

GREEN PAPER ON RETAIL FINANCIAL SERVICES

ABOUT EPIF (EUROPEAN PAYMENT INSTITUTIONS FEDERATION)

Founded in 2011, the European Payment Institutions Federation (EPIF) comprises more than 250 authorized payment institutions and other non-bank payment services providers across Europe. Thus, EPIF represents more than one third of all authorized Payment Institutions in Europe [1]. Our diverse membership includes a broad range of business models:

- Three-party Card Network Schemes;
- Acquirers;
- Money Transfer Operators;
- FX Payment Providers;
- Mobile Payments;
- Payment Processing Service Providers;
- Card Issuers;
- Third Party Providers; and
- Digital wallets.

EPIF seeks to be the voice of the European 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. We also seek to promote a single EU payments market through consistent regulation.

We strive to be a provider of efficient payments in that single market and it is our aim to increase payment product diversification and innovation tailored to the needs of consumers and merchants (e.g. via mobile and e-Commerce). EPIF seeks to represent the voice of this industry with EU institutions, policymakers and stakeholders. It aims to play a constructive role in shaping and developing market conditions for payments in a modern and constantly evolving environment.

INTRODUCTORY REMARKS

High level principles

- Core EPIF issues to be addressed in building the European retail payments market: Although EPIF covers a wide range of business models, in evaluating the Green paper, some fundamental overarching themes the membership has encountered in evaluating the retail financial market from a payments perspective are:

1. Access to payment systems is fundamental at an EU level to create more payment options for consumers and businesses

EPIF members are fundamental supporters of the intent of the PSD in expanding competition and choice in the provision of payments products and services. As EPIF members' core business is not banking, but highly dependent on it, fair banking "access" is critical at several levels:

- **Bank accounts:** allows to PIs to receive money into a bank account
- **Account information:** provides PIs with information held by a bank that is needed
- **Domestic / international interbank systems:** provides PIs with ability to participate

2. Payments institutions business models are diverse and need to be treated appropriately from a regulatory perspective (re: Appendix A)

Given the breadth of business types and activities that fall under the definition of payment institutions (PI), it is challenging at times to define how policy issues around payments should be addressed by a regulatory body. Some manifestations of this include:

- the default for addressing a "payments" issues becomes the banking regulator which may not be equipped to address non-bank PI issues;
- PIs are being wrongly classed in public policy reviews – recent examples include:
 - a payments institution being classed as a platform;
 - 3-party schemes not being appropriately differentiated from 4-party schemes; and
 - confusion in identifying under what obligations PIs are operating - a recent example was a money transfer organisation being deemed less safe than banks as it was unregulated, when in reality subject to same rules in this regards as banks.

3. Dealing with "payments" as a generic term is not helpful in evaluating policy issues

The term "payments" often becomes entangled with form factors (e.g. mobile; CHIP card) and consumer payment products (e.g. credit card transaction) in a manner that can confuse the nature of the payment product with how it is made. As outlined in Appendix A, the mechanisms used by different types of consumer payments products, along with the underlying schemes, carry very different risks to consumers, merchants and payment service providers. In addition, they are supported by different technology and operational requirements. Almost all of these payment types, along with the supporting

schemes, have the ability to be initiated by an internet/mobile device via a set of standards, and/or a payment institution's product, while maintaining the attributes (e.g. chargeback rights; refunds etc.) the consumer wants from the specific payment product. In domestic markets members have cited cases where certain payment product types were deemed equivalent, specifically direct debits and recurring payments on all cards, that resulted in compliance obligations on recurring transactions that failed to recognise the difference in the products and could not tractably be met. This is further evidence that care must be taken when defining what is wanted from a specific payment type.

4. *Assessing practical technical / operational / cost and strategic implications is critical in evaluating policy options*

Payments systems are complex and costly with a high degree of interdependency among parties. A key factor of concern among EPIF members with recent policy initiatives has been the lack of analysis of the practical implications for payments institutions. A recent example from the Interchange Fee Regulation (IFR) is ensuring the consumers choice of payment brand on the card which requires;

- issuance of new cards with new CHIP specification;
- deployment of all new terminals and
- consumers to tap twice to use contactless cards.

