European Payment Institutions Federation aisbl

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EPIF POSITION PAPER ON PAYMENT INITIATION SERVICES (PIS)

EPIF, founded in 2011, represents the interests of the non-bank payment institutions ("PI") sector at the European level. We currently represent over 250 PIs offering services in every part of Europe. Our diverse membership includes the broad range of business models covered by the PSD including:

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

EPIF seeks to represent the voice of the PI industry with EU institutions, policymakers 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.

Collectively, we wish to be seen as an infrastructure 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 society (e.g. via mobile and internet).

INTRODUCTION

EPIF is glad to share its views on the topic of third parties accessing payment accounts to effect payments on behalf of European consumers (also called Payment Initiation Services)[1] as well as to make four recommendations in respect of Payment Initiation Services ("PIS").

[1] This position paper focuses only on "Payment Initiation Services", and does not cover "Account Information Services".

1. EXECUTIVE SUMMARY

Thanks to their safety, convenience and economic efficiency, we expect PIS to bring significant benefits to European consumers and contribute to the integration of the European payments market. In order for this to happen, consumer interests need to be safe-guarded and it needs to be ensured that third-party providers and bank-sponsored providers of PIS compete on a level playing field. To achieve this, policy-makers should take four key issues into consideration:

1. Providers of PIS should be brought into the scope of the PSD to ensure consumer protection and market integrity;
2. Providers of PIS should not be required to enter into a contractual agreement with account-servicing banks in order to provide consumers with PIS;
3. All providers of PIS and all other Payment Institutions that are regulated under the PSD (authorized Payment Institutions) should be ensured access to basic financial infrastructure, e.g. have the right to open and maintain a basic standard bank account;
4. The consumer's right to share information with regulated Payment Institutions should be safe-guarded in order for the consumer to receive efficient payment products and services.

2. BACKGROUND

Over the last two decades banks have taken advantage of technological development and invented and developed online banking. By transitioning their customers from physically visiting a bank branch to do their banking business in the online bank, banks have enjoyed cost savings. They have been able to close branches, deduct the number of employees and reduced their costs for handling cash. At the same time banks have been able to charge customers for using online banking services.

The last few years have seen the invention of PIS. PIS allow consumers to use their online bank in order to initiate online payments directly from their bank accounts. The invention of PIS has given consumers access to an alternative offering of safe, convenient and cheap means of online payments.

Different PIS solutions exist across Europe: some are offered by individual banks, some in the form of a scheme in which several banks participate and some are provided by bank-independent third-party providers without the cooperation of account-servicing banks. PIS are rapidly expanding and as pan-European solutions develop, the European consumer will get the possibility to initiate pan-European payments. This will foster European cross-border trade.

The European online payments market is currently suffering from limited competition and is dominated by bank-sponsored payment solutions.

The Payment Services Directive has created a regulatory framework which allows providers other than banks to offer payment solutions to European consumers. Banks are in a preferential position to offer online payment solutions from the bank accounts they hold on behalf of their customers. Customers trust banks inter alia due to the deposit guarantees protection they enjoy. It is important that regulators ensure that banks' customers can freely choose and use competing payment solutions, including those not offered or sponsored by the banking sector.

3. HOW PAYMENT INITIATION SERVICES WORK

While there are certain differences in the details of how PIS solutions work, the common denominator is that they use specialised third-party software that enables the consumer to initiate payments directly from his or her online bank. More specifically, the consumer uses the PIS software to initiate a payment on the consumer's behalf for a defined amount to a defined recipient (typically an online merchant). The consumer authorises the specific payment and personally carries through and completes the necessary steps for executing it, including logging in to the online bank (using her existing online bank credentials), selecting from which of his or her bank account the payment should be made, and thereafter signing the transaction (again using his or her existing online bank credentials).

The consumer retains full control of the completion of the payment and uses bank issued security credentials to carry it out. The PIS provider is not able to initiate a payment without the consumer actively participating and going through the same steps (using bank issued security credentials) as if initiating an online bank payment without using PIS software. This makes PIS one of the safest online payment methods, and the risk for the consumer to be exposed to fraud or erroneously executed transactions is minimized. Every month millions of PIS transactions are carried out across multiple countries in Europe and the amount of reported fraud cases is virtually non-existent.[2]

[2] Payment Network AG (now Sofort AG), Europe's largest bank-independent third-party provider of PIS, has since its launch in 2004 not had one single case of data fraud affecting the consumer

(http://www.thepaypers.com/news/interviews/exclusive-interview-with-georg-schardt-chief-marketing-officer-at-payment-network/746430-38/full).

4. THE DEFINITION OF "THIRD PARTY ACCESS" TO PAYMENT ACCOUNTS

There have been claims that "third party access" to payment accounts is a new phenomenon. This is not accurate. In fact, consumers have shared their online bank information and credentials with third-party software providers since the invention of online banking. Indeed online banking is built on the very premise that the consumer *has* to transmit his or her credentials through a chain of third-party software interfaces in order to access the bank account. More specifically, in order to log in to the online bank, the consumer has to transmit his or her credentials through the computer operating system (e.g. Microsoft Windows) as well as the web browser (e.g. Microsoft Explorer). These are third-party software interfaces over which the bank has no control. If a consumer would not be allowed to share his or her credentials and bank account information with third-party software, every bank would have to provide each of its consumers with a specific computer, a specific operating system and a specific web browser to be used when accessing the online bank. PIS simply constitute one additional third-party software interface in the chain of interfaces between the consumer and her online bank account. It is however only the independent third-party PIS provider's software that introduces an element of competition with bank-sponsored payment solutions.

