13 OCTOBER 2014

EPIF POSITION ON THE RECENT DEVELOPMENTS IN COUNCIL RE THE PAYMENT SERVICES DIRECTIVE 2

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.

EPIF is glad to share its position on the Payment Services Directive 2 (PSD2) recent Council compromise text with EU policymakers.

We are glad that some of our previous issues have been addressed in the latest compromise text. In particular, the access to bank services for PIs (new Art. 29a) and the differentiation of fit and proper requirements for PI agents (Art. 18 (1) (c)).

1. SCOPE

- Article 2 of the proposed PSD2 text extends the scope of the PSD to bring 'one-leg' transactions into scope. In extending the proposed scope to include one-leg transactions, it is at least encouraging that the proposed PSD2 text only applies this to certain articles and only to those parts of the payment transaction which are carried out in the EEA. At the very least, however, Articles 63-66 should also be excluded from the scope of a one-leg approach. Under these Articles, Payment Services Users (PSU), e.g. cardholders, are entitled to an immediate refund for an unauthorised transaction up to 13 months after the debit date. Yet the period for merchants to keep records outside the EEA is typically much shorter than 13 months (e.g. 6 months). This means that if a cardholder raises a claim after this shorter period, the merchant would no longer be in possession of the relevant records, which in turn means the card issuer would be unable to determine whether the transaction was in fact unauthorised or incorrectly executed. For the provisions of these Articles to function in one-leg scenarios, there would need to be a legal requirement on merchants worldwide to retain data for over 13 months, which the European Union clearly does not have jurisdiction to implement. Alternatively, payment systems would need to take steps to ensure that, globally, acquirers in turn take steps to ensure that merchants hold records for over 13 months. With thousands of banks and other institutions involved, the sheer volume of contracts, processes and behaviours that would need to be changed is staggering and ultimately leaves EEA-based PSPs at risk of having to write off transactions without having really established whether there was in fact error or fraud in the transaction.
- Any such extension of the scope of the PSD should be treated as a maximum harmonisation issue, to avoid Member States effectively seeking to 'gold-plate' beyond this, as the present diversity of approaches across the EEA has created significant operational and legal complexity for PSPs. In this regard, paragraph 1d of Article 2 should be deleted.
- On the issue of 'negative scope' covered by Article 3 of the proposed PSD2, and specifically paragraph (f), the words "cash to cash operations" should be substituted for "the purchase of currency". In the UK, the former Financial Services Authority clarified that cash purchases of foreign exchange are excluded on the basis of the negative scope exemption. It further clarified that cash

includes physical notes and coins as well as transactions whereby a customer pays for foreign currency using a payment card. The underlying arrangements regarding the use of a payment instrument as between the customer, the card issuer, the merchant acquirer and the bureau de change (acting as merchant) would however be in scope. Other Member States may have developed their own guidance in this respect. The PSD2 would benefit from clarification of this point at the European level.

- On micro-enterprises, Articles 31(2) and 54(3) of the proposed PSD2 text maintain the existing Member State option to extend the consumer protections of Title III and Title IV to micro-enterprises. Where a PSP engages in lines of business that provide services to hundreds of thousands of commercial customers – such as merchant acquiring – the additional burden of verifying whether a business customer qualifies as a micro-enterprise is high. Given the operational and administrative burden of verifying this (exacerbated because the definition of 'micro-enterprise' is based on criteria that would not normally be known to anyone but the customer, e.g. number of employees and annual turnover figures), PSPs are forced to treat all or most commercial PSUs as micro-enterprises. As a result, consumer protections are often extended to large businesses that do not want or need them. It is submitted that PSD2 should be amended to achieve maximum harmonisation on the distinction between consumers and micro-enterprises by removing Articles 31(2) and 54(3).

2. SAFEGUARDING

- **The use of "safeguard" and "segregate" in Art. 9 of the PSD 2 is not entirely consistent**. The absence of any clear guidance on the distinction between the two obligations means that the rules are open to interpretation by stakeholders in Member States and potential inconsistency in application between payment service providers. The current requirements do not take account of the necessity for smaller PIs, to use customer funds to guarantee customers' orders. We also seek clarity on the types of funds which need to be segregated (i.e a clear definition of "funds"). The definition of payment services is not applied consistently; and some payment services are hybrid by nature. There are instances in which funds held by the financial institution are inclusive of fees and charges payable by the customer or fees owned by the scheme to the card acquirer/issuer. One example is when a merchant acquiring business receives funds from the schemes. The European Commission would appear to support a purposive interpretation as per its FAQs ID 1037 and ID 1065.