In addition to this from a strategic perspective under the IFR with the splitting of the 4-party schemes processing and franchise management business some PI's will experience a significant change around the competitive structure of the card payments market – this is not simply a change in accounting / reporting / operations for the schemes.

EPIF overall assessment

- EPIF is a strong supporter of having a single market in payments and its membership is at the forefront of innovation in payments;
- “Payments” are highly differentiated and technically complex, so easy answers may have complex consequences. Regulators need to have a broad and accurate view of business models and payments types;
- In discussions with many players in the EU (public and private) there appears at times to be an assumption that technology is the solution to problems, when either the problem is not understood or the complexity of implementation is onerous. Considering the 4-common points of concern our membership have is a reasonable framework to reduce the risk and ensure technology is applied in the right business and commercial context;
- Technology is an important part of the “how” in the evolution of retail financial services, and it is critical to have clarity on “what” the issue is we are trying to address and “what” it will take to implement any changes. Finally, it must be understood “why” consumers /businesses/ payments entities are taking (or not taking) the actions the green paper seeks to advance;
- Though we fully support the concept of a level playing field in the digital financial market, we consider this is challenging to achieve for two reasons:
 - Market conditions are not regulation led so elements such a labour market flexibility are relevant as much as factors as regulation. ‘Non-digital’ factors should not be underestimated. However, regulation can be a drag factor;

- Technical interoperability needs to be matched by interoperability of solutions to common problems – the main one being identification of a consumer in a non-face to face environment, but also security, customer authentication etc. While allowing for innovation, the creation of a truly digital economy will inevitably require solutions to these problems that carry official approval.
- Pricing in a true single market should be uniform. Pricing is said to be different in different markets. This is an indicator of the lack of a single market, not a ‘cause’ but a symptom of the fact that economies are still based on Member State boundaries. Pricing is not the problem.
- In the money remittance sector, customers have casual relationships with providers and therefore switching is simple, especially given the proliferation of providers;
A 29th regime is a nice idea but in reality does it simply create another layer of complexity and will it likely only be agreed at a level close to the highest common denominator? It may therefore hamper innovation and competition;

RESPONSE

1. For which financial products could improved cross-border supply increase competition on national markets in terms of better choice and price?

Money transfer could be one of these products as they could help provide additional choice in currently closed domestic markets. Existing local debit markets have differing functionalities, so opening cross-border supply should support additional functions being made available in new markets. The European Commission should make the distinction between Domestic Money Transfers (Peer to Peer Payments), Intra-SEPA Money Transfers (receiver within SEPA) and International Money Transfers (receiver outside of SEPA). It would make sense for any future regulatory regime to consider the risk levels of each product independently and align rules accordingly.

Separately, in the SME and consumers lending market, increased competition from FinTech-based, alternative lenders could bring welcome competition. For credit products, digital services can increase efficiency, enable price and product comparability and simplify access to better and more bespoke offerings.

2. What are the barriers which prevent firms from directly providing financial services cross-border and consumers from directly purchasing products cross-border?

The minimum harmonization approach has led to inconsistent implementation on many areas of the EU retail financial regulation. As an example, of the Anti-Money Laundering Directive (AMLD) into national law. The lack of clear EU-wide standards make it impossible for financial service providers, as well as consumers, to look beyond their respective national borders. Ideally financial services, as e-commerce services, could be provided cross-border into all countries following a common EU-wide standard. This would bring simplicity to the market. As the reporting obligation stays within the home Member State (MS), it should be the home MS's FIU responsibility to share relevant cases with other European FIUs without mandating financial services companies to perform multiple filings for a single case.

3. Can any of these barriers be overcome in the future by digitalization and innovation in the FinTech sector?

Digitalization can facilitate the offer and the consumption of financial services cross-border provided that they are the best means of overcoming these consumer constraints. It is expected that firms will compete on this basis. However, without reforming the legal and regulatory framework the situation will ultimately remain the same. In particular:

- a) Firms should be enabled to offer products cross-border by applying EU-wide standards;
- b) The digital sector should not be considered as high-risk per se, and firms should be put in a position to leverage the latest technologies in order to mitigate the specific risks associated with non-face-to-face environments.

