EPIF feedback in response to European Commission public consultation on tax fraud & evasion – strengthening rules on administrative cooperation and expanding the exchange of information to crypto-assets and e-money

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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 ("PI") in Europe. All of our members operate online. Our diverse membership includes a broad range of business models, including:

- Three-party Card Network Schemes
- E-Money Providers
- E-Payment Service Providers and Gateways
- Money Transfer Operators
- Acquirers
- Digital Wallets
- FX Payment Providers and Operators
- Payment Processing Services
- Card Issuers
- Independent Card Processors
- Third Party Providers
- Payment Collectors

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).

Introduction

EPIF welcomes the opportunity to share its views on the European Commission's public consultation pertaining to the review of Directive 2011/16/EU as regards measures to strengthen existing rules and expand the exchange of information framework in the field of taxation to include crypto-assets and e-money.

While EPIF is following actively European developments in the field of crypto-assets, our membership does not yet represent this market segment. Therefore, the comments and proposals of EPIF in the context of this public consultation are limited to the European e-money sector.

The nature of the European e-money sector

E-money institutions as well as e-money are regulated through the E-Money Directive (2009/110/EC) as well as by the second Payment Services Directive (2015/2366/EU). Moreover, European e-money issuers are subject to strict AML and KYC requirements, and thus already subject to reporting obligations where they have reason to believe their products are being used for the purposes of tax evasion.

The purpose and scope of the E-Money Directive is to create the regulatory and supervisory framework for the issuance, redemption and use of e-money for payment purposes. E-money, as defined by EU legislation, is by design **a means of payment for services and goods that contributes to financial inclusion rather than a deposit in the "ordinary course of a banking business"–** both as regards to the overall value stored on average on an e-money instrument, as well as the timeframe over which this value is stored on an e-money instrument. Classical use cases are low value **payments** for digital goods and services or payments on public transport networks whereas industry evidence also shows that as customers depend more on e-commerce, they have grown to rely on e-money also for purchases of expensive items e.g. luxury holidays, cars, art, electronic goods.

EPIF supports the objective to fighting tax fraud and tax evasion by capturing e-money accounts that are being used to hold large balances over a sustained period of time. Indeed, some e-money products provide a functionality resembling that of a bank account.

However, EPIF strongly maintains that a clear demarcation is needed between those use cases where the holder of e-money clearly intends to use e-money instruments as a means of storing large amounts of capital and/or over a longer timeframe, from those use cases where the holder of e-money clearly intends to use e-money instruments to make purchases. To ensure that the reporting objective is met, EPIF proposes establishing clear reporting thresholds.

Proposal for capturing e-money under DAC8

EPIF proposes that e-money issuers should be exempted from DAC8 compliance:

a) Where e-money customer funds on the account do not exceed a specific threshold of EUR 15,000; or

b) Where a customer is enabled to hold funds in excess of EUR 15.000 for transactional purposes, however, the average end of day balance for the last 30 calendar days does not exceed EUR 15.000.

Arguments in support of this proposal:

- **AML/KYC requirements:** Any attempts at evading the threshold by holding funds immediately below the limit would be reviewed as part of suspicious activity or transaction reporting obligations. Indeed, European e-money issuers are already subject to strict AML and KYC requirements. Accordingly, they have put in place KYC and on-boarding practices that have a threshold of EUR 15,000. This is because of the AML enhanced due diligence. In the interest of both efficiency and consistency, the DAC8 threshold should be set at EUR 15,000 to align both the enhanced due diligence of the customer for AML purposes and the on-boarding of the customer for tax reporting purposes. In this case, e-money issuers would have to upgrade their compliance systems but not fundamentally re-design them. Furthermore, under the current EUR 15,000 AML threshold, e-money issuers can take the commercial choice to either only service clients below the 15,000 threshold thereby not having the associated compliance costs, or go beyond the 15,000 threshold and incur those costs.

- **OECD Common Reporting Standard Framework:** The proposed absolute threshold is a good proxy for the use of the respective e-money instrument as a payment instrument. Section VIII(C)(17)g of the CRS framework recognises that depository accounts can be excluded from reporting obligations by national jurisdictions where these accounts present low risk for being used for tax evasion and does not otherwise frustrate the implementation of the CRS framework. One of the important examples given for excluded accounts are those that contribute to financial inclusion namely by providing limited and defined services and where monthly deposits do not exceed USD 1,250 per month. EPIF would argue that the proposed threshold meets these conditions. By definition, e-money provides clearly defined services limited to conducting payments, which are also subject to a clear regulatory framework in the EU. Taking aggregated monthly deposits over a year brings us to the EUR 15,000 above which, it could be legitimately argued that the e-money is held for other purposes than to conduct payment transactions.

- **FATF Recommendation 10 Customer Due Diligence (CDD):** The proposed threshold is also consistent with the existing international standards for AML. FATF Recommendation 10 CDD sets the threshold for carrying out occasional transactions at USD 15,000 below which, full CDD is not required.

- A single threshold is fairly easy to implement for the industry and can be built up-front into the compliance process of any e-money issuer. It therefore meets the principles of proportionality and to ado a risk-based approach. This threshold would also be easy to communicate to customers and would ensure that no one is holding excessive amounts of funds in e-money accounts.

