

30 January 2015

As policy makers entered the trilogue negotiations on the Payment Services Directive 2 (PSD2) EPIF would like to take this opportunity to set out its current views on the draft text.

The European Payment Institutions Federation (EPIF) is a trade association which represents roughly 40% of all authorized Payment Institutions in Europe. Its members are therefore the companies which are directly regulated by the PSD and will be most directly impacted by the changes under consideration in the PSD2.

EPIF represents a diverse range of business models including: money transfer operators, three party card schemes, payment processors, merchant acquirers, operators of electronic, mobile and online payments, payment initiation services, e-wallets, foreign exchange operators and many more. The Payment Institutions sector is highly innovative with many players such as internet providers. They are also promoters of the digital economy and are developing payments that utilise new technologies such as mobile phones. EPIF stands for innovation, consumer choice and competition in the EU payments markets.

We are very supportive of the new Article 29a introduced by Council which recognises the importance of Payment Institutions needing access to basic payment clearing and settlement mechanisms and thereby to open or maintain bank accounts. We would urge Council and the European Parliament to incorporate this important provision into the final text.

However, we remain very concerned about four provisions in the PSD2 draft texts:

- **Article 26a in the Council text** gives arguably disproportional and unnecessarily far reaching competences to host Member States supervisors, such as the option to require Payment Institutions to appoint a local Central Contact Point (CCP) for PSD purposes or to report periodically on local activities. This is in addition to the oversight role of the Home State regulator. While we understand the need for information on payment activities carried out locally from a host supervisor perspective, we trust that this goal can be achieved via better co-operation and communication between home and host Member State competent authorities, facilitated by the EBA.

This proposal negatively affects the existing passporting regime as it runs counter to the Single Market and proportionality principle and does not contribute to a further integrated and efficient payment market. We believe that Payment Institutions should in principle continue to engage primarily with only one supervisory authority, i.e. its home Member State supervisor. The powers of host Member State supervisory authorities should be limited to exceptional circumstances where the behaviour of Payment Institution creates a serious threat to the stability or the trust in the payment system.

In addition this provision sets a dangerous precedent for other future pieces of legislation by undermining the Single European Market. Together with the new rules in the 4th Anti-Money Laundering Directive regarding the single point of contact in each Member State, it reintroduces supervisory fragmentation in the EU market while more integration is needed.

- EPIF would like to suggest that the **role of an acquirer should be made clear in the definition of “acquiring of payment transaction”**. An acquirer is entitled to structure its arrangements with the merchant in a manner which involves the merchant acquirer

acquiring payment transactions on its own behalf and ultimately receiving payment from the cardholder on its own behalf. This means that the money received by the acquirer through the card scheme from the card issuer, is money due to the merchant acquirer and not to the merchant. **The European Parliament's definition refers to the payment service provider "holding the funds on behalf of the payee"**. We would urge the Council and the European Parliament to reconsider this as this is not the case.

Article 78 does not recognize the current acquiring model (in contradiction with Article 74.3), as it generally mandates payee's payment service providers to fund their payees (i.e. merchants) the day after the transaction date. This does not mirror the business reality as most payees demand agreeing longer payment timeframes, which will allow them and their PSPs to better manage fraud and risk, as well as to afford the service charges and banking/account fees.

- EPIF welcomes the effort both the Council and the European Parliament have made to balance the need for security and access. In this debate it should not be forgotten that EPIF's members are all fully authorised and regulated. **One area that concerns us though is the proposed strong customer authentication and other security requirements for once-off transactions.** The proposed security requirements should differentiate between account based business models and transactional business models where such strong security standards may not be warranted or necessary. If these adjustments are not made, these rules have the potential to penalise certain business models where strong consumer authentication is not practical. We would urge the Council and the European Parliament to give this aspect very **careful consideration and add a proportionality element in order not to overburden certain operators or transactions.**
- We also **oppose the removal of the exemption from 'open access'** requirements for three-party schemes with licensees in Article 29. The existing exemption has been in place only since 2007. Three party schemes with licensees have contributed to competition in the cards market and are fully compatible with EU competition law in relation to selective distribution regimes. No problem has been identified to justify its proposed removal so we advocate for keeping the existing PSD1 language in Art. 28 (2) (c).

We thank you for your consideration and we will be pleased to speak to you further on this issue.

Yours faithfully,



On behalf of the EPIF Chair Ms Sarah Sheehan,

The European Payment Institutions Federation (EPIF)