

EPIF Response to the FSB Consultation

Recommendations for Regulating and Supervising Bank and Non-Bank PSPs Offering Cross-Border Payment Services

Introduction

- 1. Do the definitions contained in the report provide sufficient clarity and establish the common understanding necessary to facilitate the practical implementation of recommendations proposed in this report?**

EPIF is a very strong supporter of the G20 Roadmap on Cross-Border Payments and appreciates the opportunity to respond to this consultation. By the very nature of our organisation our responses very much reflect the perspective of coming from the European Union.

Nonetheless, the majority of our members are internationally active payment services providers from the non-bank payment sector. Therefore, international cooperation is critical for the success of our industry.

Regulation and compliance have emerged as one of the largest cost elements for the industry. These often-justified costs are ultimately borne by the customer. Streamlining regulation, advancing outcome-based and risk-based solutions to regulation and supervision, as well as the support for the adoption of new technologies will all contribute to reducing costs and improving the efficiency and seamlessness of the customer's payment experience. This makes it easier for new entrants to enter the market, enhancing choice and competition for the customer.

Operating from inside the EU we have been part of establishing the regulatory and supervisory framework that has helped build a Single Market for payments across 27 jurisdictions and the European Economic Area. We believe this process has provided us with important learnings for the FSB discussions on effective regulation and supervision.

EPIF therefore very much supports this FSB initiative and stands ready to assist this effort in any way possible.

We welcome the report and its recommendations. Where relevant, we make particular reference to the respective FSB Recommendation.

- 2. What adjustments are required to the draft definitions to improve clarity?**

We believe the definitions in the report are clear.

- 3. What other terms should be defined in this section?**

Please see our response to Question 2.

4. Does the explanation regarding the scope of the report provide sufficient clarity to promote the intended understanding of the recommendations?

We believe the report is sufficiently clear.

Section 1: The role of banks and non-banks in cross-border payments

5. Do the descriptions of the roles of banks and non-banks in providing cross border payment services adequately reflect current practices?

The non-bank payment sector has emerged from and is responding to new and continuously evolving customer needs. On average each citizen uses a multiple number of means of payment depending on the circumstances and the nature of the transaction. This includes cash, card, account-based and other means of payment, such as remittances or DLT supported applications.

We bring competition and innovation to the market, increase choice and reduce costs for our customers.

The industry continues to face significant challenges, in particular regarding:

- Restrictions of access by non-bank payment providers to financial infrastructure;
- Growing costs to meet AML and anti-terrorism financing requirements that diverge per country and per region;
- The impact of de-risking which makes it hard for non-banks to maintain safeguarding accounts or access the correspondence banking network;
- Constant need for policy to adapt to allow continuous payments innovation in the face of technological change without locking the payments sector into one particular technology; and
- Lack of recognized e-ID solutions.

In the European context we welcomed the adoption of the Payment Services and E-Money Directives in the early 2000s. These created a regulatory and supervisory framework for the sector and allowed authorized non-banks to access the European market based on being licenced in one Member State based on the concept of “passporting” into other EU member states. While national member state rules continue to introduce unnecessary and disproportionate frictions in the provision of cross-border payment services, the regulatory framework in itself has been helpful.

The European framework with a specific policy for payment and e-money institutions has been replicated in some other jurisdictions in the world. We think others should also explore this model of authorization and oversight, in particular a way for PSPs to “passport” to other jurisdictions

The fact that payment and e-money institutions are licensed entities in the EU has also brought them within the regulatory framework of other legislation, such as most recently on ICT operational resilience. While this is a reflection of the natural evolution of regulation it is important to remember the specific business model of non-bank payment providers, the diversity of their business models, customer base and risk profiles and to account for relevant differences in the application of the respective regulation.

We therefore welcome references in the consultation to proportionality. We also believe that the role of e-money and payment institutions in driving innovation and improving the customer experience could be highlighted further. For example, there has been a proliferation of different payment methods globally which non-bank PSPs are helping businesses and consumers globally to send and receive. While we recognize the current role of banks in cross border payments, we feel it is important to highlight the nonbank PSP’s increasing activities so that the FSB consultation does not anchor future regulatory enhancements to a bank-centric model.

Section 2: Cross Border Payment Frictions and Risks

- 6. What additional risks or frictions, within the scope of this report, are created by potential inconsistencies in the legal, regulatory and supervisory frameworks applicable to banks and non-banks in their provision of cross-border payment services?**

EPIF believes that the global payments landscape would benefit in particular from measures related to the following three areas:

- Greater consistency in the application of AML/CFT and sanctions regimes;
- Interoperable e-ID solutions;
- Risk-based and technology-neutral regulation;
- Greater harmonisation of regulation and supervision; and
- Ensuring direct access by sophisticated and internationally active non-bank payment services providers to the inter-bank payment system and to central bank safeguarding accounts.

As highlighted in the parallel FSB consultation on data, conflicts often exist between AML and data privacy legislation. It would be helpful to establish clarity on the overlap between these requirements, so companies are not in breach of data protection regulations when complying with AML/CFT legislation.