5. EPIF RECOMMENDATIONS

1. **Providers of PIS should be brought into the scope of the Payment Services Directive to ensure consumer protection and market integrity**

As previously described, PIS is one of the safest ways to effect an online payment. However the safety of the PIS solution is dependent on the integrity of the PIS provider. Since PIS constitute a new third-party software interface between the consumer and his or her bank account, it needs to be ensured that the consumer is protected in case of problems/failures of the payment occurring in the "sphere" of the PIS provider. It is therefore in the interest of both the consumer and the market as a whole that providers of PIS are brought into the scope of the PSD. All providers of PIS would then be subject to oversight and extensive regulation including capital requirements and liability regulation. This would ensure that the liability for problems/failures occurring in the PIS provider's point in the payment chain is allocated to the PIS provider. This would enhance consumer protection and remove the risk that the liability would extend to the account-servicing bank. To that end, regulatory oversight of PIS providers must reasonably follow a risk-based approach, balancing safety aspects, consumer protection and competition considerations.

2. **Providers of PIS should not be required to enter into a contractual agreement with account-servicing banks to provide consumers with PIS**

The consumer uses PIS software to access his or her online bank and initiate a payment. This is analogous to the consumer using other third-party software, such as her computer's operating system and web browser, to access his or her online bank to initiate a payment. PIS providers should accordingly for the consumer clearly state the terms and conditions according to which the software can be utilized. However there is no more reason for the account-servicing bank to have an agreement with PIS providers than with manufacturers of operating systems and web browsers used by the consumer when accessing her online bank. Furthermore, if PIS providers are brought into the scope of the PSD, they will be regulated entities and obliged to follow the same rules and obligations as other regulated financial institutions. The account-servicing bank would then have certainty that the PIS provider is liable for any problems within its responsibility of a payment process.

As PIS offered by third-party payment service providers compete with banks' own payment solutions, banks have an incentive to try to determine the conditions on which such competing payment solutions are provided, and thereby potentially exclude third-party-providers from providing PIS to 'their' customers. Legal requirements stipulating that a service agreement needs to exist between the bank and a PIS provider would have significant adverse consequences for consumer choice, innovation and competition in the European payments market.

3. **Providers of PIS and other Payment Institutions that are regulated under the PSD (Authorized Payment Institutions) should be ensured access to basic financial infrastructure such as standard bank accounts in order to enable them to provide payment services**

Some European banks have decided not to provide bank services to independent third-party providers of PIS. These banks are not willing to open or maintain a bank account for an independent PIS provider. This has happened even in instances where the PIS provider is an authorized Payment Institution under the PSD. Similar refusal to serve Authorized Payment Institutions active in the money remittance market has been observed in some EU countries. This behaviour effectively prevents non-bank financial institutions from offering their payment services in an efficient and compliant manner. Banks should not be allowed to control access to the domestic settlement and financial infrastructure in a manner which effectively prohibits competition. Authorized Payment Institutions should not be precluded from opening basic bank accounts and have access to related basic banking services.[3]

4. The consumer's right to share information in order to receive superior products and services should be safe-guarded

A consumer can today go to his or her account-servicing bank, ask for a printed bank account statement, put it into an envelope and send it to someone else, e.g. another bank, in order to get an offer for better banking service. PIS technology can be developed to allow for the consumer to do the same thing more efficiently and securely online. One example would be a consumer looking to get a loan to buy a house. PIS technology could be developed to give him or her the possibility to share financial information, e.g. his or her historical bank account statements (which currently only his or her existing bank has access to), with another bank. The other bank would then be given the possibility to assess the potential client's creditworthiness and provide him or her with competing quotes on the loan.

Another example would be a consumer having moved from one European country to another. As he or she has no credit history in the new country of residence, the person may experience difficulties getting access to e.g. a credit card. If he or she were able to share some financial information, e.g. the historical bank account balance, with credit institutions in the new country of residence, he or she will not need to build a new financial profile before getting access to the credit card.

While bank secrecy must always be respected the right of the consumer to share financial information about him- or herself must equally be protected. The consumer's personal information is his or her own property, as much online as offline. Future legislation should not interfere with the consumer's right to, if he or she so desires, share personal financial information with third parties not only in the physical world, but also in the online space. In order to safeguard the consumer's integrity, such third parties should be regulated under the PSD, appropriately measuring the risk that such third parties bring to the payment system (as already referred to in recommendation 1 above).

[3] In certain cases, for instance based on specific fact based AML/CFT concerns, banks will rightfully refuse opening or maintaining a bank account for a specific provider, in line with applicable law.

CONCLUSION

Finally, EPIF welcomes the opportunity to engage further with relevant EU Institutions on the issues highlighted above. EPIF would be happy to provide any technical input or any other helpful information, including the substantiation of the points made above or with regards to explaining how the Payment Initiation Services rules apply to the different business models we represent.

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