- **Overall, the proposal remains flexible. It does keep open the possibility for some issuers of e-money to cater for higher net individuals or other corporate use cases. Such use cases would rightly and automatically be subject to DAC8 compliance. The approach recommended by EPIF would recognise that the DAC8 reporting obligation would therefore clearly depend on the functionality and purpose of the respective e-money instrument.**

Exclusion for PSPs acting in passthrough capacity

EPIF proposes to distinguish payment products where the payment service provider acts in a passthrough capacity, e.g. products that are used for money remittance, enable the acquiring of transactions for merchants, or are used for making payments to suppliers or to employees. The element these products have in common is that they are used by customers as a means of enabling immediate or near-term payments. All funds are held by the PSP in contemplation of payments being made and where these are not made, funds are usually settled back to the bank account the funds originated from.

The above described products are distinguished from stored value products where products are stored with no intended payment instruction being given. In addition, they are not used for storing value, whereas any balance will always be earmarked for contemplated transactions for a predetermined purpose and no revenue is generated for the customer from any funds held.

EPIF would argue that these do not meet the criteria for Financial Accounts that are sought under the OECD Common Reporting Standard (CRS) and are neither of the nature of depository accounts enabling the sheltering of funds, nor of custodial accounts deriving income from and sheltering of assets – as defined under Financial Accounts, paragraph C of Section VIII CRS.

Specificities of money remittance activities

Money remittance is defined in the PSD2[1] as a payment service where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee.

Money remittance involves the transfer of money from consumer to consumer, consumer to business, business to consumer or business to business. The remitter, the party originating the transfer, provides funds to be transferred immediately or within 90 days to the recipient. The money transferor acts as a **passthrough entity** without an ongoing relationship with the recipient of the funds. The money transferor can either transfer the money to the recipient or return the funds to the remitter if the remitter requests the return of the funds before the recipient picks up the money. **The funds are designated for money transfer and cannot serve another purpose.**

Unlike e-money products, the recipient cannot reload funds, accumulate funds, or make investments. To the extent funds are held, they are provided in advance by the remitter for transmission on a future date, or they are held for the recipient because the recipient has not picked up the funds. The remitter and recipient are not paid interest while the funds are held for the money transfer, and the funds are transferred pursuant to the instructions of the remitter. The recipient cannot maintain the funds with the money transferor beyond the specified period of time under local law, or the money may escheat to the state/country or is returned to the remitter.

Under the current OECD CRS rules, which are transposed in the EU by means of DAC, a money transfer business that does not undertake any other activities (e.g. accept deposits and engage in other banking activities) does not satisfy the definition of a financial institution.

EPIF would argue that an entity undertaking money remittance, and no other activities, does not present a risk of being used for tax avoidance or evasion and thus should be excluded from the scope of DAC. To the extent that a money transfer entity provides stored value products, it could potentially be in scope of DAC and thus be required to perform due diligence on accounts above the threshold proposed above.

<u>Arguments in support of this proposal:</u>

- The relationship between the remitter, receiver and the money transfer entity ends at the time the money is transferred and received by the recipient. The money transferor acts as a pass through to connect the remitter and recipient. **Unlike e-money products, there is no ongoing relationship between the entity and the receiver.** The transaction ends at the time of receipt of the money, and the receiver cannot add additional amounts to accumulate money beyond the wire transfer. **Unlike stored value products, the money transfer cannot be used as a product for commerce or investment; it cannot act as a method of storage for later use.** If the receiver

[1] Article 4 (22) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337 23.12.2015, p. 35)

fails to pick up the transfer in the specified period of time under local law, then the money may escheat to the state/country or is returned to the remitter.

- The money transfer entity may be required to hold the money transfer for a period of time either because the recipient has failed to pick up the money, or the money is placed with the money transfer entity for a transfer at a later date. In either instance, the money transfer entity does not pay interest or allow for access to the funds for other purposes. In some circumstances, a money transfer is sent to an account at a third party financial institution. That financial institution will have the information and ability to report on the financial account. The money transfer entity will not have the information or the ability to obtain the information, as its customer is generally the remitter. This approach has the benefit of ensuring quality information reporting by those entities who have relevant information for CRS/DAC purposes.

Data collection by national authorities

EPIF strongly agrees with the European Commission Inception Impact Assessment that **only the data necessary to perform the risk analysis and facilitate tax control of e-money should be collected.**

EPIF acknowledges the concerns that e-money products could be used to hold assets however stresses that e-money customers do not, in principle, use e-money accounts as deposits. The success of e-money products lies in the convenience to on-board and use the product to transact in a fast and cheap way in a short period of time.

In addition, there is a clear demarcation between active customers and customers that register but ultimately never use the product.

EPIF therefore calls on the European Commission to take a proportionate approach to the inclusion of e-money in scope of the Directive on Administrative Cooperation (2011/16/EU), in light of the particularities of e-money products, and consider excluding reporting obligations on low value transactions, which would be extremely burdensome for the e-money industry let alone a significant obstacle to new innovative solutions in the sector.

EPIF also calls for a single home country reporting mechanism regarding the data collection by national authorities.