There are also cases where bank and non-bank financial institutions are treated differently (for example the case of reporting of low value suspicious transactions). As customers are moving increasingly to online payment solutions and the ability of fraud and AML detection in the online environment equals or outperforms face-to-face identification, regulation should ensure a level playing field and remain open to technological innovation. Moreover, regulators should be conscious and capable of monitoring risk reductions that non-bank PSPs may be able to bring to cross border payments (e.g., decreasing human error via automated processes built on new technologies).

Section 3: Principles for developing recommendations

- 7. Do the identified principles provide sufficient support and appropriately frame boundaries for the recommendations in the report?**

EPIF very much supports the emphasis put by the FSB on the consistent approach to regulation and supervision.

We also welcome the clear and explicit references to proportionality and the need for a risk-based approach in the draft Recommendations. This should in particular take into account the specific nature of business of the non-bank payment provider, as well as the geographical reach of the provision of services. In this regard we in particular welcome Recommendations 4 and 5 of the FSB consultation paper.

Similarly, EPIF believes that any regulation should be technology neutral in its approach. This will encourage the industry to invest in research and development, as well as promote the adoption of new technologies.

The lack of regulatory harmonization in a number of policy areas (e.g. AML, credit, consumer protection, cybersecurity, data protection) remains a significant barrier for non-bank payment providers to scale globally.

One area that the report could further reference are the principles of innovation and competition. The latter have played an important role in the EU's regulatory framework for payment services and e-money associations as a result of which Europe has seen a flourishing payments landscape for the benefit of businesses and consumers. Therefore, these principles guiding regulation and supervision across different jurisdictions can significantly contribute to improving cross-border payments in line

with the G20 efforts. They could also form part of the recommendations of the report in order to align PSP regulatory and supervisory regimes.

Against this backdrop, EPIF would like to make the following recommendations:

- **Harmonized, future-proof and outcome-based regulation**

EPIF believes that technology has the potential to democratize financial services across borders. With the right technical and regulatory framework, financial technology companies can provide customers with the flexible, convenient and safe levels of service that they now expect from our industry.

Any new regulatory measure must be future proof, harmonized, risk-based and technology neutral to allow. This will allow regulatory measures to be reviewed regularly as new markets and technologies emerge. It must also support financial technology solution providers to operate in multiple jurisdictions.

Regulators should foster growth and innovation by cooperating with innovators and by exploring sandboxes.

Defining the appropriate access of all market participants to personal or non-personal data (subject to the correct safeguards and consent) will become critical for the development and application of future orientated technology solutions, such as AI, DLT or data analytics.

We welcome that the FSB is exploring the risks and opportunities of future data storage developments, especially with regards to how to ensure sufficient competition and ultimately high security and customer convenience.

EPIF is closely monitoring the creation of the cybersecurity certification schemes and supports the efforts to increase trust and security in products, services and processes that are crucial for the proper functioning of the payment market, while avoiding requirements of data localization.

- **Access to financial infrastructure:**

As already mentioned, at the centre of the effectiveness of both retail and wholesale payments is access to the underlying infrastructure.

EPIF members believe that any legal or practical obstacles that currently prevent the non-bank sector from having direct access to the intra-bank payment system should be removed, subject to meeting the same minimum technical and security requirements. This should also include the possibility for non-bank payment providers to open safeguarding accounts with central banks.

- **Lack of recognized e-ID solutions**

The lack of a cross-border harmonized, secure and reliable, digital identity framework poses a significant barrier to the development of KYC solutions which can be used across national borders. The developments surrounding digital identity verification are one of the most promising uses of RegTech in recent years. Online verification procedures and KYC is far more convenient for users without compromising security. A harmonized online (i.e. non-face-to-face) KYC framework at the global level would facilitate the introduction of a truly cross-border financial services market, and markedly reduce the cost of compliance for digital businesses.

- **A comprehensive approach to fraud**

EPIF would urge regulators to think about payment fraud in a more holistic manner, as part of the overall risk management frameworks of payment services providers and in collaboration with key stakeholders.

Fraud typologies evolve over time, as consumer behaviours change, as fraudsters become more sophisticated businesses also improve their risk management systems. As such it is important that payment services providers and their customers can remain agile and flexible in their security and fraud mitigation measures, to be able to adapt quickly and efficiently to new developments whilst maintaining customer trust.

We would like to see an integrated, principles-based and inclusive approach to payment security that takes into account all the pillars of risk management (not only authentication/identity, but also security, privacy, data management, AML/CTF and sanctions) and all players in the payment chain. This should

not only cover obligations and responsibilities of payment services providers but also of merchants, consumers and communications providers (including that liabilities for instances of fraud are apportioned fairly and proportionately depending on the unique roles played by the entities involved).

Section 4: Recommendations for improving alignment of PSP regulatory and supervisory regimes

8. Are the recommendations sufficiently granular, actionable, and flexible to mitigate and reduce frictions while accommodating differences in national legal and regulatory frameworks and supporting the application of proportionality?

