MEP Antonio Tajani
European Parliament
Rue Wiertz
1049 Brussels
Belgium

Brussels, 17 December 2014

BY EMAIL TO: antonio.tajani@europarl.europa.eu

Dear MEP Tajani,

The digital industry and online technology companies represented by the European Digital Media Association, the Electronic Money Association, the Computer and Communications Industry Association and Ecommerce Europe are concerned about the direction taken in the review of the Payment Services Directive ("PSD2") in the EU Council's proposals. As explained in further detail below, we fear that the Compromise text of the Council Presidency[1] will negatively impact the growth of online payments and hence of e-commerce, because consumers will no longer be able to enjoy the benefits of convenient, innovative payment solutions.

As we approach the PSD2 trilogue discussions, we believe that the following points need urgent amendment in order to ensure consumer choice and continued innovation in the field of online security, as well as a truly harmonized Digital Single Market:

1. **Strong Customer Authentication must include alternative authentication factors (Art. 4.22 and Art. 87.1a)**

Security and consumer trust are at the core of digital payments business. As the majority of online payment accounts are provided to users free of charge (contrary to bank accounts), consumers would immediately switch to other payment instruments if they felt unsafe.

The Council Compromise text risks blocking innovations which aim to improve the safety of online payments, while at the same time providing convenience and ease-of-use for customers, e.g. in the authentication of customer's identity. The Council text limits customer authentication methods to "*two-factor*"[2] authentication, reproducing the traditional banking approach. This would stifle innovation by removing the incentive for Payment Service Providers ("PSPs") to invest into new, frictionless authentication methods. Moreover, mandating a monolithic authentication approach would likely impair the industry's ability to respond to cyber-attacks by dramatically reducing its resilience and flexibility.

[1] The document is dated 1 December 2014 and is accessible through the following link: *http://data.consilium.europa.eu/doc/document/ST-16154-2014-INIT/en/pdf*

[2] Two factor authentication is a process in which the user provides two means of identification, one of which is typically a physical token (e.g. a card) and the other is something memorized (e.g. a security code). Therefore, the definition of two-factor authentication is the use of at least two elements categorized as knowledge, possession and inheritance (i.e. something you know, something you have and something you are).

We recommend amending Art. 4.22 by expanding the *"strong authentication"* definition to include *"multi-factor authentication"* methods. These allow deployment of advanced technologies (e.g. real-time data analytics, customer behavioral patterns, geo-localization or machine learning) to support smart customer identification. The "*strong transaction authentication*" requirement (Art. 87.1a) – not included in the Commission's proposal or in the Parliament Report – should be only maintained as best practice.

2. <u>Third Party Providers only need access to online bank accounts to operate (Art. 58.1)</u>

We support the PSD2 objective to ensure the development of Third Party Providers (i.e. companies such as Sofort or iDeal, referred to as "TPPs") by regulating their services, and expect them to bring significant benefits and contribute to the integration of the European payments market. While the intention of the Commission is clear (i.e. to ensure consumers can shop online by using their bank account, which can be connected through a TPP to the merchant's website), the current Art. 58.1 implies that TPPs can access any online payment account. This language could be interpreted as including *"customer accounts"*[3] as well as standalone systems for e-money/e-wallet accounts:

> (i) *"Customer accounts"* lack the key feature of bank accounts, i.e. the ability to confirm that consumers have available funds to process their online shopping orders – which is the key information needed by TPPs to operate;
>
> (ii) E-money on the other hand only persists on the system of the issuer, it is intended for a specific business proposition, and in most cases requires that the issuer have a relationship with both payer and payee.

While TPPs and bank accounts can be complementary to facilitate online shopping, TPPs and other accounts such as e-money/e-wallet, and *"customer accounts"* are not. There is no value added by TPPs in this context. While the software *"bridge"* described in recital 18 of the proposal provides value to users of online banking accounts, by enabling them to use the account on the merchant's site, it is not needed by users of other online payment accounts, which are already usable online and are fundamentally different from bank deposit accounts.

We recommend that TPPs should only be allowed to access "*payment accounts accessible via online banking*", as per the Parliament Report and Recital 18 of the PSD2.

3. <u>Host Regulators must have a limited role to avoid fragmentation of the EU Single Market (Art. 26 (a) and (b))</u>

If the Digital Single Market is to be meaningful, companies established in one EU Member State must be encouraged to do business across Europe. Provisions recently introduced by the Presidency Compromise (and not foreseen in either the Commission proposal or the Parliament Report) jeopardize this principle by exposing PSPs licensed in one Member State to the unilateral decisions of another Member State.

[3] *"Customer accounts"* are created by e-commerce providers to allow customers to register their payment credential with a payment service provider and place orders online.

We agree that regulators in *"Host"* countries (a Member State where the PSP operates, as opposed to the *"Home"* Member State where it is licensed) are closer to the local market and should have some ability to intervene. However, this should only be possible in objectively defined exceptional circumstances and subject to a clear procedure. Otherwise we can expect a resurgence of national obstacles to cross-border trade across the EU.

We urge the EU Parliament to defend the Digital Single Market as per the Parliament Report on the PSD2. *"Host"* Regulator interference should be limited to tightly defined emergency situations, and their actions should be allowed only where the *"Home"* Regulator has been unresponsive and mediation by the European Banking Authority (EBA) has failed. Finally, any such *"Host"* Regulator initiative must be strictly necessary, proportionate and temporary.

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The undersigned associations are committed to ensuring the development of smart, safe and innovative payment solutions in Europe. Online payment technology companies are powerful growth enablers, allowing SMEs to reach consumers across the EU, and to process payments in a secure, fast and convenient manner. We therefore seek the Parliament's and your support on the above issues. The undersigned associations would be delighted to have the opportunity to meet with you to discuss these further.

Yours sincerely,

Sarah Sheehan
Chair, European Payments Institutions Federation[i]

James Waterworth
Vice-President – Europe, Computer and Communications Industry Association[ii]

Paul Alfing
Chair, Ecommerce Europe Committee on Payments[iii]

Zuzana Púčiková
Chair, EDiMA Working Group on Payments[iv]

Dr Thaer Sabri
Chief Executive, E-Money Association[v]

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[i] **EPIF** is the European trade association representing the interests of more than 200 authorized Payment Institutions at the European level. EPIF brings together European and international companies covering a wide range of business models regulated by the Payment Services Directive (PSD). EPIF has further positions on the PSD2 and other topics which can be found on its website www.paymentinstitutions.eu.

[ii] **CCIA** is a nonprofit membership organization for a wide range of companies in the computer, Internet, information technology, and telecommunications industries, represented by their senior executives. Created over four decades ago, CCIA promotes open markets, open systems, open networks, and full, fair, and open competition.

[iii] **Ecommerce Europe** is the association representing 25,000+ companies selling products and/or services online to consumers in Europe. Founded by leading national e-commerce associations, its mission is to

advance the interests and influence of e-commerce in Europe through advocacy, communication and networking.

[iv] **EDiMA** is the European trade association representing online platforms. It is an alliance of new media and internet companies whose members include Allegro, Amazon EU, Apple, eBay, Expedia, Facebook, Google, LinkedIn, Microsoft, Nokia and Yahoo! Europe.

[v] **The Electronic Money Association** (EMA) is the trade body for electronic money issuers and innovative payment service providers including payment institutions, banks and payment schemes. We provide members with a forum to share issues that impact new means of payment, and provide a means for pursuing these to resolution.