

CALL FOR EU-US UNDERSTANDING ON SAFE HARBOUR 2.0

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).

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

THE FREE FLOW OF DATA SUSTAINS EU BUSINESS

Like many of its sister EU trade associations, EPIF believes strongly that the free flow of data sustains business at all levels – including among Small and Medium-sized Enterprises (SMEs) that constitute the large majority of EU-owned businesses. The effective use and sharing of data also is critical to innovation. Accordingly, we believe tapping the full potential of data is an essential ingredient in achieving the European Commission’s goals for job creation, investment and growth, as well as establishing a Digital Single Market (DSM). We have full confidence that these economic objectives can be attained without undermining EU citizens’ fundamental right to data privacy or reducing the current EU norm for data protection. We reject the argument that economic growth and high standards for data privacy are somehow mutually exclusive. It is not an either-or question, but rather a matter of striking the right balance, which is certainly possible in practice.

Because modern digital economies rely so heavily on the free flow of data, EPIF urges negotiators representing the European Union and the United States to reach agreement on a new Safe Harbour agreement (often cited as Safe Harbour 2.0) at the earliest possible juncture. The present state of legal uncertainty about transatlantic transfers of data created by the Court of Justice of the EU (CJEU) October 6th 2015 ruling invalidating Safe Harbour affects American and European business alike. The public discourse has focused on the roughly 4,400 American companies that had self-certified under the Safe Harbour framework. A key omission, however, has been the comparable number of EU firms that depended on Safe Harbour to conduct business with American counterparts and parent companies, and to store and process data in the United States as part of an efficient, global business model. Therefore, we believe the dialogue has been distorted to suggest that replacing Safe Harbour is a US-only problem. As an association of European Payment Institutions, we know all too well there is an important EU side to the same equation.

More specifically, we call on the Commission and US negotiators to finalize their agreement on the 13 EU-proposed amendments to the original Safe Harbour that will greatly enhance the likelihood of any new agreement gaining acceptance among all stakeholders. We recognize those changes also are needed to take full account of the CJEU’s ruling. We urge all parties to embrace constructive compromise solutions to avert a continuing deadlock.

We view the late January 2016 deadline set by Member State Data Protection Authorities (DPAs) as a well-intentioned benchmark to incentivize reaching a new US-EU legal framework for data transfers. By the same token, however, completing the transition to other approved mechanisms may in good faith require more time. The current grace period benefits European businesses as well.

While awaiting a positive outcome on Safe Harbour 2.0, EPIF welcomes recent statements by the Commission and Article 29 Working Party that other approved means of data transfer remain valid e.g., Binding Corporate Rules and Standard Contract Clauses. EU and US companies that formerly relied on Safe Harbour must be offered some means of sustaining their businesses while ensuring compliance with existing EU regulation and the CJEU ruling.

A robust global digital economy is by definition precisely what the name implies - it is global. EPIF believes EU payment institutions are well positioned to compete and thrive in an open market. We must seek solutions that avoid creating unintended barriers to business growth and innovation or active engagement with the EU's global partners in the US and elsewhere.