- c) In terms of suppliers, PI's / FinTech companies rely upon access to bank and interbank infrastructure and payment systems in general to undertake business in the EU. Fair access to bank accounts, account information and interbank and payment systems is critical to this. This together with the easing of passporting requirements in member states and maximum harmonisation of domestic payments regulation would be helpful for PI's as FinTech companies. Going beyond the regulation of "access to the rails" risks getting into a "picking the winners" payment product scenario which is likely to reduce competition rather than enhance it.

A significant factor involved in leveraging digitization to overcome barriers will be educating competent authorities on the specific risk posed by non-face to face/digital transactions and the controls in place to handle the risks, as well as providing clear accountability for the transaction and money ownership. It is important for regulators to understand the different AML risks created by a transaction that is either funded or paid out electronically, or both, versus those that are paid out in cash.

Overcoming consumer constraints on potential issues of knowledge or confidence related to digitisation requires an understanding of what is the nature of these constraints and what is needed to mitigate them.

4. What can be done to ensure that digitalization of financial services does not result in increased financial exclusion, in particular of those digitally illiterate?

It is necessary to identify the reasons why consumers are not currently using digital financial services and what could engage them. In addition, similar research should be done to investigate why existing consumers using digital financial services may be excluded/impacted. Once the reasons are understood (be they economic; knowledge; availability; trust etc.) and quantified, practical mechanisms can be developed to mitigate these. Having this knowledge would be a great foundation for FinTech firms to create products to potentially meet these needs.

Simplicity in the offering of the digital solutions is critical to adoption, especially for digitally illiterate individuals. Additionally, product convenience may only be achievable through simplicity and standardization of the regulations. Moreover, providers always offer different options to the end consumers so that they can choose what channel to use.

5. What should be our approach if the opportunities presented by the growth and spread of digital technologies give rise to new consumer protection risks?

Collaboration between financial institutions and competent authorities is the right way forward. In the last decade, most products have gone through a digitalization process and today consumers are more aware of both, opportunities and risks presented by new technologies. The new risks might arise and need to be identified and assessed in the digital environment. As payments institutions our focus is clearly on payment related risks such as authorization, settlement, fulfilment and merchant credit as well as compliance risks such as AML that could impact customers – both consumers and merchants or senders and receivers. Having this framework developed with experts across relevant sectors should

help to define, evaluate and measure what are truly new consumer protection risks as compared to the status quo. In order to offset some of the inherent risks, firms should be allowed to use all available measures to constantly upgrade their systems and procedures to ensure full protection to the end consumers. As long as digital tools are electronically funded with electronic payments, the consumer protection afforded by these payment forms should extend to the digital technologies.

6. Do customers have access to safe, simple and understandable financial products throughout the European Union? If not, what could be done to allow this access?

The current situation is not homogeneous; it really varies on a country by country basis. Countries with more modern and flexible regulations allow for new products and services to be developed faster.

7. Is the quality of enforcement of EU retail financial services legislation across the EU a problem for consumer trust and market integration?

It certainly is as it contributes to the inconsistent application of the principles stemming from the EU Directives which ultimately hinders competition within the Single Market. There is also an unbalanced focus from the regulators on companies that conduct both face to face and digital transactions. Businesses that only offer digital solutions tend to be less of a focus for enforcement departments, creating a disparity in the marketplace. Many Member States adopt a confrontational rather than collaborative approach to enforcement, treating all infractions as equally serious and focusing solely on punishment rather than problem solving.

8. Is there other evidence to be considered or are there other developments that need to be taken into account in relation to cross-border competition and choice in retail financial services?

Member States often adopt a rather protectionist approach in order to safeguard internal interests that clash with the principle of fair competition within the Single Market. The outstanding question for a digital economy is whether it requires its own legislative and regulatory framework tailored to its unique environment.

9. What would be the most appropriate channel to raise consumer awareness about the different retail financial services and insurance products available throughout the Union?