- It is necessary to **measure the consequences of such amendment to the safeguarding rules on the treatment of PIs by payment systems (Article 29 of the PSD2)**. PIs (hybrid and non-hybrid) have to prove that they have the capacity to comply with the rules of payment systems. PIs cannot cover their undertakings under the systems by their own funds. They need to have the possibility to use customers' funds to guarantee customers' orders passed through the system and which are irrevocable as of the time of receipt of the order by the system. Each Member State has its own interpretation of the applicable safeguarding method. Such rules have to be fully harmonized to facilitate the access on payment systems and to avoid any domestic favorable treatment. It is necessary to provide the same opportunity of using customers' funds to guarantee customers' orders in the payment systems in the same conditions for hybrid or non-hybrid PIs in any Member State. The safeguarding requirement as interpreted in various Member States does not provide the opportunity to do so.

- **PSD safeguarding provisions in the context of acquiring do not accurately reflect the contractual relationships and operating models which form the basis of the relationship between the parties in a three or four party model scheme**. The draft PSD2 text does not recognize the separate and distinct contractual relationships which exist between a card issuer and its cardholder and that between an acquirer and its merchant. This is because there are a number of situations where merchant acquirers do not immediately settle all funds received from the Card Scheme e.g.
    - Where fraud is suspected and funding withheld pending investigation;
    - Where 'net settlement' arrangements have been agreed and interchange, processing costs and (any) chargebacks are deducted, usually on a daily basis;
    - Where merchants have agreed longer funding cycles in order to minimize bank charges; or
    - Where merchants have agreed to funds being retained to repay an acquirer debt or to build a security reserve to cover processing liabilities;
- **This distinction is particularly relevant when the definition of the "relevant funds" is considered**. Its application remains ambiguous when applied to card acquiring and should be clarified[1]. The payment of amounts due to a merchant from its payment service provider should primarily be subject to the commercial terms agreed between the merchant and acquirer. Parties should have the freedom to agree these terms to allow the factoring in of fundamental risk management considerations which may be necessary to deal with the contingent risk when the acquirer is unavoidably faced with when it processes card transactions.
- Furthermore, some safeguarding mechanisms allowed by the PSD are not always feasible or even available to PIs, such as insurance cover.

[1] Consistent with the contractual relationships which exist, merchant acquirers generally receive payment of funds directly from the card schemes in respect of card transactions processed and not from a payment service user or a payment service provider.

- Also, there appears to be no clear provision in the PSD2 for how safeguarded funds should be dealt with if they remain **unused or unclaimed**. As currently drafted, the safeguarding rules in the PSD2 appear to operate indefinitely, and they lack a prescription period or other mechanism to clarify in what circumstances unclaimed funds can fall outside the safeguarding requirements. The PSD2 should clarify the circumstances, on a **maximum harmonisation** basis, under which safeguarding obligations cease for unclaimed funds, e.g. by way of a **standard long-stop prescription period** of, say, 5 years or earlier if the PSU otherwise loses entitlement to the funds under applicable national law.

3. ACCESS TO BANK SERVICES IN HOME AND HOST MEMBER STATES FOR PAYMENT INSTITUTIONS

- **PIs need access to bank services in the countries they operate in order to provide their authorized payment services**. These bank services include the opening and maintenance of a bank account or basic settlement services. As a matter of fact, many Payment Institutions are facing challenges in opening or maintaining bank accounts across Europe.
- In order to achieve a level playing field, European legislators should ensure that banks in Home and Host Member States and EU banking regulations should not limit access to bank accounts and other banking services for PIs. Art. 29a of the PSD 2 goes in this direction acknowledging that Member States shall ensure that access to accounts maintained with a credit institution shall be decided upon in a non-discriminatory manner. Further clarification of this article is however necessary to ensure this issue is being addressed adequately.

