represent the interests of the non-bank payment sector at the European level. EPIF currently has more than 190 authorised payment institutions and other non-bank payment providers which offer services throughout Europe. EPIF represents more than one third of all authorized Payment Institutions (PI) in Europe.[1] Our diverse membership includes a broad range of business models:

- 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 represents the PI industry and the non-bank payment sector to the EU institutions, policymakers and other stakeholders. We aim to play a constructive role in shaping and developing market conditions for payments in a constantly evolving environment. It is our desire to promote a single EU payments market via the removal of excessive regulatory obstacles.

It is our aim to increase payment product diversification and innovation tailored to the needs of payment users (e.g. via mobile and internet).

This position paper highlights the problems PIs are facing regarding access to bank accounts.

[1] According to the Commission, there were 568 authorized Payment Institutions in Europe as per end 2012.

1. WHY A BANK ACCOUNT IS ESSENTIAL FOR PAYMENT INSITUTIONS

- **Payment institutions need to be able to open and maintain bank accounts in order to provide payment services. The PI's bank account access** is required to take receipt of payments, to have access to ATM's network, to receive deposits from agents, hold safeguarded client funds and process payments including refunds.

- While **payment institutions compete with banks** in the European market for online payments, **banks have a pivotal role regarding the access to essential financial infrastructure (e.g access to settlement accounts, safeguarding of clients' funds, indirect access to Retail Payment Systems and currency settlements).** The current system effectively allows banks to limit competition by deciding which payment institutions (PI) should be able to exist and which should not.

2. MEMBER STATES WHERE ACCESS TO BANK ACCOUNT IS DENIED TO PAYMENT INSTITUTIONS

In several Member States, EPIF members have encountered problems in accessing a bank account. Countries where this has occurred include:

- United Kingdom
- Sweden
- France
- Italy
- Spain
- Greece
- Austria
- Denmark
- Germany
- Norway
- Netherlands
- Belgium
- Finland

3. JUSTIFICATION GIVEN TO PAYMENT INSTITUTIONS BY BANKS

Some of the reasons given by banks when refusing to provide services to payment institutions include:

- **Anti-money laundering and combating the Financing of Terrorism (AML/CFT) requirements:**

- This fails to take into consideration that the higher the risk, the higher the control measures to manage that risk. Some of the guidance and studies on AML (e.g. FATF Report) identify PIs as a high risk activity from the AML/CTF perspective, but to mitigate that risk "Enhance Due

Diligence" measures are recommended. A high risk activity can be mitigated through the application of different Due Diligence measures.

- Whilst it is **best practice for banks to know their customers' customers (**JMLSG guidance), it should not be ignored that **PI's are required to comply with AML/FT procedures in their own right.**

- There are also a number of **cases where no justification is given** or where EPIF's members are simply told by some banks that they just do not serve payment institutions.

4. CASE STUDIES OF FINANCIAL EXCLUSION BY BANKS OF PAYMENT INSTITUTIONS

SPAIN

- Fifteen of the largest banks in Spain have closed or refused to open bank accounts for PIs without any prior due diligence and/or analysis of the operations of the PIs.

- PIs in Spain challenged these decisions and the Spanish Courts ruled that the conduct of the banks was unlawful and forced the banks to reopen the accounts.

- For many PIs, especially those providing money remittance services, it is becoming increasingly difficult to open an account, which is fundamental to provide payment services.

FRANCE

- The French PI Association (AFEPAME) has started a dialogue with the French Credit Institution Association (FBF), in order to draft a "code of conduct" related to AML/CTF responsibility split between the bank and the PI.

- However, FBF argues there are currently no waivers for banks dealing with PIs. Banks need only suspect money laundering risks to justify the sudden closure of an account.

UNITED KINGDOM

- For some types of PIs, especially remittance firms, it is now very difficult in the UK to **obtain an account in a bank** which will enable them to meet the **safeguarding requirements under the PSD**.

- A recent example of the difficulties created for PIs is the court case against Barclays Bank after the bank had closed the accounts of two customers both money service businesses (MSBs)

(Dahabshiil Transfer Services Ltd. v Barclays Bank Plc [2013] EWHC 3379 (Ch) (05 November 2013)).

- Many PIs which had pre-existing accounts lost them last year as a result of the decisions of their banks. Consequently, a large number of **PIs have ceased trading**. Some PIs still operating are forced to use a pre-existing bank account in another Member State which severely **limits their business**.

- The **UK government is aware of this problem** and has set up a **working group of key stakeholders**. The working group is providing input into new AML/CTF guidance for the **MSB sector** which is being developed by **the UK regulator.**

UNITED STATES

- **FinCen** and the **Federal Banking Agencies** issued **guidance in 2005 for banking organisations when providing banking services to money services businesses** operating in the United States. While banking organisations are expected to manage risk associated with all accounts, including money services business accounts, **banking organisations will not be held responsible for their customer's compliance** with the Bank Secrecy Act and other applicable laws and regulations.

- These **clarifications are important for the banking organisations** to understand how they can **provide services to money services businesses while remaining compliant** with applicable laws and regulations. Similar **guidance in the EU would help to define respective responsibilities.**

5. EPIF'S POSITION

- EPIF strongly believes in **a fully functioning payments market** which serves the interests of consumers. **Competition is essential** in this context, meaning that there should be an adequate diversity of PIs. However **it is impossible to offer business as a PI without a bank account.**

- EPIF advocates that **the law should state that a properly authorised or registered and supervised PI has the right to obtain and operate a bank account. It must also have access to related services which are essential to allow the PI to provide services to its own customers.** To achieve this, EPIF calls for legislators to set out a common framework which should define the minimum conditions for a PI to open and maintain a bank account (e.g annual audits, AML checks tailored to the specific business of the PI and the countries in which it operates).

- It is **unreasonable that PIs may be obliged to comply** with **enhanced procedures** which are **not applicable to their business**. There should be a differentiation in the requirements for a domestic PI with those of a PI operating in more countries and processing funds for riskier activities (e.g. online gaming).

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- If legislators feel unable to mandate banks to provide access to accounts for PIs, then a **bank should be required to provide reasons for terminating or refusing to open a bank account. At the moment, banks can rely on very generic reasons such as "changes to credit risk appetite"**. A local dispute resolution mechanism should be available to PIs and provide a swift and un-bureaucratic solution.

- EPIF suggests the **EBA** to issue similar guidance as **FinCen** and the **Federal Banking Agencies guidance on providing banking services to money services businesses. This guidance would ideally cover the due diligence expectations, the risk assessment and the risk indicators.**

- EPIF urges legislators to consider whether there are any other **remedial options** open to them if **commercial banks continue to refuse to provide accounts for PIs.**

- Finally, in light of the fact that the AML/CFT responsibilities from banks appears to be the principle problem for PIs, EPIF proposes that banks be allowed to partially derogate their responsibility where their customers are authorised payment institutions.

CONCLUSION

EPIF welcomes the opportunity to engage further with EU policymakers on the issues highlighted above. EPIF would be happy to provide technical input or any other helpful information, including reinforcing these points or explaining how the different PSD rules, particularly on access to bank accounts, apply to the various business models we represent.

For more information about the PI sector, EPIF and its members, please contact us via our website or Secretariat.

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