Much can be done to educate European consumers about their rights and obligations in relation to cross-border retail financial products, to build trust and confidence for consumers to shop around, regardless of the member state of the provider. A communication strategy at EU level to educate on consumer rights in financial services would stimulate consumer demand and their appetite to 'shop around' for the best deal in the financial services market.

EU-promoted comparison websites might be useful instruments too, to provide the bigger picture to EU consumers, as long as they are neutral and independent.

Communications channels are also quickly evolving, with the rise of digital means of communications (email, instant messaging, blogs and social media), especially to reach the younger generation. Awareness and education campaigns should target these channels as well .

10. What more can be done to facilitate cross-border distribution of financial products through intermediaries?

11. Is further action necessary to encourage comparability and / or facilitate switching to retail financial services from providers located either in the same or another Member State? If yes, what action and for which product segments?

12. What more can be done at EU level to tackle the problem of excessive fees charged for cross-border payments (e.g. credit transfers) involving different currencies in the EU?

Firstly, the Commission should note that the cost of Anti-Money Laundering and regulatory compliance is higher for cross-border transactions than for domestic. As such the Green Paper's comparison between fees for domestic and fees for cross-border is not a fair comparison.

With regards to excessive fees, increasing competition would have a significant impact on lowering fees charged in cross-border payments (e.g. credit transfers). For example, Article 16 of the Payment Service Directive does not permit Payment Institutions to issue credit cross-border. This was not addressed in the recent revised Payment Service Directive. Enabling this would be a significant way to increase competition in cross-border payments.

Additionally, underlying cross-border laws should be made more consistent to reduce the variation in the cost of complying with different legal requirements in each Member State which can add to the cost of cross-border transactions.

Overall, there is a need for a balanced view from the legislators that gives due consideration to the costs at play for the commercial services the service providers offer. Moreover, price regulation would only serve to stifle innovation and deter new entrants.

13. In addition to existing disclosure requirements, are there any further actions needed to ensure that consumers know what currency conversion fees they are being charged when they make cross-border transactions?

Fairness and consumer transparency is paramount. European consumers are sophisticated and increasingly technologically savvy. Existing EU transparency and disclosure requirements seem

appropriate to address this issue. The current regulatory set-up provides a singular ability for consumers to do price comparison and to understand exactly what is charged, when and how.

Disclosure requirements often only serve to overload the consumer with information. Where and how to provide information is more important than disclosure at every point. Business needs to be allowed to find innovative ways to inform and advise the consumer in appropriate and effective ways.

Provision of Dynamic Currency Conversion (DCC) is heavily dependent upon extra investments. Currently DCC is not a transparent process and as a last resort, it should either be proscribed or held to the same standards as the card issuer.

14. What can be done to limit unjustified discrimination on the grounds of residence in the retail financial sector including insurance?

The financial service provider (FSP) is required to know and understand the legal requirements of the jurisdiction in which it is providing the service which can be burdensome. Depending on the Member State, the FSP will feel more secure when offering/selling its services/products in certain MS than others due to the applicable local laws, competent courts, length of litigations, recovery procedures etc.

An alignment at EU level of all these subjects will allow the FSP to have the right level comfort and prevent discrimination.

15. What can be done at EU level to facilitate the portability of retail financial products – for example, life insurance and private health insurance?

EU harmonization of consumer and data protection regimes (at least) will definitely encourage companies to support financial services portability. Given the current fragmentation in these - and several others - critical regulatory areas, portability is very challenging (if at all feasible) for financial services providers.

16. What can be done at the EU level to facilitate access for service providers to mandatory professional indemnity insurance and its cross-border recognition?

17. Is further EU-level action needed to improve the transparency and comparability of financial products (particularly by means of digital solutions) to strengthen consumer trust?

18. Should any measures be taken to increase consumer awareness of FIN-NET and its effectiveness in the context of the Alternative Dispute Resolution Directive's implementation?

19. Do consumers have adequate access to financial compensation in the case of mis-selling of retail financial products and insurance? If not, what could be done to ensure this is the case?

20. Is action needed to ensure that victims of car accidents are covered by guarantee funds from other Member States in case the insurance company becomes insolvent?