- In the event that a transaction carried out by a PI represents a risk of money laundering, it is understandable that a credit institution should decide to put an end to the business relationship with that PI by cancelling its bank account; indeed, it is even mandatory. But according to the provisions of anti-money laundering laws, this requires the credit institution to detect signs of risk in the PI's transaction and then immediately to conduct a special examination of that transaction, after which it may conclude that, in fact, there is no logical explanation or economic sense that justifies the transaction made by the PI. That said, what is not acceptable is that credit institutions decide to cancel PIs bank accounts without having detected any risk transaction and without having conducted the mandatory special examination called for by AML regulations. And it is even less acceptable that credit institutions directly refuse to open accounts for Payment Institutions.

- It is therefore our understanding that measures of a regulatory nature should be put in place to prevent banks from cancelling or refusing to open accounts for Payment Institutions, a practice which makes it extremely difficult for these financial institutions to go about their legitimate business, especially when banks are the only institutions legally empowered to accept funds deposited by PIs and to execute the corresponding transfer orders that they issue.

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- If the measures proposed above should not be adopted, we consider that the aspirations inspired by the drafting of the PSD, to wit the increase in competition as a pre-condition for the reduction of transfer costs and enhanced security and efficiency of payment service, would be definitively thwarted.

4. THIRD PARTY ACCESS TO PAYMENT ACCOUNTS

- Payment initiation services provided by third party payment services providers ("TPPs") are expected to deliver faster and cheaper payment means to consumers. **Thanks to their safety, convenience and economic efficiency, payment initiation services will bring significant benefits to European consumers** and contribute to the integration of the European payments market.
- The recent compromise text (primarily articles 58, 87 and 87a) **rightly ensures technological and business model neutrality for TPPs and that TPPs can rely on the authentication method established by the AS-PSP.** These are **crucial principles to safeguard** in order to ensure the continued operations of existing well-functioning TPPs and to allow for further innovation and competition to take place.
- Accessibility of payment accounts by Third Party Providers has all its rationale in the context of bank accounts (as confirmed by Recital 18). The Commission's intention is clearly to target bank accounts to ensure users can benefit from the development of the digital economy by facilitating e-commerce payments. Other types of non-bank accounts – such as e-money accounts - cannot be used to perform the typical banking operations but are **complementing the traditional bank accounts** since they are designed precisely to allow **small value payments in the e-commerce environment.** We would therefore recommend clarifying that e-money accounts and e-money accounts providers are not covered by the provision on TPPs access. E-money accounts already provide users with the ability to pay online without the support of any specific service. Obliging e-money accounts to provide for TPPs' access would imply huge technical adjustments which are not justified given the lack of any business rationale for it.
- EPIF has published a specific position paper on Payment Initiation Services which is available on our website.

5. PSD PASSPORTING REGIME

The PSD has helped to foster the development of a Single Market for non-bank payment services. The success can be measured by the fact that close to 600 PIs have been authorised to provide their services across borders EU wide, alongside 2100 small or 'waived' PIs which only provide their services within one EU country. The PSD is one of the real success stories of the Single Market.

EPIF believes that the passporting regime is one of the main successes of the PSD but equally one of the main areas where there is further room for improvement in the PSD 2.

12 month limitation for credit extension (cross-border)

- The PSD incorporates restrictions on passporting that undermine the key aims of fostering competition and developing a single internal market for payment services, and indeed seem in direct conflict with basic EU Treaty principles such as the free movement of services and the freedom of establishment. One **problematic example is the limitation in new Art. 17(4)(b) on the ability of PIs to passport payment services involving the extension of credit with a repayment term exceeding 12 months**. Therefore while the PSD has allowed PIs to passport charge card businesses ("charge cards" being cards requiring repayment of the balance in full each month), this provision prevents PIs from doing so for credit card businesses. This is because "credit cards" allow the cardholder to revolve balances beyond a one month period, potentially beyond 12 months therefore Art. 17(4)(b) effectively prohibits PIs from issuing credit cards outside their home countries, fundamentally hampering the single market objectives of the PSD and ultimately driving a wedge through the middle of an otherwise vibrant and competitive card issuing sector across Europe.
- **EPIF urges the Commission to remove the restriction in Art. 17(4)(b)**, in particular as it involves a breach of the fundamental EU Treaty principles of the free movement of services and establishment.

