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EPIF POSITION ON THE 4TH ANTI MONEY LAUNDERING DIRECTIVE

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).

EPIF is glad to share its position on the draft 4th Anti-Money Laundering Directive with EU policymakers.

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

INTRODUCTION

Payment Institution's ("PI") compliance with anti-money laundering ("AML") and combating the financing of terrorism ("CFT") obligations is a prerequisite for their authorisation under the Payment Services Directive ("PSD"). Below EPIF sets out a summary of key areas that EPIF believes the 4AMLD should seek to address but currently does not, along with EPIF's position on those key areas.

1. MINIMUM HARMONISATION

The need for PIs to adapt to 28 different AML regimes means that the maximum harmonisation sought by the PSD is far from being achieved as payment products and services cannot be offered cross-border in a cost efficient manner. In EPIF's view AML rules should be more harmonized at the EU level via the adoption of a maximum harmonization approach.

2. THE RISK-BASED APPROACH (RBA)

Inconsistencies in Member States' application of the RBA could lead to barriers to entry and reduced competition in the market. EPIF considers that over-arching guidance at an EU level as to how the RBA should be applied by Member States is required so that the discretionary element does not lead to further divergences in Member States' interpretation.

3. CUSTOMER DUE DILIGENCE (CDD)

A) Inconsistency on Simplified Customer Due Diligence ("SCDD")

EPIF has concerns that giving individual EU States discretion as to when SCDD is permitted could give rise to greater uncertainty as to whether and when SCDD will be available at a national level. In implementing the RBA to determine what is deemed low risk, EPIF advocates that States to adopt a neutrality of treatment approach across different business models.

B) Innovative Payments

Innovative products often involve non face to face settings, e.g. mobile/online or staged transactions. Despite transaction thresholds, some local EU AML supervisors assume that such non face to face transactions are inherently risky and require CDD at the "point-of-sale". EPIF considers that such cumbersome requirements serve as a clear obstacle to the development and innovation of online and/or mobile payment products as they jeopardise the business case behind many of these low-margin payment services.

Moreover, EPIF believes that the optional exemption for electronic money products (Article 10 bis) should be extended to cover also other innovative retail payments products which do not constitute e-money, such as online or mobile money remittance products, if the same quantitative limitations and thresholds are observed. There is no reason why an artificial CDD differentiation shall be made between e-money products and non e-money products where similar risk mitigation mechanisms are applied.

Firstly, the funding mechanism is similar as innovative remittance transactions are funded in a substantially similar way to e-money transactions: via debit or credit cards, bank transfers, cash, etc. Secondly, similar risk management processes can and are being applied to innovative retail payments products and e-money products. Innovative retail payment products which do not constitute electronic money include for instance online or mobile payments or remittances. Risk management processes applying to these products comprise a full suite of AML/CFT controls and fraud controls. Lastly, online or mobile money transfers allow full transparency regarding the fund flows and payouts.

C) Low Value Payments - Simplified and Enhanced Customer Due Diligence

EPIF believes CDD requirements should be consistent across the EU and should increase in line with the risk profile of the activity, without hampering low-value payment products from being offered. From EPIF's perspective the risks associated with low value payments are strictly related to Terrorism Financing rather than Money Laundering. In EPIF's view such Terrorism Financing risks are sufficiently mitigated via the ongoing checking of customer data against the various official international sanctions lists.

D) CDD Requirements for Transfer of Funds exceeding EUR 1000

EPIF believes that imposing all CDD requirements (Identification of a customer, verification of the information, keeping/storing copies of documents, review beneficial ownership, source of funds / purpose & nature of relationship, PEP checks and on-going monitoring based on customer profile) for each fund transfer exceeding EUR 1000 is not proportional to the limited risks involved. Also there is a risk of driving many remittance transactions underground into an already sizeable European informal remittance sector, undermining the overall integrity of the European AML/CFT regime.[1]

EPIF believes that it should be made clear that the Wire Transfer Regulation does not impose full Customer Due Diligence (CDD) for all transactions above 1000 EUR but only for certain types of transactions (commercial transactions more specifically). Therefore, EPIF suggests amending Article 10b (ii) as follows: *"which is a transfer of funds **exceeding EUR 1 000** in the circumstances provided for in [revised Reg 1781/2006]".*

4. BUSINESS RELATIONSHIP

The current proposal does not change the existing definition of "Business Relationship" under the 3AMLD and the European Commission does not provide any further guidance regarding the definition of a Business Relationship or any other relevant aspect. This could lead to national supervisory authorities coming to different conclusions as to when a Business Relationship is being formed and inconsistency of approach across the EU.

5. CENTRAL CONTACT POINT

EPIF believes that the criteria for the central contact points should be flexible allowing obliged entities to comply with the rule without adding unnecessary burdens. Obliged entities should be able to appoint an AML trained person from their own staff or, as currently allowed by most regulators under the current

[1] The FATF has recently published a report on *The Role of Hawala and Other Similar Service Providers in Money Laundering and Terrorist Financing* (October 2013) and finds that FATF Member States have very little data related to this sector, but that they provided estimates between 10% and 50% regarding the size of the informal remittance market. This means that in Europe, between USD 10 and 50 billion of funds could be already be flowing via these insecure channels.

regime, be able to appoint AML trained staff based in another EU country or an AML trained person from a third party (e.g. an agent or a partner) in the respective country.

6. REPORTING AND SUPERVISORY CO-OPERATION

EPIF believes that it should be clarified in the Directive that obliged entities operating cross border on the basis of the freedom to provide services shall only report suspicious activities to the FIU of the Member State where they are established (their Home State FIU).

In parallel, EPIF views the strengthening of the powers of Host State Supervisors as positive provided this is coupled with closer Home and Host State Supervisory Authority and FIU cooperation. PIs face significant operational challenges where there is a lack of co-ordination and agreement between Home and Host State Supervisory Authorities.

7. DATA PRIVACY

EPIF is of the opinion that applicable data privacy rules should not unduly restrict its members' ability to process relevant data for AML, CFT or Fraud Prevention purposes. Allowing data to be collected and/or used for legitimate purposes such as AML, CFT, Fraud and Payment Risk Management is critical to the payments industry and must be allowed under the new rules.

8. FUNDS TRANSFER REGULATION

EPIF believes the Funds Transfer Regulation should be clarified to provide that commercial person-to-person transfers of funds are out of scope because requiring identification verification for commercial person-to-person transfers with an amount in excess of 1000 EUR would be disproportionate and could seriously compromise the functioning and development of C2C platforms.

It should also be clarified that the exemption regime provided for in the Regulation for transfers below 1000 EUR applies regardless of the fact that the transfer of funds is made from an account or not.

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.

Finally, EPIF welcomes the opportunity to engage further with relevant EU Institutions on the issues highlighted above.