21. What further measures could be taken to enhance transparency about ancillary insurance products and to ensure that consumers can make well-informed decisions to purchase these products? With respect to the car rental sector, are specific measures needed with regard to add-on products?

22. What can be done at the EU level to support firms in creating and providing innovative digital financial services across Europe, with appropriate levels of security and consumer protection?

The Commission should ensure a level playing field at EU level and prevent Member States from setting specific requirements in terms of customer enrolment, transaction monitoring and reporting, etc. that do not allow firms to adopt innovative solutions. The Commission should also create a tailored framework for innovative digital financial services at an EU level that has direct effect and remove the ability for local opt-outs while providing solutions to major barriers such as non-face to face identification.

23. Is further action needed to improve the application of EU-level AML legislation, particularly to ensure that service providers can identify customers at a distance, whilst maintaining the standards of the current framework?

EU AML legislation should be made flexible enough to permit the usage of new technologies for the purpose of customer due diligence in non-face-to-face situations. Firms should be allowed to use a broader range of data that is made available to them when consumers are transacting online. Rather than relying on mere copies of ID documents (that nowadays can be easily forged), firms could use electronic payment information, IP address, device ID and other metadata that is associated with online transactions. A customer using their credit/debit card delivered by an EU financial Institution when purchasing other financial services with different financial services providers should be considered as an already identified customer. Third party service providers of reliable data to verify identity could be imposed in each EU MS to ease the identification.

The creation of a harmonized (pan-European) e-ID solution would be the ideal solution, but other options include opening pathways for online providers to interact with bricks and mortar providers to leverage and rely on Know Your Customer information. Banking systems and card systems to provide look up and matching services to enable reliable identification, for example, or permit their customer to create online profiles/identities that can be 'carried' with them as they operate on line.

24. Is further action necessary to promote the uptake and use of e-ID and e-signatures in retail financial services, including as regards security standards?

Further action is necessary in this space. There is a lot of confusion around the concepts of electronic signature and electronic IDs. The definitions and methodologies vary on a country by country basis, and there is no true pan-European solution, despite the adoption of the recent e-IDAS Regulation. The EU should provide clear guidance on the basic principles, while ensuring that firms as well as consumers have the flexibility to use the different technological solutions available.

In addition, the current electronic signature regime is very bureaucratic and cumbersome. It should be revisited to allow for proper innovation and to support more convenient and simpler processes to access qualified electronic signatures, which can be used securely across the EU and don't raise validity issues. The EU should also embrace an e-ID solution that has an open API and can enable instant KYC checks. The EU should moreover make sure that the rules do not impede further innovation in this field.

Finally, given the low level of uptake and usage of e-IDs and e-signatures, it would be appropriate to raise awareness with online customers on their advantages and functionalities.

25. In your opinion, what kind of data is necessary for credit-worthiness assessments?

Both positive and negative credit attributes have proven to be effective in creating competitive open markets underpinned by consumer protection. Data such as income, expenditure, sales and credit histories in terms of facilities taken, outstanding and repayment conduct have all proved useful.

New forms of data are being used every day to make these assessments. For instance, PayPal utilizes payments information instead of the traditional FICO service. But other players use social, tax, and business performance data to assess credit risk. There should not be a floor or ceiling placed on the type of data that can be used for assessing credit-worthiness.

Implementing a credit scoring or financial profile across EU member states to provide customers with instant credit validation would be helpful, but the system should be fair, taking into account potential discrepancies between EU member states, and take into account data protection and privacy concerns.

The information organisations use to determine credit-worthiness is likely to change over the coming decade, but as a base line we would include:

- Traditional credit data;
- Improved access to cross-border data (which will facilitate greater competition in cross-border payments); and,
- Verified information from government or banking sources on income and assets.

26. Does the increased use of personal financial and non-financial data by firms (including traditionally non-financial firms) require further action to facilitate provision of services or ensure consumer protection?

How consumers engage with businesses and their own finances is undergoing profound technological and cultural change. Business can use non-financial data to provide new and innovative services.

Consumers should be able to consent and opt-in to providing additional personal financial and non-financial data.