Enhancing cooperation between competent host and home authorities

- There is currently an apparent **lack of communication and cooperation** between home and host authorities. As a consequence, the cross-border PSD passporting process and the day-to-day supervisory cooperation practice should be improved. Also, the role of the host regulator in relation to PSD conduct of business rules and/or PI reporting should be more precisely defined to avoid potential duplication of reporting obligations and confusion amongst PIs and regulators.
- In that regard, **EPIF welcomes that the proposed PSD 2 (Art. 26) gives additional powers to the European Banking Authority (EBA)** to address the PSD passporting process and exchange of information between home and host authorities via the adoption of regulatory technical standards and guidelines. EBA's involvement in standard setting is clearly a positive development which could potentially lead to more consistency and harmonisation of rules for cross border active PIs.
- **EBA needs to be given adequate resources** in order to be able to fulfill these new duties. As for the standard setting process led by EBA it is important to ensure that the non-banking industry is represented and consulted whenever new guidance and/or technical standards relevant to the PI sector are discussed.
- However, **EPIF is concerned by the introduction in the latest Council compromise text of new Articles 26a and 26b**. These Articles give arguably undue and unnecessary far reaching competences

to Host Member States Supervisors, such as the requirement to appoint local Central Contact Points (CCP). While we understand and appreciate the need for information on payment activities carried out locally from a host supervisor's perspective, there are less incisive measures available to achieve this goal. EPIF believes this proposal runs counter to the Single Market and proportionality principle. In addition, it sets a dangerous precedent for other future pieces of legislation by undermining the Single European Market. Together with the proposed rules in the 4th Anti Money Laundering Directive regarding the central point of contact in each Member State, it reintroduces supervisory fragmentation in the market while more integration is needed.

- The PI sector is highly innovative with many players such as are internet providers. They also are promoters of the digital economy and are developing payments that utilise new technologies such as mobile phones. Against this spectrum, EPIF sees no reason why the new Articles 26a and 26b have been introduced.

- The PSD2 would also benefit from clarifying that the safeguarding provisions and Title II prudential matters generally are subject to the rules of the home state and the supervision of the home state authority. Member States have taken slightly different interpretations in relation to such rules with the potential for unnecessary expense and significant operational challenge to PSPs.

- In the context of the provision of cross border services, EPIF advocates against providing supervision powers to Host Member States, as it would offset the inherent benefits of the single market and introduce market fragmentation, business disruption as well as legal uncertainty.

Outsourcing

- We are concerned by the recent introduction of a requirement for PIs to include information about planned outsourcing of operational functions into the PSD passporting process (Art. 26 (1) (f)). Article 26 covers the right of establishment and the freedom to provide services for PI in a cross-border context. Outsourcing is neither in itself an expression of the right of establishment, nor a payment service, for which the PSD pass-porting process should apply. Article 18 (7) already covers the outsourcing of operational functions of payment services and rightly puts the Home State supervisor in charge of assessing these intentions and related plans. Furthermore, introducing such a requirement for Payment Institutions only unfairly discriminates PIs vis-à-vis other PSPs which are not subject to similar requirements. We therefore recommend the deletion of sub-paragraph Art. 26 (1) (f).

Member States discretion in applying requirements

- By allowing Member States to apply discretion in the application of certain rules, the ability of PI's to passport in different Member States it is hindered and the application of different requirements on a country by country basis creates barriers to homogenous expansion on a cross border basis. An example is the waiver included in Art. 54 (3) of the PSD 2 treatment of microenterprises which is leading to significant variation between Member States in terms of the Directive's implementation.

6. ACCOUNTING

- The PSD includes requirement of separated accounting of the payment services from the closely related ancillary services. EPIF questions the relevance of this separation for a non-hybrid PI. The prudential requirements should be looked at in their totality. **EPIF suggests to limit the scope of separated accounting requirement to hybrid PIs only** (as defined in Art. 17-c).

