European Payment Institutions Federation aisbl

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EPIF POSITION PAPER ON THE EBA GUIDELINES ON PI INSURANCE FOR PSPs'

ABOUT EPIF (EUROPEAN PAYMENT INSTITUTIONS FEDERATION)

EPIF, founded in 2011, represents the interests of the non-bank payment sector at the European level. We currently have over 190 authorised payment institutions and other non-bank payment providers as our members offering services in every part of Europe. EPIF thus represents roughly one third of all authorized Payment Institutions in Europe.[1] Our diverse membership includes the broad range of business models including:

- 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 seeks to represent the voice of the PI industry and the non-bank payment sector with EU institutions, policy-makers 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.

We wish to be seen as a 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 payment users (e.g. via mobile and internet).

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

SUMMARY

There appears an over-reliance on insurance to underpin the new TPP market. This appears to be the assumed solution even in the title of the 'Guidelines on Professional Indemnity (PI) insurance for PSPs'. This is unfortunate since there is no such market existing today. If this unavailability becomes a barrier to entry to small TPPs this would seem directly contrary to the intentions of PSD2 to encourage TPPs to flourish.

We would therefore suggest that it should be possible for appropriately capitalised payment services providers to provide PIS and AIS services without an additional special insurance. In this case, TPPs should be required to provide information on own funds, reflecting any PIS volumes, to the regulators and the market. This would give regulators, AS PSPs and consumers comfort on the viability of the TPPs with which they are dealing. Also, this would both support the start of a competitive market and may in the future provide data that might help such an insurance market to develop.

BACKGROUND

Per Article 5 of the PSD2:

- Para 2. Member States shall require undertakings that apply for authorisation to provide payment services as referred to in point (7) of Annex I [i.e. as PISPs], as a condition of their authorisation, to hold a **professional indemnity insurance**, covering the territories in which they offer services, **or some other comparable guarantee** against liability to ensure that they can cover their liabilities as specified in Articles 73 [unauthorised transactions] , 89 & 90 [non-execution, defective or late execution], and 92 [right of recourse, including failure to use strong authentication].

- Para 3. Member States shall require undertakings that apply for registration to provide payment services as referred to in point (8) of Annex I [i.e. as AISPs], as a condition of their registration, to hold a **professional indemnity insurance** covering the territories in which they offer services, **or some other comparable guarantee** against their liability vis-à-vis the account servicing payment service provider or the payment service user resulting from non-authorised or fraudulent access to or non-authorised or fraudulent use of payment account information.

  http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L2366&from=EN

DISCUSSION

We agree with the legislative intent that PISs and AISs should have some security to provide cover for the risks that they pose to consumers, banks and the markets generally. Since it is intended to allow such participants to have lesser capital requirements and they do not have any client funds to segregate and hold as security, it has been envisaged that the security cover would be provided by professional indemnity insurance or some other comparable guarantee.

While agreeing with the principle, it appears that there are practical issues with such a solution. Professional indemnity insurance does not exist to cover such risk. It was suggested as an alternative to client funds segregation and has not proven practical. As such, if it is retained as a requirement there is a risk that it will act as a major barrier to entry for new market entrants, while not being required in practice for banks that wish to provide PIS and AIS payments services. This is slightly perverse given that the legislative intent was to permit greater access for non-bank fintech companies into payments services to compete with banks.

We understand this was noted as a concern in the UK HM Treasury Workshop on Payments initiation services (PIS) and account information services (AIS) on 15 April 2016, where a market participant made clear that they were unable to find any trace of such an insurance market existing despite making enquiries of several insurers.

Subsequently representatives of EPIF investigated with representatives of the insurance industry knowledgeable in this area to confirm whether they thought such a market was possible to create. The discussion began by noting that practical difficulties have meant that similar insurance as envisaged for client safeguarding has never proved possible to devise.

Regarding professional indemnity insurance for TPPs, the judgement was that there was no track record to build a service on, that therefore any solution would need to have capped upper limits. As such, the insurance would not really provide a reliable back-stop for the parties who might lose in the event of a losses resulting from losses related to TPPs. Especially since, in a TPP did fail, it could take considerable effort, time and cost to determine which parties were able to claim. Therefore it would be very unclear what level of loss coverage would be achieved by any such policy and when it would pay out.

RECOMMENDATION

As a result EPIF would recommend that, when preparing the 'Guidelines on PI insurance for PSPs':

- While PI insurance should continue to be a potential solution, it should not be the only solution as there are means of achieving comparable assurance that the TPP is able to cover its liabilities as they fall due.

- Large, well-capitalised or collateralised authorised payments institutions should hence be permitted to operate as PISPs and/or AISPs without additional insurance to the same extent and in the same way as seems to be envisaged for banks / credit institutions.

- More specifically, payment institutions that already comply with capital requirements on own funds should be able to provide PIS and AIS servcies without an additional insurance as long as any PIS volumes are reflected when calculating the own funds in accordance with Article 9 PSD2.

- In order for regulators, AS PSPs, and consumers to be confident of this PISPs and AISPs should be required to provide regulators with clear data regarding their own funds related to their AISP and PISP activities as part of their regular reporting.

- It might be worth working with the insurance industry to determine the degree to which such reporting might in the future support the development of such an insurance market. Certainly the insurance industry participants were very keen to engage with regulators to develop the market to ensure information necessary to determine risks is available, and also to ensure the insurance provided appropriately addresses the question set by the regulators. Without such positive engagement from the regulators many participants were unwilling to start on a journey that looks no more likely to be successful than the attempt to generate the safeguarding insurance referenced in PSD1.