Consumer protection is essential, not least to ensure consumer trust in the services they are using. Rather than prescribing what information can be shared, regulation should ensure that:

- Consumers are able to make informed decisions;
- Consent is genuine; and,
- Effective data protection rules are in place and are being complied with.

27. Should requirements about the form, content or accessibility of insurance claims histories be strengthened (for instance in relation to period covered or content) to ensure that firms are able to provide services cross-border?

28. Is further action required to support firms in providing post-contractual services in another Member State without a subsidiary or branch office?

Home member state rule should be strengthened so that firms are subject to a harmonized, single set of rules while providing post-contractual services. Thanks to new technologies and innovative digital services, local subsidiaries/branch offices are often unnecessary to provide services (including post-contractual services, which can be provided remotely online). Provisions mandating that a local presence is required to provide post-contractual services should be carefully scrutinized, to ensure they do not create unnecessary obstacles to cross-border trade.

29. Is further action necessary to encourage lenders to provide mortgage or loans cross-border?

Local enforcement and valuation of assets (in the case of mortgages) will be always a challenge for cross-border lenders. However, there are certain steps that can be taken to encourage cross-border lending:

- The limitation on cross-border lending provided by Payment Institutions, set by the PSD1 and maintained in PSD2 (art. 18.4), should be lifted.
- The way assets are estimated should be harmonized by implementing a scoring methodology (same baselines and scales) that will be used across all EU member states.
- Consumer contract laws and regulations (e.g.- specifically with respect to insolvency and default) also need to be streamlined and standardized, as do the arrangements relating to local market liquidity and security.

30. Is action necessary at EU level to make practical assistance available from Member State governments or national competent authorities (e.g. through 'one-stop-shops') in order to facilitate cross-border sales of financial services, particularly for innovative firms or products?

The one stop shops only will not solve the issues mentioned above (question 14). The harmonization suggested is the necessary step to overcome the issue. The two need to be combined.

The implementation of the 'one-stop-shop' principle, i.e. enabling businesses and consumers to have only one regulatory interface, is crucial. The existing passporting regime is undermined by the regulatory fragmentation and lack of harmonization in several areas (e.g. banking, credit, AML, etc.).

Local regulators have the ability to take completely different approach vis-à-vis new/innovative products, (e.g. the regulatory environment for crypto currencies, or online gaming/fantasy sports), but also more traditional products (such as lending and credit products), where discrepancies in the regulatory environment may prevent firms from offering their services cross-border (or accepting cross-border clients).

The home member state of the service provider should be supervising and regulating the service provision, leaving little room for additional oversight by the local regulators. To this end, further harmonization would be required. Also, any interaction with local regulators should be channelled through the Home Member State supervisor (one-stop-shop), to prevent that the supply of cross-border services entails complex compliance and huge administrative costs.

31. What steps would be most helpful to make it easy for businesses to take advantage of the freedom of establishment or the freedom of provision of services for innovative products (such as streamlined cooperation between home and host supervisors)?

To facilitate the business of a FSP operating cross border within the EU, the border between applicable law of Home and Host MS should be clearly defined at EU level and not subject to each supervisor's interpretation as it currently is. This will ease the subsequent cooperation between home and host supervisors.

The EBA's proposed RTS on passporting under PSD2 still need refining and improvement. The current draft increases the timeframe for the competent authorities to process notifications, is unclear on the starting date of three month period to process the notification and includes a requirement for the same information to be provided for initial notification and subsequent. Once passported, the FSP will continue to have to comply with the Home State applicable law which better protects the consumer from the Home State supervisor's perspective. Harmonization here will also be part of the solution.

32. For which retail financial services products might standardization or opt-in regimes be most effective in overcoming differences in the legislation of Member States?

In terms of payments there is already a significant body of regulation aimed at building the single market. This said, EPIF members still struggle with differences in domestic implementation of rules and challenges to access to core interbank payments infrastructure – specifically Money Transfers, Electronic Payments, Deposit Accounts, Saving Accounts, Loans, Credit Cards, Prepaid Cards.

33. Is further action necessary at EU level in relation to the 'location of risk' principle in insurance legislation and to clarify rules on 'general good' in the insurance sector?