7. USE OF AGENTS

- The PSD recognises the market reality that many payment institutions, specifically those operating money remittance services offer their services to customers via an agent network. **Agents are third parties which offer the payment service on behalf of the Payment Institution**. These agents can be authorized financial institutions such as banks or postal organizations, or non-financial institutions such as retail chains. Often customers prefer going through agents because of convenience, geographic proximity or other reasons. The rules should continue to accommodate these consumer choices and competition, while ensuring the safety of payment services.
- Under the existing PSD1 regulatory framework, a new agent or branch could commence its activities in the relevant host Member State one month after a complete notification was made to the home Member State as long as the host competent authority did not object to it. The current Council proposal triples this timeline to three months for the cross-border registration process of a branch and an agent.
- At least for agents, this seems too long for the standard review of the defined set of information and data points - in particular given that the EBA will provide additional guidance regarding the passporting data points and –format.
- While acknowledging that the supervisory community may need additional time to assess the information provided and to communicate with each other, we suggest introducing a maximum two month time frame from the moment of the complete notification until the registration of the agent, if applicable.
- Moreover, the current Council proposal (Art. 5 para. 1(l)) requires PIs to do at minimum one off/on-site check per year on every agent or agent location. Most Payment Institutions conduct regular off/on-site checks on their agent network based on a risk-based approach in line with applicable laws and supervisory guidance. This approach allows PI to assess the risks of its agent network and to apply oversight resources accordingly so that the entire oversight process is effective and commensurate with the risks identified. Therefore we suggest keeping the current balanced approach and not replacing it with a strict requirement.

- **The PSD 2 should specify the fit & proper assessment of the PSD agents' management in more detail**, ideally harmonising the information which needs to be collected and provided to the Home State supervisor. Currently, the information required and the group of people screened varies greatly between Member States, creating an unlevel playing field. A harmonised "fit & proper form" could be part of a new Annex of the PSD 2 or the EBA could work out a standard F&P form and related document needs.

- Finally, **EPIF welcomes the PSD 2 proposal for an EU registry for PIs**, their branches and agents which should be managed by EBA.

8. SURCHARGING

- **Surcharging** is the practice whereby the merchant charges his client an additional fee for the use of a particular means of payment**. It is an inherently unfriendly consumer experience**. **As well as forcing consumers to "pay for paying"', it also serves to mislead customers on the true price of goods and services**. Indeed, as BEUC has recently stated: "*Companies have shamelessly used them [surcharges] to reap extra profit from people paying by card. Such practices rightly annoyed Europe's consumers as they essentially punished them when making a payment."* We therefore welcome the recognition that surcharging is anti-consumer.

- Nevertheless, EPIF urges policymakers to **go further than the current proposals and ban surcharging altogether in the interest of consumer protection**. As the European Commission is aware, surcharging of card payment transactions is already prohibited in nine Member States at present and it would seem prudent to extend this to the whole of the EU. The current proposed solution will only lead to greater confusion and frustration for consumers who will be faced with different surcharging experiences depending on which card they choose to use and at which merchants.

- Operationally, **selective surcharging** would in particular be cumbersome for merchants and their customers to implement and understand. For example, merchants' employees would have great difficulty differentiating between price regulated and non-price regulated card transactions.

- EPIF therefore urges policymakers to take a pro-consumer *and anti-money laundering* stance by banning surcharging altogether.

9. OPEN ACCESS REQUIREMENTS

- **The European Commission proposes to extend the "open access" requirements of Art. 29 of the PSD to smaller, proprietary networks with licensees**. This significant change to the position under the PSD is likely to make it significantly more difficult for such smaller, proprietary networks to compete with Visa and MasterCard and does not reflect the EU business model of these networks.

- Three-party schemes' freedom to select financial institution partners is fundamental to their ability to build scale and relevance and to compete in an industry dominated by inter-bank schemes.
- **Three-party networks, including those with licensing partners, are currently exempt from the "open access" requirements of Art. 29 of the PSD**. The exemption wording was carefully drafted to reflect fundamental contrasts in network structure with "four-party" networks. The measure reflected the Commission's view that access to "three-party" schemes is not necessary for market entry. It was also adopted by the European Central Bank in its 6th SEPA Progress Report in 2008 and incorporated by the European Payments Council in v2.1 of the SEPA Cards Framework.
- Nothing has changed since that time to justify a shift in policy, yet the exemption is not present in the revised PSD, nor has any rationale been given for such a significant change.
- Far from creating a 'level playing field', the removal of this exemption will significantly disadvantage smaller non-bank networks, reducing competition, innovation and consumer choice.
- **We urge policymakers to preserve the exemption for "three-party" networks with licensees in Art. 28(2)(c) of the existing Payment Services Directive.**

10. TERMINATION

- Article 48 of the proposed PSD2 text maintains the existing requirement for the PSP to give **two months' notice** to terminate the contract. The termination requirements should include a **carve-out for situations where the PSU is in material breach** of the framework contract, is **insolvent**, or in other circumstances where it is clear the relationship is irretrievably broken beyond the PSU's control, enabling **immediate termination**.