EPIF generally welcomes the proposed Recommendations. The effectiveness of the Recommendations will ultimately come down to the implementation by the respective jurisdictions.

It is worth pointing out that competent authorities could seek to further strengthen consultative processes with the non-bank payment sector in order to benefit from the sector's insights and create a mutual understanding of the sector's business models and risks ahead of developing supervisory guidance and when overseeing the implementation of this guidance. This can further add to the effectiveness of supervision and the implementation of regulation by the industry.

9. To what extent would the recommendations improve the quality and consistency of regulation and supervision of non-bank payment service providers (PSPs) active in cross-border payments services?

In conducting their business, EPIF members often face unnecessary host state requirements that become barriers for access and the provision of services. Examples include data localization requirements, AML/CTF compliance and local consumer protection rules.

In addition, many non-bank payment providers' business models are often deemed high-risk from a supervisory and AML/CTF perspective. While this might be the case of some of our business models the majority of our business is not high-risk in nature. We therefore believe that in adopting risk-based regulation and supervision this should take into account the available risk mitigation techniques the industry has been developing and employing and make a clear distinction between inherent and residual risks of the business.

EPIF also very much welcomes Recommendation 4 of the FSB consultation paper which would require supervisors to more clearly communicate their supervisory expectations, as well as the explicit reference to the risk-based approach as part of this Recommendation 4.

Finally, access to payment systems is crucial for PSPs to be able to offer their services in different jurisdictions. In some instances, for example, access to the distribution of local payment methods is still limited to domestic banks, limiting the ability of PSPs to offer their services and the potential to enhance competition through a diversity of different payment providers.

10. For the purpose of identifying material areas to be addressed from a priority and effectiveness perspective, should the report categorise the identified frictions created by inconsistencies in the legal, regulatory and supervisory frameworks applicable to banks and non-banks in their provision of cross-border payments services in terms of focus or order in which they should be addressed?

The FSB should consider categorising by order the identified frictions created by the legal, regulatory and supervisory inconsistencies. To that end, high among the ordering of such frictions should be the higher costs, reduced competition, restraints on innovation, and diminished financial inclusion caused by the legal and regulatory inconsistency of not allowing settlement account and payment systems access to non-bank PSPs.

EPIF is a strong proponent of information sharing between jurisdictions, as set out in Recommendation 6 of the FSB consultation paper.

Sharing of appropriate information amongst industry participants would allow for the simplification and improvement of existing products, as well as provide consumers with the right level of comfort and security. One example of this is allowing financial institutions to share the information for digital on-boarding and KYC checks purposes within the privacy framework. We also believe that legal authorisation should be given to facilitate private-to-private information sharing and allow the private sector to share AML/CFT relevant information but also on incident reports, fraud and other relevant information. This would add to the quality of reporting, so that reported information is confined to genuine cases of financial crime concerns.

There is a need to balance privacy laws with the wider public interest of sharing information across borders, between entities in the same group enterprise, between entities in different group enterprises, and between entities in group enterprises and government, in both directions.

It is also important to bear in mind that there is natural tension between the creation of open data spaces, which are designed to promote data sharing, and the incentives that customers would have to grant access to data in Open Banking arrangements or for companies to pool their data.

11. Recommendation 5 focuses on domestic licensing. How and to what extent would licensing recognition regimes between jurisdictions support the goal of strengthening consistency in the regulation and supervision of banks and non-banks in their provision of cross-border payment services? What risks need to be considered?

The Payment Services and E-Money Directives in the European Union have helped to foster the development of an EU Single Market for non-bank payment services. The success can be measured by the number of payment and e-money institutions that have been authorised to provide their services across borders within the European Union. The PSD is one of the real success stories of the EU's Single Market.

EPIF believes that the passporting regime - allowing PSPs that are licenced in one EU member state to leverage their licence to operate across different member states in the EU and offer their products and services to all EU businesses and consumers - is one of the main successes of the Payment Services and E-Money Directives. It has contributed to a diverse set of payment providers delivering customer-friendly, inclusive, safe and innovative payment services. Other jurisdictions should consider to what extent a similar framework may benefit the provision of payment services in different regions.

Federated jurisdictions with numerous sub-jurisdictions (each of which has its own licensing framework and requirements) that lack a passporting or jurisdictional-wide licensing option may raise information sharing, legal harmonization and competent authority coordination challenges that could hamper the goal of strengthening regulatory and supervisory consistency.

12. There are no comprehensive international standards for the regulation, supervision and oversight of non-bank PSPs and the cross-border payment services that they offer. Is there a need for such international standards?

EPIF is open to exploring this idea.

General

13. What, if any, additional issues relevant to consistency in the regulation and supervision of banks and non-banks in their provision of cross-border payment services should be considered in the report?

EPIF's comments are covered by the answers to the other 12 questions of the FSB consultation.

We would nonetheless add that the FSB process in itself and the nature of these consultations is crucial for advancing the understanding of regulators and supervisors about cross-border payments. Any cooperation and dialogue on these important issues at international level is to be welcomed and EPIF will do its utmost to support these discussions.