11. PAYMENT TO MERCHANTS

- **The PSD 2 should provide greater clarity on the relationship between a payment institution and its merchant customers**. Specifically, it should recognize that companies should, within the general scope of the PSD, be able to determine the commercial and financial parameters of their relationship by contract, as Art 74.3 of the PSD 2 seems to allow. EPIF is aware of the current trend towards **faster payments**. However, the reflection of this trend in **legislation must be limited to what is really necessary** to attain the objectives of the legislation in this point, i.e. protection of consumers, and not disproportionally limit the contractual autonomy of the parties in the b2b sector.

- As currently drafted**, Article 78** of the PSD 2 **does not recognize the current acquiring model**, as it generally mandates (in contradiction with Article 74.3) Payee's PSPs (acquiring banks or Payment Institutions) to fund their Payees (i.e. merchants) the day after the transaction date. This **does not mirror the business reality** as **most Payees** (especially in the card-not-present space and in certain countries, such as the UK) are precisely the **ones interested in agreeing longer payment timeframes**, which will allow them and their **PSPs to better manage fraud and risk** (as already explained in section 4 -Safeguarding) as well as to **afford the service charges and banking/account fees**. There are a number of situations where Payee's PSPs do not immediately settle all funds received from the Card Schemes, as for instance: where fraud is suspected and funding withheld pending investigation; where 'net settlement' arrangements have been agreed and interchange, processing costs and (any) chargebacks are deducted, usually on a daily basis; where merchants have agreed longer funding cycles in order to minimize bank or service charges; or where merchants have agreed to funds being retained to repay an acquirer debt or to build a security reserve to cover processing liabilities. We could also highlight the fact that some of these scenarios mirror Card Schemes regulations, the rationale for which is to protect the payments system's stability.

- EPIF is supportive of the need for **maximum execution timelines for payments and for funds** to be at the **disposal of the beneficiary within set timeframes** where this is necessary to protect consumers. However, in the interest of security, fraud prevention and compliance with other national regulations (as well as industry standards, such as Card Schemes Operating Regulations), it is necessary that the Directive reflects, specifically in Article 73 (Scope, of Section 2 on Execution Time and Value Date), the need for **financial institutions to have to carry out additional checks and controls** which especially for certain cross border payments, may take longer.

- From a competition perspective, it is important to note that the timeframes currently contained in PSD1 and the proposal for PSD2 do not take into account the interest of medium and smaller merchants, which are the ones normally interested in longer settlement timeframes. **With D+1 the level playing field will be at stake.**

- There are also practical reasons why it is necessary to **extend the settlement timeframes in certain circumstances.** The faster payments trend is meant to **protect consumers**, not merchants and other professional market participants (such as big retailers) who have **the benefit of being able to individually negotiate the terms of their engagement with the merchant acquirer**. Moreover, the security of certain payments cannot be guaranteed if settlement is performed as fast as this trend anticipates, especially where settlement relates to large volume transactions. The speed of settlement does also not take into account the credit risk borne by the market participants when charge backs, refunds and rejections need to be deducted from the settlement funds at various stages. The wording of **the revised PSD should clearly recognize (specifically in Art. 73.2 and 78.1) that the payment timeframe in which the payee's PSP funds the payee may be agreed between the parties involved** (in line with the wording of Art. 74.3). In the case of merchant acquiring the movement of funds between issuer, card scheme and acquirer is not dependent upon the acquirer's obligation to settle the value of transactions processed to its merchant. Moreover, as already mentioned, Payees and Payee's PSPs need some days to prevent, detect and counter potential fraud, during which funds should be withheld. Therefore, EPIF advocates that **the PSD should recognize the requirement that a payee and its PSP may decide the payment timeframe in which funds are remitted by an acquirer PSP to its merchant payee** to allow for prudent risk management measures to be accommodated within the payment terms.

- The same rationale applies to **e-commerce platforms**, which - according the Commission proposal – will no longer benefits from the commercial agent exemption and be in scope of the Directive. As a consequence, the Directive needs to be amended to accommodate the e-commerce platforms business model. As they currently stand, the execution timeframes of the Directive frustrate the main objective of e-commerce platforms: i.e. increase safety and security for the buyer (the payer) by holding the payment until a certain timeframe has elapsed or the seller (the payee) has fulfilled agreed conditions (e.g. has shipped the goods purchased by the buyer). This is clearly in the interest of both buyers and sellers (similar to classic escrow setups) and needs to be adequately reflected into the Directive.

12. SECURITY REQUIREMENTS

- **The PSD2 text contains a list of new authorization requirements for PIs (Art. 5), which relate to new security related conduct of business rules** (also contained in Chapter 5 in Art. 85-87). It will be important to clarify these new requirements and how they apply to the different PI business models authorized under the PSD.

- **Given the broad range of new security related requirements for all PSPs, we think that these requirements should apply taking into account the different business models (size and type) based on the principle of proportionality. The level of security requirements shall also be applied using the risk based approach. Also, Art. 86 (1) of the PSD 2 might be interpreted in an overly onerous manner, which could outweigh the potential benefits**. The requirement to notify payment service users should only apply where there is a *"**material** security incident that is **likely** to impact the financial interests of the payment service users*". More clarification is also needed as to what would be deemed as "*financial interests of users*" and the circumstances under which users must be notified of a security incident. Practical questions arise in which manner a PSP can contact its users if no business relationship has been established between the PSP and the user.

- **Lastly, Art. 87 requires all PSPs to apply strong customer authentication when a payer initiates an electronic payment transaction**. It is current unclear which transactions are subject to these new security requirements. More analysis is needed to understand how such a requirement applies in the context of a transactional payment service, i.e. when no business relationship has been established with the payment services user. **The new security requirements should not discriminate one business model (i.e. the account based business model) versus another (i.e. the transactional business model). EPIF believes that this requirement should apply in a proportionate manner in order not to have unintended consequences mainly on small PIs.**

- Also, our understanding is that this requirement only applies to Internet payments and only to the flow between payer and payee (and not to the ones present throughout the rest of the payment chain). Therefore, EPIF supports the clarification of the proposal's wording in line with the above.
- Finally, EPIF welcomes the reference of Art. 87 (3) to the EBA technical standards allowing exemptions to deployment of strong authentication. We would however suggest that the three exemptions listed are mentioned as examples only: this will allow the EBA to determine in a flexible manner the circumstances that will permit for alternatives to strong authentication. In fact, given the pace of technical development, we recommend providing open-end security criteria to ensure regulation is supporting and following innovation rather than stifling it.

13. OUT OF COURT REDRESS

- The European Commission proposal proposes an ambitious timetable for the handling of complaints. **In most cases PSPs need longer than 15 business days to properly investigate a complaint and provide appropriate resolution for the Payment Service Users** (as provided in Art. 90 of the PSD 2). Furthermore, it is unclear what the rationale would be for introducing a timeframe, and such a short one, including what demonstrable customer detriment the new provision is aimed at addressing. Therefore, EPIF members would ask that the current provisions of the PSD remain unchanged. If a timeframe were imposed, it should be reasonable and achievable, and in any event must specify that the timeframe does not commence until all relevant information and documentation is provided by the PSU to enable the PSP to investigate and resolve the matter.
- The latest Council compromise has introduced a new obligation for PSPs to ensure that the internal dispute resolutions procedures are available in the respective official languages of the Member States where the payment service is offered. This new obligation bears far reaching consequences for EU PSPs. It means that a PSP must offer customer service in the language of each Member State in which it provides its services, regardless of the agreement concluded with the customer (under Art. 44 (1)). The obligation might require – especially for PSPs operating services cross border – having a procedure in each of the EU 24 official languages. This is hardly feasible even for large PSPs, creates disproportionate burdens for PSPs while increasing considerably administrative costs. We recommend removing this requirement and aligning the language to Art. 44 (1).

CONCLUSION

EPIF welcomes the opportunity to engage further with EU policy-makers on the issues highlighted above. EPIF would be happy to provide technical input or any other helpful information, including reinforcing the points above or to explain how the different PSD rules apply to the different business models we represent.

For more information about the PI sector, EPIF and its members, please contact us via our website or Secretariat.